

Late Backup

ORDINANCE NO. _____

#20
10-20-11

1 AN ORDINANCE APPROVING AND AUTHORIZING THE ISSUANCE OF A
2 REFUNDING BOND FOR THE PURPOSE OF REFINANCING NOTES
3 AUTHORIZED IN 1999 TO SECURE A HUD 108 LOAN, DELEGATING
4 AUTHORITY TO THE CITY MANAGER TO APPROVE CERTAIN TERMS OF
5 THE BOND, AND AUTHORIZING EXECUTION OF RELATED DOCUMENTS.
6

7 BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:
8

9 **PART 1. FINDINGS:** Council finds that:

10 (A) the City of Austin, Texas (City, or Issuer), is a political subdivision of the
11 state of Texas and is a home-rule city operating pursuant to the Texas Local
12 Government Code and its Charter; and

13 (B) in 1999, the City authorized the execution and delivery of promissory notes
14 in a principal amount not to exceed \$9,035,000, pursuant to Ordinance No.
15 991216-77 approved by Council on December 16, 1999, from the United States
16 Department of Housing and Urban Development (HUD) under Section 108 of title
17 1 of the Housing and Community Development Act of 1974 (HUD Act) to assist
18 with the acquisition of land and the redevelopment of the commercial and
19 residential area east of IH-35 along East 11th and 12th Streets which the City
20 Council determined to be a public purpose and which was approved by the City
21 Council as a program in the amended 1995-1996 community development program
22 for the City; and

23 (C) pursuant to Section 8 of Ordinance No. 991216-77, as approved by Council,
24 the City secured, executed, and delivered a replacement note evidenced and
25 secured by City of Austin pledged CDBG Loan Inventory and City of Austin
26 pledged CDBG Real Property Inventory, in the aggregate principal amount of
27 \$6,305,000 (the Series 2001-A Notes); and

28 (D) the Series 2001-A Notes are currently outstanding in the aggregate principal
29 amount of \$3,105,000 and mature on August 1 in each of the years 2012 through
30 2017; and

31 (E) the City pledged federal Community Development Block Grant funds and
32 various city-owned properties to secure the Series 2001-A Notes; and

(F) on September 26, 2011, a representative of HUD contacted the City and offered the opportunity to refinance the existing Series 2001-A Notes maturing in the years 2012 through 2017 (the Refunded Notes) at historically low interest rates as a result of a public offering being conducted by HUD on or about November 17, 2011; and

(G) the Refunded Notes mature on August 1 in the years and in the principal amounts, and bear interest at the rates set forth below with the estimated projected interest rates after HUD refunding provided for comparison:

Existing Interest Rate on remaining Payments and Projected Rates:

Payment Date	Principal Payment Amount	2001-A Not to Exceed Rate	2011-A*
Aug 1, 2012	\$ 495,000	6.00%	0.29%
Aug 1, 2013	\$ 540,000	6.08%	0.41%
Aug 1, 2014	\$ 590,000	6.17%	0.62%
Aug 1, 2015	\$ 645,000	6.25%	0.89%
Aug 1, 2016	\$ 700,000	6.36%	1.22%
Aug 1, 2017	\$ 135,000	6.45%	1.59%

(H) HUD projected that the interest rates on a new obligation issued by the City to refund the Refunded Notes could range from approximately 0.29% to 1.59%, which would result in an average expected rate of approximately 0.84% and could result in approximately **\$429,511** in net present value of interest savings, but the final interest rates and actual savings will not be known until HUD conducts its public offering; and

(I) the City has received from HUD and has reviewed a Contract for Loan Guarantee Assistance Under Section 108 of the Housing and Community Development Act of 1974, as amended, 42 U.S.C. Section 5308, for Series HUD 2011-A Certificates (Contract), which contains all terms related to the new loan being offered by HUD to refund the Refunded Notes (the 2011 HUD 108 Loan), including the form of the bond to evidence the City's repayment obligations related to the 2011 HUD Loan; and

(J) all of the Refunded Notes mature or are subject to redemption prior to maturity within 6 years of the date of the bond authorized by this Ordinance; and

1 (K) Chapter 1207, Texas Government Code (Chapter 1207), particularly Section
2 1207.002, authorizes the City to issue refunding bonds to refund all or any part of
3 the City's outstanding bonds, notes, or other general or special obligations; and

4 (L) Section 1207.081 provides that refunding bonds may be issued to be exchanged
5 for, and on the surrender and cancellation of, the obligation to be refunded; and

6 (M) Section 1207.005 further provides that a refunding bond may be secured by
7 and made payable from taxes, revenue, or both, another source, or a combination
8 of sources to the extent the City is otherwise authorized to secure payment by any
9 type of bond by or from that source or those sources; and

10 (N) Section 1207.007 further authorizes the City Council to delegate to any
11 officer or employee of the City the authority to establish the terms and details
12 related to the issuance and sale or exchange of the refunding bonds, including the
13 form and designation of the refunding bonds, the principal amount of the refunding
14 bonds and the amount of the refunding bonds to mature in each year, the dates,
15 price, interest rates, interest payment dates, principal payment dates, and
16 redemption features of the refunding bonds, any other details relating to the
17 issuance and sale or exchange of the refunding bonds as specified by the City
18 Council in the proceedings authorizing the issuance of the refunding bonds; and

19 (O) the City Council of the City finds and declares a public purpose and deems it
20 advisable and in the best interests of the City to issue a bond (defined in Section 2
21 below as the Bond) to refund the Refunded Notes in order to achieve debt service
22 savings for the benefit of the taxpayers of the Issuer; and

23 (P) the City Council further finds that issuing the Bond authorized by this
24 Ordinance for the purposes described in these findings is in the best interests of the
25 City since it is reasonably expected and highly likely that since the interest rates on
26 the bond (as projected by HUD) are expected to be between 5.71% and 4.86% less
27 than the current rates on the Refunded Notes, the City will achieve significant
28 interest cost savings; nevertheless, the manner in which the refunding is being
29 executed does not make it practicable for the City Council to make a determination
30 at this time as to the actual interest cost savings that will be achieved upon issuance
31 of the Bond; and

32 (Q) the Bond authorized by this Ordinance is to be issued pursuant to Chapter
33 1207 and other applicable laws of the State of Texas; and

34 (R) the City Council now finds it necessary and appropriate to approve the form
35 and content of the Contract and the Bond, including the pledge of funds and
36 revenues described in the Contract and the Bond, and to authorize certain City

1 officials to execute the Contract and the Bond and all other documents related to
2 this issuance, and to take all other actions deemed necessary, in connection with
3 obtaining the 2011 HUD 108 Loan; and

4 (S) it is officially found and determined that the meeting at which the Ordinance
5 was adopted was open to the public, and public notice of the time, place, and
6 purpose this meeting was given all as required by Chapter 551 of the Texas
7 Government Code.

8 **PART 2. CONTRACT APPROVAL:** The City Council approves the Contract in
9 substantially the form attached to this Ordinance as Exhibit A and further authorizes the
10 Mayor, the City Manager, Assistant City Manager, the Director of Finance of the City,
11 the City Clerk, the Director of the City's Neighborhood Housing and Community
12 Development Office, and the City Treasurer to execute the Contract and all other
13 documents related to the 2011 HUD 108 Loan and to approve any and all changes to the
14 Contract from the form approved by this Ordinance, and such approval shall be evidence
15 by the signature of such official of the City and the delivery of the executed Contract
16 concurrent with the initial delivery of the Contract to HUD; and further

17 **PART 3. BOND APPROVAL:** A bond of the City, in substantially the form attached to
18 this Ordinance as Exhibit B (the Bond) is authorized by the City Council to be issued and
19 delivered in the aggregate principal amount of \$3,105,000 for the purpose of refunding
20 all outstanding City of Austin, Texas, Promissory Notes B-94-MC-48-0500-A, maturing
21 in the years 2012 through 2017 inclusive. The Bond shall be (i) payable in principal
22 installments on the dates and in the amounts set forth in the Bond, (ii) be secured as
23 provided in the Bond and the Contract (and as further described below); (iii) bear interest
24 from August 1, 2012 at the rates approved by the City Manager (as further described
25 below); (iv) be delivered in exchange for the Refunded Notes in the manner set forth in
26 the Contract; and (v) contain all other terms and provisions as set forth in the Bond and
27 the Contract. The Mayor and the City Manager and the City Clerk are hereby authorized
28 to execute the Bond on behalf of the City and to approve any and all changes to the Bond
29 from the form approved by this Ordinance and such approval shall be evidenced by the
30 signature of the official of the City on the Bond and the delivery of the executed Bond
31 concurrent with the initial delivery of the Bond to HUD in accordance with the
32 requirements set forth in the Bond and the Contract.

33 **PART 4. DELEGATION OF CERTAIN TERMS:** As authorized by Section
34 1207.007, the City Manager is authorized, appointed, and designated as the officer of the
35 City to act on behalf of the City to effect the sale and delivery of the Bond in the manner
36 set forth in the Contract and to establish and approve the respective rate of interest to be
37 borne on each principal installment (but in no event to exceed 6.00% for any principal
38 installment date, which is the lowest rate of interest currently being born by the Refunded

Notes), and to approve all other matters relating to the issuance, sale, and delivery of the Bonds. The City Manager, acting on behalf of the City, is further authorized to complete the "Interest Rate" column under "Schedule P&I" attached to the Bond to be issued and delivered pursuant to this Ordinance and pursuant to the Contract with the final interest determined following public offering by HUD.

PART 5. PLEDGE OF CERTAIN FUNDS AND REVENUES TO SECURE NOTE:

Without limiting the full and complete approval of the form of the Contract set forth in Section 1 above, the City Council specifically authorizes the lien on and pledge of the funds and revenues of the City as set forth in Sections 5 and 15 of the Contract, including:

- (i) all allocations or grants which have been made or for which the City may become eligible under Section 106 of the HUD Act, as well as any grants which are or may become available to the City pursuant to Section 108(q) of the HUD Act;
- (ii) program income, as defined at 24 CFR 570.500(a) (or any successor regulation), directly generated from the use of the "Guaranteed Loan Funds" (as defined in the Contract);
- (iii) other security as described in paragraph 15, et seq., of the Contract or incorporated in the Contract by paragraph D, as applicable and if any;
- (iv) all proceeds (including insurance and condemnation proceeds) from any of the foregoing; and
- (v) all funds or investments in the accounts established pursuant to paragraphs 1 and 6 of the Contract.

PART 6. APPROVAL OF ALL OTHER DOCUMENTS AND ACTIONS: The City Council hereby authorizes the City Manager, the Assistant City Manager, the Director of Finance, and the Director of the City's Neighborhood Housing and Community Development Office to do and perform all such acts and things and to execute, acknowledge, and deliver in the name and under the corporate seal and on behalf of the City all such instruments, documents and agreements, whether or not herein mentioned, as may be necessary or desirable in order to carry out the terms and provisions of this Ordinance, the Contract and the Bond, to obtain the 2011 HUD 108 Loan, and to obtain the Texas Attorney General's approval of the Contract and the Bond.

1 **PART 7. ENFORCEABILITY OF ORDINANCE:** If any section, paragraph, clause,
2 or provision of this Ordinance shall be held to be invalid or unenforceable, the invalidity
3 or unenforceability of such section, paragraph, clause, or provision shall not affect any of
4 the remaining provisions of this Ordinance. In case any obligation of the City authorized
5 or established by this Ordinance is held to be in violation of law as applied to any person
6 or any circumstance, such obligation shall be deemed to be the obligation of the City to
7 the fullest extent permitted by law.
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9 **PART 8. INCORPORATION OF FINDINGS:** The City Council finds that the
10 statements set forth in the findings of this Ordinance are true and correct and the City
11 Council hereby incorporates these findings as part of this Ordinance.
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13 **PART 9. EFFECTIVE DATE:** Pursuant to Section 1201.028 of the Texas
14 Government Code this Ordinance shall be effective immediately upon adoption.

15 **PASSED AND APPROVED**

16
17 §
18 §
19 _____, 2011 § _____
20 Lee Leffingwell
21 Mayor
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23
24 **APPROVED:** _____
25 Karen M. Kennard
26 City Attorney
27
28

ATTEST: _____
Shirley A. Gentry
City Clerk