



Roll Call Number

Agenda Item Number

41A

Date November 18, 2013

**RESOLUTION APPROVING REVISIONS TO THE
DEBT MANAGEMENT PROGRAM POLICY OF THE CITY OF DES MOINES**

WHEREAS, the Finance Director has submitted the attached Council Communication relating to the revised Debt Management Program Policy of the City of Des Moines that incorporates the City Council directed Debt Issuance and Limitation Policy and the Fund Balance Policy.


NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Des Moines, Iowa, that the revised Debt Management Program Policy of the City of Des Moines including the City Council directives on the Debt Issuance and Limitation Policy and the Fund Balance Policy incorporated therein, is hereby approved.

BE IT FURTHER RESOLVED that the Finance Director is hereby directed to disseminate the Debt Management Program Policy to the members of the City Council and the City employees set out in the Policy.

(Council Communication No. 13-550 Attached)

Moved by _____ to adopt.

APPROVED AS TO FORM:



Lawrence R. McDowell
Deputy City Attorney

COUNCIL ACTION	YEAS	NAYS	PASS	ABSENT
COWNIE				
COLEMAN				
GRIESS				
HENSLEY				
MAHAFFEY				
MOORE				
TOTAL				

MOTION CARRIED

APPROVED

CERTIFICATE

I, DIANE RAUH, City Clerk of said City hereby certify that at a meeting of the City Council of said City of Des Moines, held on the above date, among other proceedings the above was adopted.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal the day and year first above written.

Mayor

City Clerk

41A

CITY OF DES MOINES, IOWA
DEBT MANAGEMENT PROGRAM

ADMINISTERED BY THE FINANCE DEPARTMENT

Earlier Revision: February 2012

Latest Revision: November 2013

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I. Purpose

The City of Des Moines continues to have extensive capital outlay needs across the organization. Growth requires new infrastructure while existing facilities age and need major repairs and eventual replacement. Long-term obligations will transpire as debt issuances or development agreements. This policy manual is designed to assist in managing these debt issuance needs and it will be referenced to ensure proper procedures are followed throughout the debt issuance process and thereafter in regards to spenddown of proceeds and compliance reporting. In addition, this manual includes references to City Council Policy Directives that are attached as appendices to guide debt planning and preferential repayment structures.

II. Debt Instruments and Definitions

“Advisors” means the City’s bond counsel, financial advisor, paying agent, and rebate analyst.

“Code” means Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended.

“Credit Ratings” are independent ratings of the City’s financial capacity and insight into City’s organizational strengths and weaknesses as they pertain to providing municipal services. Moody’s and Standard and Poor’s currently rate City of Des Moines debt.

“General Obligation Debt” typically referred to as G.O. debt is backed by the full-faith and credit of the City which requires that sufficient tax revenue is generated each year to pay all debt service on such debt. There is no statutory limit on the amount of annual taxes that can be raised for payment of municipal debt service.

“Revenue Debt” means debt issued for purpose of City Enterprise Funds such as Sanitary Sewer, Stormwater Utility, Solid Waste and Parking. Revenue debt is secured by the annual revenues of the individual Enterprise Fund and therefore carries a riskier credit rating and higher interest rates than the City’s General Obligation debt. Reserve funds and proof of excess annual payment capacity (debt service coverage) are required when issuing Revenue Debt.

“Rules” means Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations promulgated thereunder.

III. Debt Planning Guidelines

A. Capital Financing Strategy

The City will seek to use current revenues (cash) for capital outlays if the useful life of the improvement/equipment is less than five years. Lease-purchase financing will be considered for funding equipment that has useful life beyond five years. Traditional debt will be utilized for capital improvements that are expected to retain value and efficient functionality beyond ten years. This approach will achieve a fair allocation of costs upon the current and future beneficiaries/users of the capital investments.

If the financial environment stabilizes and alternative revenue sources become available, the length of debt can be shortened and more capital outlays can shift to current revenue resources to reduce interest costs.

Whenever possible, the City will leverage grant opportunities without straying from pursuing the most essential capital projects.

The City will use Revenue Debt to fund Enterprise capital outlays if the associated credit rating is strong and interest costs are only marginally higher than a G.O. borrowing. See credit discussion below.

B. Credit Rating Strategy

The City seeks to maintain the highest possible credit rating for its long-term General Obligation and Revenue debt that can be reasonably achieved without compromising the delivery of basic City services.

The City’s current ratings are as follows.

<u>Type of Debt</u>	<u>Standard & Poor Rating</u>	<u>Moody’s Rating</u>
General Obligation	AAA	Aa1
Sanitary Sewer	AA	Aa3
Stormwater Utility	AA+	Aa2

The Parking and Solid Waste Enterprises are not rated.

The City recognizes that access to the broad municipal debt markets is essential to maintaining affordable interest costs for capital outlays. As municipal bond market and credit agency requirements and expectations change, so too will the City’s policies and procedures associated with debt issuances and administrative compliance. The City will keep this program and council-directed policies updated.

C. Debt Limit Calculation

Article XI, Section 3 of the State of Iowa Constitution limits the amount of debt outstanding at any time of any county, municipality or other political subdivision to no more than 5% of the actual value of all taxable property within the corporate limits, as taken from the last state and county tax list. The debt limit can be further restricted if a municipality so chooses.

The City of Des Moines' constitutional debt limit for July 1, 2013 is calculated as follows:

2012 Actual Valuation of Property (most recent certified values)	\$10,932,525,058
Less: Military Exemption	<u>(14,934,518)</u>
Subtotal	\$10,917,590,540
Legal Debt Limit of 5%	<u>* 0.05</u>
Legal Debt Limit	\$545,879,527
Less: General Obligation Debt Subject to Debt Limit	(398,215,000)
Less: TIF Rebate Agreements and Obligations	(11,200,722)
Less: Lease Debt Paid by Taxes	(3,012,813)
Less: Section 108 Loan	<u>(439,749)</u>
Remaining Legal Debt Margin	\$133,011,243
Reduce Debt Limit to 4% of Valuation	(109,175,905)
Remaining Self-Imposed Debt Margin	23,835,338

IV. Debt Administration Policies

A. Responsible Parties

The Finance Director shall be the party primarily responsible for ensuring that the City of Des Moines successfully carries out its tax compliance requirements under applicable provisions of the Rules with regard to all obligations associated with debt issuance. The Finance Director shall be assisted by other staff and officials when appropriate and at the Finance Director's discretion. Advisors may be engaged during the time the bonds are outstanding for assistance in carrying out post-issuance tax compliance requirements.

The Finance Director shall be responsible for assigning post-issuance tax compliance responsibilities to other staff and to the Advisors. The Finance Director shall utilize such other professional service organizations as are necessary to ensure compliance with the post-issuance tax compliance requirements of the City of Des Moines. The Finance

Director shall provide training and educational resources to staff responsible for ensuring compliance with any portion of the tax compliance requirements of this policy.

B. Tax Exempt Debt Compliance

The City of Des Moines tax-exempt governmental bonds must comply with federal tax rules pertaining to expenditure of proceeds for qualified costs, rate of expenditure, use of bond financed property, investment of proceeds in compliance with arbitrage rules, and retention of records. As an issuer of such bonds, the Governing Body of the City of Des Moines is required by the terms of Sections 103 and 141 through 150 of the Internal Revenue Code of 1986, as amended, and the U.S. Treasury Regulations promulgated thereunder, to take certain actions subsequent to the issuance of the bonds to ensure the continuing tax-exempt status of such bonds. Further, Section 6001 of the Code and Section 1.6001-1(a) of the Treasury Regulations impose record retention requirements on the City of Des Moines with respect to its tax-exempt governmental bonds. This policy is designed to ensure that the City of Des Moines complies with its tax compliance obligations under applicable provisions of the Rules.

Expenditure of Bond Proceeds Process: The Finance Director shall review the resolution authorizing issuance for each tax-exempt obligation, and shall:

1. obtain a computation of the yield on such issue from the City's financial advisor;
2. create a separate Project Fund (with as many sub-funds as shall be necessary to allocate proceeds among the projects being funded by the issue) into which the proceeds of issue shall be deposited;
3. review all requisitions, draw schedules, draw requests, invoices and bills requesting payment from the Project Fund;
4. determine whether payment from the Project Fund is appropriate, and if so, make payment from the Project Fund (and appropriate sub-fund if applicable);
5. maintain records of the payment requests and corresponding cancelled checks showing payment;
6. consult with the Advisors to ensure that such expenditures are within the sixty (60) day period prior to the date in which the City of Des Moines made a "declaration of intent" to reimburse such costs or are preliminary expenditures under the Code, in the event the City of Des Moines seeks to utilize bond proceeds for costs that were incurred prior to the issuance of the bonds;

7. maintain records showing the earnings on, and investment of, the Project Fund;
8. ensure that investments acquired with proceeds are purchased at fair market value; and
9. identify bond proceeds or applicable debt service allocations that must be invested with a yield-restriction and monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted.

Rate of Expenditure:

The Finance Director shall ensure that the expenditure of bond proceeds will be monitored against the expenditure expectations represented in the tax compliance certificate for such bond issue to ensure that:

1. Five percent (5%) of the net sale proceeds were spent or committed within six (6) months of the issue date;
2. Eighty-five percent (85%) of the net sale proceeds were spent within three (3) years of the issue date; and
3. the City of Des Moines proceeded with due diligence to complete the project and fully spend the net sale proceeds.

Failure to meet the expected expenditure expectations represented in the tax compliance certificate for such bond issue shall be documented and retained by the Finance Director in the records for the bond issue.

Arbitrage Rules and Rebate Requirements

The Finance Director shall review the tax compliance certificate for each tax-exempt obligation, and the expenditure records, and shall:

1. monitor and ensure that proceeds of each such issue are spent within the temporary period set forth in such certificate;
2. if the "small issuer" exception does not apply, monitor and ensure that the proceeds are spent in accordance with one or more of the applicable exceptions to rebate as set forth in such certificate;

3. not less than sixty (60) days prior to a required expenditure date confer with bond counsel if it appears expenditures will fail to meet the applicable temporary period or rebate exception expenditure requirements of the Tax-Exemption Certificate;
4. in the event of failure to meet a temporary period or rebate exception:
 - i. procure a timely computation of any rebate liability and, if rebate is due, file a Form 8038-T and arrange for payment of such rebate liability;
 - ii. arrange for timely computation and payment of “yield reduction payments” (as such term is defined in the Code and Treasury Regulations), if applicable;
5. ensure that the investment of bond proceeds is made only in permitted investments of the City of Des Moines as outlined in Iowa Code chapters 12B and 12C, and any official policy;
6. consult with the Advisors to ensure that the investment of bond proceeds is performed in compliance with the arbitrage rules and rebate requirements;
7. consult with the Advisors to identify bond proceeds that must be yield-restricted and shall monitor the investments of any yield-restricted funds to ensure that the yield on such investments does not exceed the yield to which such investments are restricted;
8. contact the Rebate Analyst (and, if appropriate, bond counsel) prior to the fifth anniversary of the date of issuance of each issue of bonds of the City of Des Moines and each fifth anniversary thereafter to arrange for calculations and reports of the rebate requirements with respect to such bonds; and
9. if a rebate payment is required to be paid by the City of Des Moines, the Finance Director shall prepare or cause to be prepared the appropriate form to be filed with the IRS (Form 8038-T).

Filings with Internal Revenue Service

The Finance Director, with assistance from bond counsel, shall ensure that each issuance of bonds is properly reported with the Internal Revenue Service (IRS) as required by Section 149(e) of the Code. On the issue date of each series of bonds, the Finance Director shall consult with the Advisors to identify the deadline to file the requisite IRS form for such issue.

Reporting the Issuance of Tax-Exempt Bonds

The original issuance of a tax-exempt bond issue with an issue price of one hundred thousand dollars (\$100,000) or greater shall be reported on Form 8038-G. The original issuance of a tax-exempt bond issue with an issue price less than one hundred thousand dollars (\$100,000) shall be reported on Form 8038-GC.

- Forms 8038-G and 8038-GC shall be filed by the Finance Director or bond counsel no later than the 15th day of the 2nd calendar month following the quarter in which the bonds were issued.
- The Finance Director shall consult with the Advisors to ensure the Form 8038-G is accurately filled out.

Rebate Reporting Requirements

The Finance Director shall contact the rebate analyst prior to the 5th anniversary of the issue date on each series of bonds and each 5th anniversary thereafter to arrange for calculations of the rebate requirements with respect to such bonds. If a rebate payment is required to be paid, the Finance Director shall prepare or cause to be prepared a Form 8038-T, and submit such Form 8038-T to the IRS with the required rebate payment. If the City of Des Moines is authorized to recover a rebate payment previously paid, the Finance Director shall prepare or cause to be prepared a Form 8038-R, with respect to such rebate recovery, and submit such Form 8038-R to the IRS.

Use of Bond-Financed Property

The Finance Director shall monitor the use of all bond-financed facilities in order to determine whether private business uses of bond-financed facilities have exceeded the limits set forth in Section 141(b) of the Code (generally 10% of bond proceeds) as a result of leases and subleases, licenses, management contracts, research contracts, naming rights agreements or other arrangements that provide special legal entitlements to nongovernmental persons.

To this end, the Finance Director shall:

1. maintain appropriate records and a list of all bond financed assets. Such records shall include the actual amount of proceeds (including investment earnings) spent on each of the bond financed assets;
2. with respect to each bond financed asset, the Finance Director will monitor and confer with bond counsel with respect to all proposed:
 - i. management contracts,
 - ii. service agreements,
 - iii. research contracts,

- iv. naming rights contracts,
 - v. leases or sub-leases,
 - vi. joint venture, limited liability or partnership arrangements,
 - vii. sale of property;
 - viii. any other change in use of such asset; or
 - ix. output contracts (including retail and wholesale requirements contracts);
3. maintain a copy of the proposed agreement, contract, lease or arrangement, together with the response by bond counsel with respect to the proposal for at least three (3) years after retirement of all tax-exempt obligations issued to fund all or any portion of bond financed assets, or obligations issued to refund those obligations;
 4. provide training and educational resources to any staff member that has the primary responsibility for the operation, maintenance, or inspection of bond-financed facilities with regard to the limitations on the private business use and on the private security or payments with respect to bond-financed facilities;
 5. ensure that no item of bond-financed property will be sold or transferred to a nonexempt party without advance arrangement of a “remedial action” under the applicable Treasury Regulations and the Finance Director shall consult with bond counsel prior to the sale or transfer of any bond-financed property; and
 6. In the event of an action with respect to a bond financed asset, which may cause the private business tests or private loan financing test to be met, the Finance Director shall contact bond counsel for advice and ensure timely remedial action under IRS Regulation Sections 1.141-12.

Advance Refundings

The Finance Director shall be responsible for the following current, post issuance and record retention procedures with respect to advance refunding bonds:

1. Identify and select bonds to be advance refunded with advice from internal financial personnel, the City's financial advisor and bond counsel.
2. The Finance Director shall identify, with advice from the City's financial advisor and bond counsel, any possible federal tax compliance issues prior to structuring any advance refunding.
3. The Finance Director shall review the structure with the input of the City's financial advisor and bond counsel, of advance refunding issues prior to the issuance to ensure (i) that the proposed refunding is permitted pursuant to applicable federal tax requirements if there has been a prior refunding of the original bond issue; (ii) that the

proposed issuance complies with federal income tax requirements which might impose restrictions on the redemption date of the refunded bonds; (iii) that the proposed issuance complies with federal income tax requirements which allow for the proceeds and replacement proceeds of an issue to be invested temporarily in higher yielding investments without causing the advance refunding bonds to become “arbitrage bonds”; and (iv) that the proposed issuance will not result in the issuer’s exploitation of the difference between tax exempt and taxable interest rates to obtain a financial advantage nor overburden the tax exempt market in a way that might be considered an abusive transaction for federal tax purposes.

4. The Finance Director shall collect and review data related to arbitrage yield restriction and rebate requirements for advance refunding bonds. To ensure such compliance, the Finance Director shall engage the City's rebate consultant to prepare a verification report in connection with the advance refunding issuance. Said report shall ensure said requirements are satisfied.
5. The Finance Director shall, whenever possible, purchase SLGS to size each advance refunding escrow. The City's financial advisor and rebate consultant shall be included in the process of subscribing SLGS. To the extent SLGS are not available for purchase, the Finance Director shall, in consultation with bond counsel, comply with IRS regulations.
6. To the extent the City of Des Moines elects to purchase a guaranteed investment contract, the Finance Director shall ensure, after input from bond counsel, compliance with any bidding requirements set forth by the IRS regulations.
7. In determining the issue price for any advance refunding issuance, the Finance Director shall rely on the issue price certification by the purchasing underwriter at closing.
8. After the issuance of an advance refunding issue, the Finance Director shall ensure timely identification of violations of any federal tax requirements and engage bond counsel in attempt to remediate same in accordance with IRS regulations.

C. Record Retention

Management and retention of records related to bond issues shall be supervised by the Finance Director. Records and documents pertaining to cancellation, transfer, redemption or replacement of City of Des Moines bonds shall be preserved by the City of Des Moines or its agent for a period of not less than eleven (11) years, as set forth in Iowa Code Section 76.10. The transcript prepared by bond counsel and the bond financing record prepared by an independent financial advisor shall be retained for ten (10) years beyond the final maturity or the full defeasance due to a refunding; whichever occurs first. Other records shall be retained during the period in which the bonds remain

outstanding (plus any refunding bonds) plus three (3) years. Records may be in the form of documents and electronic copies of documents, appropriately indexed to specific bond issues and compliance functions.

The Finance Director shall collect and retain the following records with respect to each issue of bonds of the City of Des Moines and with respect to the facilities financed with the proceeds of such bonds:

- audited financial statements of the City of Des Moines;
- appraisals, demand surveys, or feasibility studies, if any, with respect to the facilities to be financed with the proceeds of such bonds;
- publications, brochures, and newspaper articles, if any, related to the bond financing;
- trustee or paying agent statements;
- records of all investments and the gains (or losses) from such investments;
- paying agent or trustee statements regarding investments and investment earnings;
- reimbursement resolutions, if any, and expenditures reimbursed with the proceeds of such bonds;
- allocations of proceeds to expenditures (including costs of issuance) and the dates and amounts of such expenditures (including any requisitions, expenditure/draw schedules, expenditure/draw requests, invoices, bills, and cancelled checks with respect to such expenditures;
- contracts entered into for the construction, renovation, or purchase of bond-financed facilities;
- an asset list or schedule of all bond financed depreciable property and any depreciation schedules with respect to such assets or property;
- records of the purchases and sales of bond-financed assets;
- private business uses of bond-financed facilities that arise subsequent to the date of issue through leases and subleases, licenses, management contracts, research contracts, naming rights agreements, or other arrangements that provide special legal entitlements to nongovernmental persons and copies of any such agreements or instruments; arbitrage rebate reports and records of rebate and yield reduction payments, if any; resolutions or other actions, if any, taken by the Governing Body subsequent to the date of issue with respect to such bonds;
- formal elections authorized by the Code or Treasury Regulations that are taken with respect to such bonds;
- relevant correspondence relating to such bonds;
- documents related to guaranteed investment contracts or certificates of deposit, credit enhancement transactions, and financial derivatives entered into subsequent to the date of issue;
- copies of the bond financing record provided by an independent financial advisor;

- copies of any and all forms filed with the IRS for each series of bonds including, as applicable, Form 8038-G or Form 8038-GC; and
- the official transcript prepared by bond counsel with respect to each series of bonds of the City of Des Moines.

D. Identification of Violations and Corrections

If, during the period the bonds remain outstanding, it is determined that a violation of federal tax requirements may have occurred, the Finance Director shall immediately consult with the Advisors to ensure that corrective or remedial action is taken. In consultation with bond counsel, the Finance Director shall become acquainted with the remedial actions under Treasury Regulations, Section 1.141-12, to be utilized in the event that private business use of bond-financed facilities exceeds the limits under Section 141(b)(1) of the Code. In consultation with bond counsel, the Finance Director shall become acquainted with the Tax Exempt Bonds Voluntary Closing Agreement Program, described in Notice 2008-31, 2008-11 I.R.B. 592, to be utilized as a means for an issuer to correct any post-issuance infractions of the Rules with respect to its outstanding bonds.

E. Other Post-Issuance Actions

If, in consultation with the Advisors, the Finance Director determines that any additional action not identified in this policy must be taken by the Finance Director to ensure the continuing tax-exempt status or “qualified” status of any issue of the City of Des Moines’s bonds, the Finance Director shall take such action if the Finance Director has the authority to do so. If, after consultation with the Advisors, the Finance Director determines that this policy shall be amended or supplemented to ensure the continuing tax-exempt status or “qualified” status of any issue of the City of Des Moines’s bonds, the Finance Director shall follow the appropriate City of Des Moines policy or procedure that this document be so amended or supplemented.

V. Distribution List for Amendments

This program shall remain in effect until superseded or terminated by action of the Finance Director. The City of Des Moines shall comply with this program and Council-directed policies upon establishment of an indebted obligation and as long as the debt remains outstanding. This program may be revised at any time to comply with amendments to the Rules or changes in City Council directives. All amendments to this program will be disseminated to the following:

Deputy City Manager, Finance Director, Controller, Comptroller, Deputy Treasurer, Budget Director, City Legal, and Procurement Officer.

Original Document Distributed February 12, 2012.

First Revision November 4, 2013.

Appendix A

Council-Directed Debt Issuance and Limitation Policy

The City Council directives pertaining to debt issuances are summarized as follows:

- a. Utilize no more than 80% of the legal debt capacity as established by the Iowa Constitution for City capital expenditures.
- b. Utilize bond proceeds to pay for planned obligations such as capital outlays and not to pay for operating expenses, unless under emergency situations.
- c. Maintain the debt service levy as low as the prevailing market rates will allow.
- d. Structure each debt issuance with the shortest reasonable maturities and not to exceed the weighted average of the useful life of the financed projects and equipment.
- e. Structure each debt issuance with the earliest market-viable and cost effective call date.
- f. Issuance of General Obligation (G.O.) debt in place of Revenue debt shall not take place if it puts at risk the City's strong G.O. credit ratings.
- g. Prior to issuance of debt associated with enterprise funds, the Finance Director shall make a recommendation as to whether it is in the best interest of the City to issue the debt as Revenue Bonds or as G.O. Bonds. The recommendation shall include the level of debt capacity available, analysis of the cost to maintain reserve funds and other bond covenants, and the impact, if any, on the City's credit ratings.

The City Council approved directives above have been incorporated into the larger Debt Management Program of the City. This broader program document includes procedures for debt issuance, reporting compliance, record retention, corrective measures if deemed necessary and departmental processes for handling bond proceeds (i.e. investment restrictions) and arbitrage calculations. It is the responsibility of the Finance Director to keep this program document updated, distributed to appropriate City staff and readily available to the bond market and credit agencies.

Appendix B

Council-Directed Fund Balance Policy

The City Council directives pertaining to fund balances and current cash reserves are summarized as follows:

- a. The City's General Fund unassigned fund balance shall be maintained at no less than 10% of annual expenditures on every June 30th. The City's annual Comprehensive Annual Financial Report will illustrate compliance with this directive each year.
- b. The City shall maintain sufficient General Fund cash liquidity throughout the fiscal year to pay current expenses.
- c. Working Capital Balances for Enterprise Funds shall be maintained at not less than 15% of annual expenditures on every June 30th.

The City Council approved directives above have been incorporated into the larger Debt Management Program of the City. This broader program document includes procedures for debt issuance, reporting compliance, record retention, corrective measures if deemed necessary and departmental processes for handling bond proceeds (i.e. investment restrictions) and arbitrage calculations. It is the responsibility of the Finance Director to keep this program document updated, distributed to appropriate City staff and readily available to the bond market and credit agencies