

CITY COUNCIL AGENDA ITEM
CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Discussion of Resolution No. 372 Repealing Post-Issuance Tax Compliance Policies for Tax-Exempt Bonds Adopted in Resolution No. 308 and Approving the Revised Policies		
DEPARTMENT:	Administrative Services		
PRESENTED BY:	Patti Rader, Interim Administrative Services Director		
ACTION:	<input type="checkbox"/> Ordinance	<input type="checkbox"/> Resolution	<input type="checkbox"/> Motion
	<input checked="" type="checkbox"/> Discussion	<input type="checkbox"/> Public Hearing	

PROBLEM/ISSUE STATEMENT:

Proposed Resolution No. 372 is attached to this staff report as Attachment A. This resolution repeals post-issuance tax compliance policies for tax-exempt bonds that were adopted in Resolution No. 308 and approves revised policies. Resolution No. 308, along with Policy and Procedure Number FIN051 - Post Issuance Compliance Policies and Procedures for Tax Exempt Bonds – were approved by Council on October 25, 2010 (Attachment B). These policies were developed as the IRS required that all debt issuers have written policies in place to ensure compliance with post debt issuance requirements and responsibilities.

Since that time, the IRS has provided additional guidance on the format and specific elements that should be included in the policies. Staff has reviewed the existing policy and revised it to include the additional recommendations. The primary changes to the original policy include 1) modify Section 2.0 to specifically assign the duties outlined in the policy to the Administrative Services Director, 2) modify Section 3.1 to specify the actions being assigned to the Administrative Services Director, and 3) modify and update Section 3.3 to include all of the new required record retention requirements. The revised policy is provided in Attachment C.

FINANCIAL IMPACT:

There is no direct financial impact in adopting these policies. Failure to comply with policies could revoke the tax-exempt status of bonds resulting in higher interest rates.

RECOMMENDATION

No action is required. Staff recommends that Council discuss Resolution No. 372 repealing post-issuance tax compliance policies for tax-exempt bonds adopted in Resolution No. 308 and approving the revised policies.

Approved By: City Manager **JN** City Attorney **MK**

ATTACHMENTS:

Attachment A: Proposed Resolution No. 372

Attachment B: Resolution No. 308

Attachment C: Shoreline Policy and Procedure Finance 2.150420 - Post Issuance
Compliance Policies and Procedures for Tax Exempt Bonds

RESOLUTION NO. 372

A RESOLUTION OF THE CITY COUNCIL, CITY OF SHORELINE, WASHINGTON, REPEALING POST-ISSUANCE TAX COMPLIANCE POLICIES FOR TAX-EXEMPT BONDS IN ACCORDANCE WITH REQUIREMENTS OF THE INTERNAL REVENUE SERVICE (“IRS”) ADOPTED IN RESOLUTION NO. 308 AND APPROVING REVISED POST-ISSUANCE TAX COMPLIANCE POLICIES FOR TAX-EXEMPT BONDS.

WHEREAS, The IRS requires that issuers of tax-exempt bonds have written policies and procedures for ensuring that federal tax requirements applicable to their tax-exempt bonds are met; and

WHEREAS, Since the original Post Issuance Compliance Policies and Procedures for Tax Exempt Bonds was approved by the City Council the IRS has issued additional guidance on specific elements that should be included in the City’s policies and procedures; and

WHEREAS, Staff would like to include these additional recommendations in the policy; now therefore

THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, HEREBY RESOLVES:

That the Shoreline City Council repeals Post-Issuance Tax Compliance Policies for Tax Exempt Bonds as detailed in Policy and Procedure as adopted in Resolution No. 308 and adopts the revised Post-Issuance Tax Compliance Policies for Tax Exempt Bonds.

ADOPTED BY THE CITY COUNCIL ON APRIL 20, 2015

Mayor Shari Winstead

ATTEST:

Jessica Simulcik Smith
City Clerk

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RESOLUTION NO. 308

A RESOLUTION OF THE CITY COUNCIL, CITY OF SHORELINE, WASHINGTON, ADOPTING POST-ISSUANCE TAX COMPLIANCE POLICIES FOR TAX-EXEMPT BONDS IN ACCORDANCE WITH REQUIREMENTS OF THE INTERNAL REVENUE SERVICE ("IRS").

WHEREAS, The IRS requires that issuers of tax-exempt bonds have written policies and procedures for ensuring that federal tax requirements applicable to their tax-exempt bonds are met; and

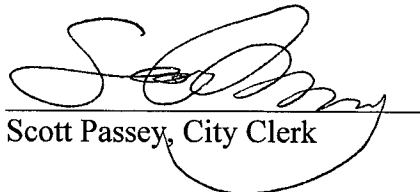
WHEREAS, The IRS plans to issue an IRS Compliance Check Questionnaire to governmental entities to inquire whether the entity has written policies and procedures in place to help ensure proper and timely use of bond proceeds and compliance with arbitrage yield restriction and rebate requirements, including the identification of which official or officials of the issuer is primarily responsible for monitoring post-issuance compliance; now therefore

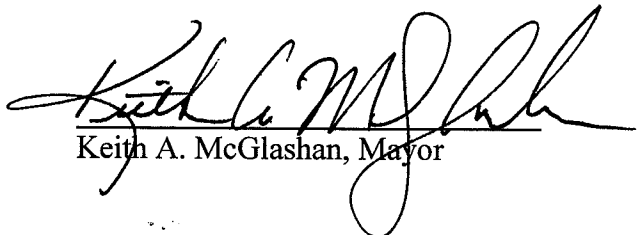
THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON, HEREBY RESOLVES:

That the Shoreline City Council adopts Post-Issuance Tax Compliance Policies for Tax Exempt Bonds as detailed in Policy and Procedure FIN 05-1 attached hereto.

ADOPTED BY THE CITY COUNCIL ON OCTOBER 25, 2010.

ATTEST:


Scott Passey, City Clerk


Keith A. McGlashan, Mayor

ORIGINAL**Shoreline Policy and Procedure****FIN051 – POST-ISSUANCE COMPLIANCE POLICIES AND PROCEDURES FOR TAX-EXEMPT BONDS**

Subject: POST-ISSUANCE COMPLIANCE POLICIES AND PROCEDURES FOR TAX- EXEMPT BONDS	Authority: Resolution 308
Effective Date:	Approved By:
Prior Versions and Related Policies: None	

1.0 PURPOSE

The purpose of these post-issuance compliance policies and procedures (“Compliance Policy”) for tax-exempt bonds issued by the City of Shoreline (the “City”) is to ensure that the City will be in compliance with requirements if the Internal Revenue Code of 1986, and amended (the “Code”), that must be satisfied with respect to tax-exempt bonds and other obligations (“bonds”) after the bonds are issued so that interest on the bonds will be and remain tax-exempt.

2.0 DEPARTMENTS AFFECTED

The Shoreline City Council has the overall, final responsibility for monitoring whether the City is in compliance with post-issuance federal tax requirements for the City’s tax-exempt bonds. However, the Shoreline City Council assigns the City Manager or his/her designee the primary operating responsibility to monitor the City’s compliance with post-issuance federal tax requirements for the City’s tax-exempt bonds.

3.0 POLICY

3.1 Arbitrage Yield Restriction and Rebate Requirements. The City Manager shall maintain or cause to be maintained records of:

- A. Purchases and sales of investments made with bond proceeds (including amounts treated as “gross proceeds” of bonds under section 148 of the Code) and receipts of earnings on those investments;
- B. Expenditures made with bond proceeds (including investment earnings on bond proceeds) for the governmental purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities;

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- C. Information showing, where applicable for a particular calendar year, that the City was eligible to be treated as a "small city" in respect of bonds issued in that calendar year because the City did not reasonably expect to issue more than \$5,000,000 of tax-exempt bonds in that calendar year;
- D. Calculations that will be sufficient to demonstrate to the Internal Revenue Service ("IRS") upon an audit of a bond issue that, where applicable, the City has complied with an available spending exception to the arbitrage rebate requirement in respect of that bond issue;
- E. Calculations that will be sufficient to demonstrate to the IRS upon an audit of a bond issue for which no exception to the arbitrage rebate requirement was applicable, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS; and
- F. Information and records showing that investment held in yield-restricted advance refunding of defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

3.2 Restrictions on Private Business Use and Private Loans. The City Manager shall adopt procedures that educate and inform the principal operating officials of City departments (the "users") for which land, buildings, facilities and equipment ("property") are financed with proceeds of tax-exempt bonds about the restrictions on private business use that apply to that property after the bonds have been issued, and of the restriction on the use of proceeds of tax-exempt bonds to make or finance any loan to any person other than a state or local government unit.

In particular, following the issuance of bonds for the financing of property, the City Manager shall provide to the users of the property a copy of this Compliance Policy and other appropriate written guidance advising that:

- A. "Private business use" means use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and *the United States of America and any federal agency*, as a result of ownership of the property or use of the property under a lease, management or service contract (except of certain "qualified" research contracts), "naming rights" contract, "public-private partnership" arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property;
- B. Under section 141 of the Code, no more than 10% of the proceeds of any tax-exempt bond issue (including the property financed with the bonds) may be used for private business use, of which no more than 5% of the proceeds of the

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tax-exempt bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use – that is, generally, a private business use that is not functionally related to the governmental purposes of the bonds; and no more than *the lesser* of \$5,000,000 or 5% of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local government unit;

- C. Before entering into any special use arrangement with a nongovernmental person that involves the use of bond-financed property, the user must consult with the City Manager, provide the City Manager with a description of the proposed nongovernmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property;
- D. In connection with the evaluation of any proposed nongovernmental use arrangement, the City Manager should consult with nationally recognized bond counsel to the City as may be necessary to obtain federal tax advice on whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any “remedial action” permitted under section 141 of the Code may be taken by the City as a means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the bonds that financed the property; and
- E. The City Manager and the user of the property shall maintain records of such nongovernmental uses, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-exempt status of the bonds that financed the property.

3.3 Records to be Maintained for Tax-Exempt Bonds. It is the policy of the City that, unless otherwise permitted by future IRS regulations or other guidance, written records (which may be in electronic form) will be maintained with respect to each bond issue for as long as those bonds remain outstanding, plus three years. For this purpose, the bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records maintained are to include:

- A. The official Transcript of Proceedings for the original issuance of the bonds;
- B. Records showing how the bond proceeds were invested, as described in 3.1(A) above;
- C. Records showing how the bond proceeds were spent, as described in 3.1(B) above, including purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and

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records of “allocations” of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued;

- D. Information, records and calculations showing that, with respect to each bond issue, the City was eligible for the “small issue” exception or one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS, as described in 3.1(C) (D) and (E) above; and
- E. Records showing that special use arrangements, if any, affecting bond-financed property made by the City with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of property financed with proceeds of tax-exempt bonds and restrictions on the use of proceeds of tax-exempt bonds to make or finance loans to any person other than a state or local government unit, as described in 3.2 above.

The basic purpose of the foregoing record retention policy for the City’s tax-exempt bonds is to enable the City to readily demonstrate to the IRS upon an audit of any tax-exempt bond issue that the City has fully complied with all federal tax requirements that must be satisfied after the date of the bonds so that interest on those bonds continues to be tax-exempt under section 103 of the Code.

3.4 Education Policy With Respect to Federal Tax Requirements for Tax-Exempt Bonds.

It is the policy of the City that the finance staff, as well as the principal operating officials of those departments of the City for which property is financed with proceeds of tax-exempt bonds should be provided with education and training on federal tax requirements applicable to tax-exempt bonds. The City recognizes that such education and training is vital as a means of helping to ensure that the City remains in compliance with those federal tax requirements in respect of its bonds. The City therefore will enable and encourage those personnel to attend and participate in educational and training programs offered by, among others, the Washington Municipal Treasurers Association and the Washington Finance Officers Association with regard to the federal tax requirements applicable to tax-exempt bonds.

Shoreline Policy and Procedure

POST-ISSUANCE COMPLIANCE POLICIES AND PROCEDURES FOR TAX-EXEMPT BONDS

Category and Number: Finance - 2.150420	Receiving Number:
Code and statutory authority: Resolution No. 372	Authorized: Effective Date: April 20, 2015
Supersedes: FIN051	By: City Council

1.0 PURPOSE

The purpose of these post-issuance compliance policies and procedures (“Compliance Policy”) for tax-exempt bonds issued by the City of Shoreline (the “City”) is to ensure that the City will be in compliance with requirements if the Internal Revenue Code of 1986, and amended (the “Code”), that must be satisfied with respect to tax-exempt bonds and other obligations (“bonds”) after the bonds are issued so that interest on the bonds will be and remain tax-exempt.

2.0 DEPARTMENTS AFFECTED

The Shoreline City Council has the overall, final responsibility for monitoring whether the City is in compliance with post-issuance federal tax requirements for the City’s tax-exempt bonds. However, the Shoreline City Council assigns the City Manager and the City Manager assigns the Administrative Services Director the primary operating responsibility to monitor the City’s compliance with post-issuance federal tax requirements for the City’s tax-exempt bonds.

3.0 POLICY

3.1 Arbitrage Yield Restriction and Rebate Requirements. The Administrative Services Director shall monitor and confirm the City’s compliance with post issuance requirements through the following actions:

- A. Monitor compliance with the “temporary period” expectations for expenditures of project bond proceeds (typically three years) and provide for yield restriction of bond proceeds as necessary;
- B. Monitor compliance with the 24-month, 18-month and 6-month rebate exemptions;
- C. Ensure that investments acquired with bond proceeds are purchased at fair market value;

- D. Consult with outside tax counsel before engaging in post-issuance credit enhancement transactions;
- E. Perform timely computation of rebate liability and, if rebate is payable, for timely filing of Form 8038-T and payment of rebate;
- F. Perform timely computation of payment of “yield reduction payments” if applicable.
- G. Manage the investment yields for investments held in yield-restricted advance refunding of defeasance escrows for bonds and investments made with unspent bond proceeds after the expiration of the applicable temporary period, to avoid the potential for payment of rebate.
- H. Periodically review program for any noncompliance events that have occurred or that may occur and report events and corrective actions taken to appropriate reporting bodies
- I. Determine, where applicable for a particular calendar year, whether the City was eligible to be treated as a “small city” in respect of bonds issued in that calendar year because the City did not reasonably expect to issue more than \$5,000,000 of tax-exempt bonds in that calendar year;

3.2 Restrictions on Private Business Use and Private Loans. The City Manager shall adopt procedures that educate and inform the principal operating officials of City departments (the “users”) for which land, buildings, facilities and equipment (“property”) are financed with proceeds of tax-exempt bonds about the restrictions on private business use that apply to that property after the bonds have been issued, and of the restriction on the use of proceeds of tax-exempt bonds to make or finance any loan to any person other than a state or local government unit.

In particular, following the issuance of bonds for the financing of property, the City Manager shall provide to the users of the property a copy of this Compliance Policy. Users of the property are advised that:

- A. “Private business use” means use by any person other than a state or local government unit, including business corporations, partnerships, limited liability companies, associations, nonprofit corporations, natural persons engaged in trade or business activity, and *the United States of America and any federal agency*, as a result of ownership of the property or use of the property under a lease, management or service contract (except of certain “qualified” research contracts), “naming rights” contract, “public-private partnership” arrangement, or any similar use arrangement that provides special legal entitlements for the use of the bond-financed property;
- B. Under section 141 of the Code, no more than 10% of the proceeds of any tax-exempt bond issue (including the property financed with the bonds) may be

used for private business use, of which no more than 5% of the proceeds of the tax-exempt bond issue (including the property financed with the bonds) may be used for any “unrelated” private business use – that is, generally, a private business use that is not functionally related to the governmental purposes of the bonds; and no more than *the lesser* of \$5,000,000 or 5% of the proceeds of a tax-exempt bond issue may be used to make or finance a loan to any person other than a state or local government unit;

- C. Before entering into any special use arrangement with a nongovernmental person that involves the use of bond-financed property, the user must consult with the City Manager, provide the City Manager with a description of the proposed nongovernmental use arrangement, and determine whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property;
- D. In connection with the evaluation of any proposed nongovernmental use arrangement, the City Manager should consult with nationally recognized bond counsel to the City as may be necessary to obtain federal tax advice on whether that use arrangement, if put into effect, will be consistent with the restrictions on private business use of the bond-financed property, and, if not, whether any “remedial action” permitted under section 141 of the Code may be taken by the City as a means of enabling that use arrangement to be put into effect without adversely affecting the tax-exempt status of the bonds that financed the property; and
- E. The City Manager and the user of the property shall maintain records of such nongovernmental uses, if any, of bond-financed property, including copies of the pertinent leases, contracts or other documentation, and the related determination that those nongovernmental uses are not inconsistent with the tax-exempt status of the bonds that financed the property.

3.3 Records to be Maintained for Tax-Exempt Bonds. It is the policy of the City that, unless otherwise permitted by future IRS regulations or other guidance, written records (which may be in electronic form) will be maintained with respect to each bond issue for as long as those bonds remain outstanding, plus three years. For this purpose, the bonds include refunding bonds that refund the original bonds and thereby refinance the property that was financed by the original bonds.

The records maintained are to include:

- A. The official Transcript of Proceedings for the original issuance of the bonds;
- B. Records detailing how the bond proceeds were invested including purchases and sales of investments made with bond proceeds (including amounts treated as “gross proceeds” of bonds under section 148 of the Code), receipts of earnings on those investments, and yield calculations for each class of investments and rebate calculations and reports;;

- C. Records showing how the bond proceeds were spent, Expenditures made with bond proceeds (including investment earnings on bond proceeds) for the governmental purposes of the bonds, such as for the costs of purchasing, constructing and/or renovating property and facilities; including purchase contracts, construction contracts, progress payment requests, invoices, cancelled checks, payment of bond issuance costs, and records of “allocations” of bond proceeds to make reimbursement for project expenditures made before the bonds were actually issued and records of sales of bond financed assets;
- D. Information, records and calculations showing that, with respect to each bond issue, the City was eligible for the “small issue” exception or one of the spending exceptions to the arbitrage rebate requirement or, if not, that the rebate amount, if any, that was payable to the United States of America in respect of investments made with gross proceeds of that bond issue was calculated and timely paid with Form 8038-T timely filed with the IRS, as described in 3.1(C) (D) and (E) above;
- E. Records showing that special use arrangements, if any, affecting bond-financed property made by the City with nongovernmental persons, if any, are consistent with applicable restrictions on private business use of property financed with proceeds of tax-exempt bonds and restrictions on the use of proceeds of tax-exempt bonds to make or finance loans to any person other than a state or local government unit, as described in 3.2 above. Records should include management contracts or leases;
- F. Documentation evidencing all sources of payment or security of the bonds; and
- G. A list or schedule of assets of all bond financed facilities or equipment
- H. Information and records showing that investment held in yield-restricted advance refunding of defeasance escrows for bonds, and investments made with unspent bond proceeds after the expiration of the applicable temporary period, were not invested in higher-yielding investments.

The basic purpose of the foregoing record retention policy for the City’s tax-exempt bonds is to enable the City to readily demonstrate to the IRS upon an audit of any tax-exempt bond issue that the City has fully complied with all federal tax requirements that must be satisfied after the date of the bonds so that interest on those bonds continues to be tax-exempt under section 103 of the Code.

3.4 Education Policy With Respect to Federal Tax Requirements for Tax-Exempt Bonds.

It is the policy of the City that the Administrative Services staff, as well as the principal operating officials of those departments of the City for which property is financed with proceeds of tax-exempt bonds should be provided with education and training on federal tax requirements applicable to tax-exempt bonds. The City recognizes that such education and training is vital as a means of helping to ensure that the City remains in compliance with those federal tax requirements in respect of its

bonds. The City therefore will enable and encourage those personnel to attend and participate in educational and training programs offered by, among others, the Government Finance Officers Association, the Washington Municipal Treasurers Association and the Washington Finance Officers Association with regard to the federal tax requirements applicable to tax-exempt bonds.