



**Debt Issuance  
CITY OF AUSTIN  
RECOMMENDATION FOR COUNCIL ACTION**

**AGENDA ITEM NO.: 121  
AGENDA DATE: Thu 06/23/2005  
PAGE: 1 of 2**

**SUBJECT:** Approve amendments to the Hotel Occupancy Tax Refunding ordinances, updating the language in the current ordinances to incorporate customary provisions for interest rate swaps and variable rate obligations.

**AMOUNT & SOURCE OF FUNDING:** N/A

**FISCAL NOTE:** There is no unanticipated fiscal impact. A fiscal note is not required.

**REQUESTING** Financial and **DIRECTOR'S**  
**DEPARTMENT:** Administrative Services - **AUTHORIZATION:** Vickie Schubert  
Treasury

**FOR MORE INFORMATION CONTACT:** John Stephens, Chief Financial Officer, 974-2076

**PRIOR COUNCIL ACTION:** N/A

**BOARD AND COMMISSION ACTION:** N/A

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The City can achieve significant present value debt service savings by refinancing various Hotel Occupancy Tax Refunding Bonds, using insured, variable rate refunding bonds, swapped to a fixed rate with Lehman. The City proposes to issue the refunding bonds on a basis subordinate to all existing bonds, and to prohibit the future issuance of any bonds secured by the hotel occupancy taxes senior to the refunding bonds.

The ordinances under which the existing bonds were issued permit variable rate refunding bonds to be issued, but require some clarification regarding, for example, how to measure variable rate bonds in terms of the additional bonds test (terms under which additional bonds can be issued). Bondholder consent is not required for these clarifications.

The City proposes to amend each of the four ordinances at the time it adopts the ordinance authorizing the refunding bonds and the interest rate swap. As a first step the City, through its financial advisor, will coordinate with the insurers of the outstanding bonds.

The amendments would:

- a. Close off the lien structure so no more bonds could be issued on parity with any of the existing issues.
- b. Deal with the "additional bonds test" issues in the existing ordinances as needed to enable customary debt service calculations with respect to issuing variable rate debt.
- c. Incorporate into the variable rate structure the customary provisions for interest rate swaps.



**Debt Issuance**  
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**PAGE:** 2 of 2

Consents would have to be in hand prior to the time the City Council adopts the amendments and the ordinance authorizing the refunding bonds and the related bond insurance, interest rate swap and liquidity facility.

This item has been posted for not later than 2:00 p.m., in order for Council action to occur prior to the close of the financial markets.

**ORDINANCE NO. 050623-\_\_**

**AN ORDINANCE** by the City Council of the City of Austin, Texas, amending Ordinance No. 990701-42; suspending the rule requiring ordinances be read on three separate days; and declaring an emergency.

**WHEREAS**, the City Council of the City of Austin, Texas (the "City") adopted Ordinance No. 990701-42 (the "Existing Ordinance") to provide, among other things, for the issuance of City of Austin, Texas, Hotel Occupancy Tax Revenue Taxable Refunding Bonds, Series 1999 (the "1999 Taxable Bonds"); and

**WHEREAS**, Section 8.02 of the Existing Ordinance authorizes the City to amend the Existing Ordinance without the consent of or notice to any of the Owners (as defined in the Existing Ordinance) of the 1999 Taxable Bonds for certain specified purposes;

**WHEREAS**, the City desires to effect certain amendments to the Existing Ordinance pursuant to the authority granted in Section 8.02(1) and (5);

**WHEREAS**, the City has received written confirmation from each major municipal securities evaluation service currently rating the Parity Bonds (as defined in the Existing Ordinance) that the adoption of this Ordinance will not cause any reduction in any rating assigned to the Parity Bonds;

**WHEREAS**, the City Council hereby finds that the amendments to the Existing Ordinance effected by this Ordinance do not adversely affect the interests of the Owners of the 1999 Taxable Bonds and are for the purposes of curing ambiguities and inconsistent provisions in the Existing Ordinance and providing for the issuance by separate ordinance of Subordinate Lien Bonds, including Variable Rate Obligations, the incurrence of and security for Reimbursement Obligations, and the definition of Variable Rate Obligations, all as defined in the Existing Ordinance; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**ARTICLE 1**  
**DEFINITIONS**

**SECTION 1.01: Definitions.** Capitalized terms not otherwise defined in this Ordinance have the meanings assigned to them in the Existing Ordinance. The following terms have the meanings indicated:

"Credit Agreement" has the meaning set forth in Chapter 1371, Texas Government Code, as the same may be amended from time to time.

"Matched Interest Rate Exchange Agreement" means a Credit Agreement between the City and another party entered into in connection with the City's issuance of Variable Rate Obligations, which Credit Agreement is in the form of an interest rate exchange agreement,

pursuant to which the City pays a fixed percentage rate of a notional amount and the other party pays a variable percentage rate of the same notional amount, of which the notional amount is equal to the principal amount of Variable Rate Obligations of the City, and of which the notional amount is reduced as the Variable Rate Obligation are paid.

**SECTION 1.02: Interpretations.** All terms defined herein and all pronouns used in this Ordinance shall be deemed to apply equally to singular and plural and to all genders. The titles and headings of the articles and sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the 1999 Taxable Bonds and the validity of the lien on and pledge of the Pledged Revenues to secure the payment of the 1999 Taxable Bonds.

**ARTICLE 2**  
**amendments**

**SECTION 2.01: Amendment to Section 5.01.** Section 5.01 of the Existing Ordinance is hereby amended and restated to read in its entirety as follows:

**SECTION 5.01: Additional Bonds.** The City shall not issue Additional Bonds payable from and secured on an equal and ratable basis with the Previously Issued Bonds, the 1999 Taxable Bonds and other Parity Bonds by a parity lien on and pledge of the Pledged Revenues and special funds.

**SECTION 2.02: Amendment to Section 5.02.** Section 5.02 of the Existing Ordinance is hereby amended by adding paragraphs (c), (d) and (e) thereto as follows:

(c) Among the obligations authorized to be issued or incurred pursuant to Section 5.02(a) are Credit Agreements. The City may enter into a Credit Agreement payable from and secured by a lien on Pledged Revenues if it obtains either (i) the consent from the insurance company insuring the payment of the 1999 Taxable Bonds or (ii) written confirmation from each Rating Agency then rating the 1999 Taxable Bonds at the request of the City that issuance of the Credit Agreement will not cause a withdrawal or reduction in the rating assigned to the 1999 Taxable Bonds. The City may secure its obligations under a Credit Agreement by a lien on Pledged Revenues if such lien is subordinate to the lien securing the Previously Issued Bonds, the Bonds and other Parity Bonds.

(d) If the City issues Variable Rate Obligations, it shall use the following procedures for purposes of determining the maximum annual principal and interest requirement and the combined average annual principal and interest requirement for Variable Rate Obligations:

(i) Any obligation that bears interest at a variable interest rate which cannot be ascertained at the time of calculation of such debt service requirement shall, at the option of the City, be deemed to bear interest at

one of the following rates: (A) an interest rate equal to the average rate borne by such obligations (or by comparable debt in the event that such obligations have not been outstanding during the preceding 24 months) for any 24-month period ending within 30 days prior to the date of calculation; (B) if the City has entered into a Credit Agreement in the nature of a Matched Interest Rate Exchange Agreement, the rate payable by the City under such Credit Agreement; or (C) an interest rate equal to the 30-Year Tax-Exempt Revenue Bond Index rate as published in The Bond Buyer on any date selected by the City within 30 days prior to the date of calculation. If such index is no longer published in The Bond Buyer, an index of tax-exempt revenue bonds with maturities of 20 years, or more, published in the financial newspaper or journal with national circulation may be selected by the City and used for this purpose.

(ii) If the City has entered into a Credit Agreement in connection with an issue of obligations payable from and secured by Pledged Revenues, and if Clause B of paragraph (d)(i) above does not apply, (X) payments due under the Credit Agreement, from either the City or the other party to the Credit Agreement, shall be included in such calculation except to the extent that the payments are already taken into account in the debt service calculation, (Y) any payments that would otherwise be included under the debt service calculation which are to be replaced by payments under a Credit Agreement from either the City or the other party to the Credit Agreement shall be excluded from such calculation, and (Z) payments due under a Credit Agreement that are paid at a variable rate shall be deemed to be made at a fixed rate determined in a manner consistent with the first sentence of this paragraph (d). For any calculation of historic data, only those payments actually made in the subject period shall be taken into account in making such calculation and for prospective calculations, only those payments reasonably expected to be made in the subject period shall be taken into account in making the calculation.

(e) If the City has entered into a Credit Agreement with a Credit Provider to discharge or purchase any of its obligations payable from or secured by Pledged Revenues under arrangements whereby the City's obligation to repay the amounts advanced under the Credit Agreement for the discharge or purchase is payable over more than one year from the advance under the Credit Agreement, then the portion of the obligations committed to be discharged or purchased pursuant to the Credit Agreement shall be excluded from any calculation of debt service requirements, and the principal of and interest requirements that constitute the City's reimbursement obligation shall be added.

### ARTICLE 3 MISCELLANEOUS

**SECTION 3.01: Benefits of Ordinance.** Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar, any bond insurance company or the Owners of the 1999 Taxable Bonds, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of such persons.

**SECTION 3.02: Governing Law.** This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

**SECTION 3.03: Effect of Headings.** The Section headings herein are for convenience only and shall not affect the construction hereof.

**SECTION 3.04: Recitals.** The recitals, including the findings therein, are hereby adopted as part of this Ordinance for all purposes.

**SECTION 3.05: Severability.** If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

**SECTION 3.06: Public Meeting.** It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given; all as required by V.T.C.A., Government Code, Chapter 551, as amended.

**SECTION 3.07: Emergency.** The public importance of this measure and the fact that there is an urgent public need for the City to amend the Existing Ordinance to permit the sale of refunding bonds to achieve debt service savings as soon as possible and without delay for the immediate preservation of the public peace, health and safety of the citizens of the City constitute and create an emergency requiring the suspension of the rule providing for ordinances to be read on three separate days; and such rule relating to the passage of ordinances and the Charter provision relating to the effective date of ordinances are hereby suspended and this ordinance is hereby passed as an emergency measure and shall be effective immediately upon its passage and adoption as provided by the Charter of the City.

***Amending 1999 Taxable Bonds  
Draft: May 11, 2005***

**PASSED AND ADOPTED, this \_\_\_\_\_, 2005.**

**CITY OF AUSTIN, TEXAS**

**Mayor**

**ATTEST:**

**City Clerk**

**(City Seal)**

**APPROVED:**

**City Attorney**

**ORDINANCE NO. 050623-\_\_**

**AN ORDINANCE** by the City Council of the City of Austin, Texas, amending Ordinance No. 990701-43; suspending the rule requiring ordinances be read on three separate days; and declaring an emergency.

**WHEREAS**, the City Council of the City of Austin, Texas (the "City") adopted Ordinance No. 990701-43 (the "Existing Ordinance") to provide, among other things, for the issuance of City of Austin, Texas, Convention Center/Waller Creek Venue Project Bonds, Series 1999A (the "1999A Bonds"); and

**WHEREAS**, Section 29 of the Existing Ordinance authorizes the City to amend the Existing Ordinance without the consent of or notice to any of the Owners (as defined in the Existing Ordinance) of the 1999A Bonds for certain specified purposes;

**WHEREAS**, the City desires to effect certain amendments to the Existing Ordinance pursuant to the authority granted in Section 29(1) and (5);

**WHEREAS**, the City has received written confirmation from each major municipal securities evaluation service currently rating the Parity Revenue Bonds (as defined in the Existing Ordinance) that the adoption of this Ordinance will not cause any reduction in any rating assigned to the Bonds;

**WHEREAS**, the City has received the written consent of Ambac Assurance Corporation to the adoption of this Ordinance;

**WHEREAS**, the City Council hereby finds that the amendments to the Existing Ordinance effected by this Ordinance do not adversely affect the interests of the Owners of the 1999A Bonds and are for the purposes of curing ambiguities and inconsistent provisions in the Existing Ordinance and providing for the issuance by separate ordinance of Subordinate Lien Bonds (as defined in the Existing Ordinance); now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**ARTICLE 1  
DEFINITIONS**

**SECTION 1.01: Definitions.** Capitalized terms not otherwise defined in this Ordinance have the meanings assigned to them in the Existing Ordinance. The following terms have the meanings indicated:

"Credit Agreement" has the meaning set forth in Chapter 1371, Texas Government Code, as the same may be amended from time to time.

"Matched Interest Rate Exchange Agreement" means a Credit Agreement between the City and another party entered into in connection with the City's issuance of Variable Rate



Obligations, which Credit Agreement is in the form of an interest rate exchange agreement, pursuant to which the City pays a fixed percentage rate of a notional amount and the other party pays a variable percentage rate of the same notional amount, of which the notional amount is equal to the principal amount of Variable Rate Obligations of the City, and of which the notional amount is reduced as the Variable Rate Obligation are paid.

“Variable Rate Obligation” means an obligation of the City for borrowed money that is payable in whole or in part from Pledged Revenues and that bears interest at a variable rate.

**SECTION 1.02: Interpretations.** All terms defined herein and all pronouns used in this Ordinance shall be deemed to apply equally to singular and plural and to all genders. The titles and headings of the articles and sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the 1999A Bonds and the validity of the lien on and pledge of the Pledged Revenues to secure the payment of the 1999A Bonds.

**ARTICLE 2**  
**amendments**

**SECTION 2.01: Amendment to Section 22.** Section 22 of the Existing Ordinance is hereby amended and restated to read in its entirety as follows:

**SECTION 22: Refunding Bonds.** The City shall not issue Additional Bonds as refunding bonds that are payable from and secured on an equal and ratable basis with the Parity Revenue Bonds by a parity lien on and pledge of the Pledged Revenues and special funds. Any refunding bonds shall be issued on a subordinate lien basis pursuant to Section 23.

**SECTION 2.02: Amendment to Section 23.** Section 23 of the Existing Ordinance is hereby amended by adding paragraphs (c), (d), and (e) thereto as follows:

(c) Among the obligations authorized to be issued or incurred pursuant to Section 23(a) and (b) are Credit Agreements and Variable Rate Obligations. The City may enter into a Credit Agreement payable from and secured by a lien on Pledged Revenues if it obtains either (i) the consent from the insurance company insuring the payment of the 1999A Bonds (Ambac Assurance Corporation as of the date of this Ordinance) or (ii) written confirmation from each Rating Agency then rating the 1999A Bonds at the request of the City that issuance of the Credit Agreement will not cause a withdrawal or reduction in the rating assigned to the 1999A Bonds. The City may secure its obligations under a Credit Agreement by a lien on Pledged Revenues if such lien is subordinate to the lien securing the Parity Revenue Bonds.

(d) If the City issues Variable Rate Obligations, it shall use the following procedures for purposes of determining the maximum annual principal

and interest requirement and the combined average annual principal and interest requirement for Variable Rate Obligations:

(i) Any obligation that bears interest at a variable interest rate which cannot be ascertained at the time of calculation of such debt service requirement shall, at the option of the City, be deemed to bear interest at one of the following rates: (A) an interest rate equal to the average rate borne by such obligations (or by comparable debt in the event that such obligations have not been outstanding during the preceding 24 months) for any 24-month period ending within 30 days prior to the date of calculation; (B) if the City has entered into a Credit Agreement in the nature of a Matched Interest Rate Exchange Agreement, the rate payable by the City under such Credit Agreement; or (C) an interest rate equal to the 30-Year Tax-Exempt Revenue Bond Index rate as published in The Bond Buyer on any date selected by the City within 30 days prior to the date of calculation. If such index is no longer published in The Bond Buyer, an index of tax-exempt revenue bonds with maturities of 20 years, or more, published in the financial newspaper or journal with national circulation may be selected by the City and used for this purpose.

(ii) If the City has entered into a Credit Agreement in connection with an issue of obligations payable from and secured by Pledged Revenues and if Clause B of paragraph (d)(i) above does not apply, (X) payments due under the Credit Agreement, from either the City or the other party to the Credit Agreement, shall be included in such calculation except to the extent that the payments are already taken into account in the debt service calculation, (Y) any payments that would otherwise be included under the debt service calculation which are to be replaced by payments under a Credit Agreement from either the City or the other party to the Credit Agreement shall be excluded from such calculation, and (Z) payments due under a Credit Agreement that are paid at a variable rate shall be deemed to be made at a fixed rate determined in a manner consistent with the first sentence of this paragraph (d). For any calculation of historic data, only those payments actually made in the subject period shall be taken into account in making such calculation and for prospective calculations, only those payments reasonably expected to be made in the subject period shall be taken into account in making the calculation.

(e) If the City has entered into a Credit Agreement with a Credit Provider to discharge or purchase any of its obligations payable from or secured by Pledged Revenues under arrangements whereby the City's obligation to repay the amounts advanced under the Credit Agreement for the discharge or purchase is payable over more than one year from the advance under the Credit Agreement, then the portion of the obligations committed to be discharged or purchased pursuant to the Credit Agreement shall be excluded from any calculation of debt

service requirements, and the principal of and interest requirements that constitute the City's reimbursement obligation shall be added.

**ARTICLE 3**  
**MISCELLANEOUS**

**SECTION 3.01: Benefits of Ordinance.** Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar, Ambac, or the Owners of the 1999A Bonds, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of such persons.

**SECTION 3.02: Governing Law.** This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

**SECTION 3.03: Effect of Headings.** The Section headings herein are for convenience only and shall not affect the construction hereof.

**SECTION 3.04: Recitals.** The recitals, including the findings therein, are hereby adopted as part of this Ordinance for all purposes.

**SECTION 3.05: Severability.** If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

**SECTION 3.06: Public Meeting.** It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given; all as required by V.T.C.A., Government Code, Chapter 551, as amended.

**SECTION 3.07: Emergency.** The public importance of this measure and the fact that there is an urgent public need for the City to amend the Existing Ordinance to permit the sale of refunding bonds to achieve debt service savings as soon as possible and without delay for the immediate preservation of the public peace, health and safety of the citizens of the City constitute and create an emergency requiring the suspension of the rule providing for ordinances to be read on three separate days; and such rule relating to the passage of ordinances and the Charter provision relating to the effective date of ordinances are hereby suspended and this ordinance is hereby passed as an emergency measure and shall be effective immediately upon its passage and adoption as provided by the Charter of the City.

*Amending 1999A Waller Ck. Bonds  
Draft: May 11, 2005*

PASSED AND ADOPTED, this \_\_\_\_\_, 2005.

CITY OF AUSTIN, TEXAS

Mayor

ATTEST:

City Clerk

(City Seal)

APPROVED:

City Attorney

**ORDINANCE NO. 050623-\_\_**

**AN ORDINANCE** by the City Council of the City of Austin, Texas, amending Ordinance No. 990826-32; suspending the rule requiring ordinances be read on three separate days; and declaring an emergency.

**WHEREAS**, the City Council of the City of Austin, Texas (the "City") adopted Ordinance No. 990826-32 (the "Existing Ordinance") to provide, among other things, for the issuance of City of Austin, Texas, Hotel Occupancy Tax Subordinate Lien Revenue Refunding Bonds, Series 1999 (the "1999 Subordinate Bonds"); and

**WHEREAS**, Section 8.02 of the Existing Ordinance authorizes the City to amend the Existing Ordinance without the consent of or notice to any of the Owners (as defined in the Existing Ordinance) of the 1999 Subordinate Bonds for certain specified purposes;

**WHEREAS**, the City desires to effect certain amendments to the Existing Ordinance pursuant to the authority granted in Section 8.02(1) and (5);

**WHEREAS**, the City has received written confirmation from each major municipal securities evaluation service currently rating the Parity Bonds (as defined in the Existing Ordinance) that the adoption of this Ordinance will not cause any reduction in any rating assigned to the Parity Bonds;

**WHEREAS**, the City Council hereby finds that the amendments to the Existing Ordinance effected by this Ordinance do not adversely affect the interests of the Owners of the 1999 Subordinate Bonds and are for the purposes of curing ambiguities and inconsistent provisions in the Existing Ordinance and providing for the issuance by separate ordinance of Subordinate Lien Bonds, including Variable Rate Obligations, the incurrence of and security for Reimbursement Obligations, and the definition of Variable Rate Obligations, all as defined in the Existing Ordinance; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**ARTICLE 1**  
**DEFINITIONS**

**SECTION 1.01: Definitions.** Capitalized terms not otherwise defined in this Ordinance have the meanings assigned to them in the Existing Ordinance. The following terms have the meanings indicated:

"Credit Agreement" has the meaning set forth in Chapter 1371, Texas Government Code, as the same may be amended from time to time.

"Matched Interest Rate Exchange Agreement" means a Credit Agreement between the City and another party entered into in connection with the City's issuance of Variable Rate Obligations, which Credit Agreement is in the form of an interest rate exchange agreement,

pursuant to which the City pays a fixed percentage rate of a notional amount and the other party pays a variable percentage rate of the same notional amount, of which the notional amount is equal to the principal amount of Variable Rate Obligations of the City, and of which the notional amount is reduced as the Variable Rate Obligation are paid.

**SECTION 1.02: Interpretations.** All terms defined herein and all pronouns used in this Ordinance shall be deemed to apply equally to singular and plural and to all genders. The titles and headings of the articles and sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the 1999 Subordinate Bonds and the validity of the lien on and pledge of the Pledged Revenues to secure the payment of the 1999 Subordinate Bonds.

**ARTICLE 2  
amendments**

**SECTION 2.01: Amendment to Section 5.02.** Section 5.02 of the Existing Ordinance is hereby amended and restated to read in its entirety as follows:

**SECTION 5.02: Refunding Bonds.** The City shall not issue Additional Bonds as Refunding Bonds that are payable from and secured on an equal and ratable basis with the Parity Bonds by a parity lien on and pledge of the Pledged Revenues and special funds. Any such Refunding Bonds shall be issued on a subordinate lien basis pursuant to Section 5.03.

**SECTION 2.02: Amendment to Section 5.03.** Section 5.03 of the Existing Ordinance is hereby amended by designating all of the existing text of Section 5.03 as paragraph (a) thereof and by adding paragraphs (b), (c), (d), and (e) thereto as follows:

(b) The City shall not issue pursuant to Section 5.03(a) of the Existing Ordinance Additional Bonds secured by a lien on Pledged Revenues that is prior or senior to the lien securing the Parity Bonds.

(c) Among the obligations authorized to be issued or incurred pursuant to Section 5.03(a) are Credit Agreements. The City may enter into a Credit Agreement payable from and secured by a lien on Pledged Revenues if it obtains either (i) the consent from the insurance company insuring the payment of the 1999 Subordinate Bonds or (ii) written confirmation from each Rating Agency then rating the 1999 Subordinate Bonds at the request of the City that issuance of the Credit Agreement will not cause a withdrawal or reduction in the rating assigned to the 1999 Subordinate Bonds. The City may secure its obligations under a Credit Agreement by a lien on Pledged Revenues if such lien is subordinate to the lien securing the Prior Lien Bonds, the Bonds and other Parity Bonds.

(d) If the City issues Variable Rate Obligations, it shall use the

following procedures for purposes of determining the maximum annual principal and interest requirement and the combined average annual principal and interest requirement for Variable Rate Obligations:

(i) Any obligation that bears interest at a variable interest rate which cannot be ascertained at the time of calculation of such debt service requirement shall, at the option of the City, be deemed to bear interest at one of the following rates: (A) an interest rate equal to the average rate borne by such obligations (or by comparable debt in the event that such obligations have not been outstanding during the preceding 24 months) for any 24-month period ending within 30 days prior to the date of calculation; (B) if the City has entered into a Credit Agreement in the nature of a Matched Interest Rate Exchange Agreement, the rate payable by the City under such Credit Agreement; or (C) an interest rate equal to the 30-Year Tax-Exempt Revenue Bond Index rate as published in The Bond Buyer on any date selected by the City within 30 days prior to the date of calculation. If such index is no longer published in The Bond Buyer, an index of tax-exempt revenue bonds with maturities of 20 years, or more, published in the financial newspaper or journal with national circulation may be selected by the City and used for this purpose.

(ii) If the City has entered into a Credit Agreement in connection with an issue of obligations payable from and secured by Pledged Revenues and if Clause B of paragraph (d)(i) above does not apply, (X) payments due under the Credit Agreement, from either the City or the other party to the Credit Agreement, shall be included in such calculation except to the extent that the payments are already taken into account in the debt service calculation, (Y) any payments that would otherwise be included under the debt service calculation which are to be replaced by payments under a Credit Agreement from either the City or the other party to the Credit Agreement shall be excluded from such calculation, and (Z) payments due under a Credit Agreement that are paid at a variable rate shall be deemed to be made at a fixed rate determined in a manner consistent with the first sentence of this paragraph (d). For any calculation of historic data, only those payments actually made in the subject period shall be taken into account in making such calculation and for prospective calculations, only those payments reasonably expected to be made in the subject period shall be taken into account in making the calculation.

(e) If the City has entered into a Credit Agreement with a Credit Provider to discharge or purchase any of its obligations payable from or secured by Pledged Revenues under arrangements whereby the City's obligation to repay the amounts advanced under the Credit Agreement for the discharge or purchase is payable over more than one year from the advance under the Credit Agreement, then the portion of the obligations committed to be discharged or purchased

pursuant to the Credit Agreement shall be excluded from any calculation of debt service requirements, and the principal of and interest requirements that constitute the City's reimbursement obligation shall be added.

**ARTICLE 3**  
**MISCELLANEOUS**

**SECTION 3.01: Benefits of Ordinance.** Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar, any bond insurance company or the Owners of the 1999 Subordinate Bonds, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of such persons.

**SECTION 3.02: Governing Law.** This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

**SECTION 3.03: Effect of Headings.** The Section headings herein are for convenience only and shall not affect the construction hereof.

**SECTION 3.04: Recitals.** The recitals, including the findings therein, are hereby adopted as part of this Ordinance for all purposes.

**SECTION 3.05: Severability.** If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

**SECTION 3.06: Public Meeting.** It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given; all as required by V.T.C.A., Government Code, Chapter 551, as amended.

**SECTION 3.07: Emergency.** The public importance of this measure and the fact that there is an urgent public need for the City to amend the Existing Ordinance to permit the sale of refunding bonds to achieve debt service savings as soon as possible and without delay for the immediate preservation of the public peace, health and safety of the citizens of the City constitute and create an emergency requiring the suspension of the rule providing for ordinances to be read on three separate days; and such rule relating to the passage of ordinances and the Charter provision relating to the effective date of ordinances are hereby suspended and this ordinance is hereby passed as an emergency measure and shall be effective immediately upon its passage and adoption as provided by the Charter of the City.



PASSED AND ADOPTED, this \_\_\_\_\_, 2005.

CITY OF AUSTIN, TEXAS

Mayor

ATTEST:

City Clerk

(City Seal)

APPROVED:

City Attorney

**ORDINANCE NO. 050623-\_\_**

**AN ORDINANCE** by the City Council of the City of Austin, Texas, amending Ordinance No. 040212-45; suspending the rule requiring ordinances be read on three separate days; and declaring an emergency.

**WHEREAS**, the City Council of the City of Austin, Texas (the "City") adopted Ordinance No. 040212-45 (the "Existing Ordinance") to provide, among other things, for the issuance of City of Austin, Texas, Hotel Occupancy Tax Revenue Refunding Bonds, Series 2004 (the "2004 Bonds"); and

**WHEREAS**, Section 8.02 of the Existing Ordinance authorizes the City to amend the Existing Ordinance without the consent of or notice to any of the Owners (as defined in the Existing Ordinance) of the 2004 Bonds for certain specified purposes;

**WHEREAS**, the City desires to effect certain amendments to the Existing Ordinance pursuant to the authority granted in Section 8.02(1) and (5);

**WHEREAS**, the City has received written confirmation from each major municipal securities evaluation service currently rating the Parity Bonds (as defined in the Existing Ordinance) that the adoption of this Ordinance will not cause any reduction in any rating assigned to the Parity Bonds;

**WHEREAS**, the City has received the written consent of Financial Security Assurance, Inc, which issued a financial guaranty insurance policy with respect to the 2004 Bonds;

**WHEREAS**, the City Council hereby finds that the amendments to the Existing Ordinance effected by this Ordinance do not adversely affect the interests of the Owners of the 2004 Bonds and are for the purposes of curing ambiguities and inconsistent provisions in the Existing Ordinance and providing for the issuance by separate ordinance of Subordinate Lien Bonds, including Variable Rate Obligations, the incurrence of and security for Reimbursement Obligations, and the definition of Variable Rate Obligations, all as defined in the Existing Ordinance; now, therefore,

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:**

**ARTICLE 1  
DEFINITIONS**

**SECTION 1.01: Definitions.** Capitalized terms not otherwise defined in this Ordinance have the meanings assigned to them in the Existing Ordinance. The following terms have the meanings indicated:

"Credit Agreement" has the meaning set forth in Chapter 1371, Texas Government Code, as the same may be amended from time to time.

"Matched Interest Rate Exchange Agreement" means a Credit Agreement between the City and another party entered into in connection with the City's issuance of Variable Rate Obligations, which Credit Agreement is in the form of an interest rate exchange agreement, pursuant to which the City pays a fixed percentage rate of a notional amount and the other party pays a variable percentage rate of the same notional amount, of which the notional amount is equal to the principal amount of Variable Rate Obligations of the City, and of which the notional amount is reduced as the Variable Rate Obligation are paid.

**SECTION 1.02: Interpretations.** All terms defined herein and all pronouns used in this Ordinance shall be deemed to apply equally to singular and plural and to all genders. The titles and headings of the articles and sections of this Ordinance have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof. This Ordinance and all the terms and provisions hereof shall be liberally construed to effectuate the purposes set forth herein and to sustain the validity of the 2004 Bonds and the validity of the lien on and pledge of the Pledged Revenues to secure the payment of the 2004 Bonds.

## **ARTICLE 2**

### **amendments**

**SECTION 2.01: Amendment to Section 1.01.** Section 1.01 of the existing Ordinance is hereby amended by replacing the definition of Subordinate Lien Bonds with the following definition:

"Subordinate Lien Bonds" mean all bonds secured by a pledge of the Pledged Revenues on a basis subordinate to the lien on Pledged Revenues securing the Bonds.

**SECTION 2.02: Amendment to Section 5.01.** Section 5.01 of the Existing Ordinance is hereby amended and restated to read in its entirety as follows:

**SECTION 5.01: Additional Bonds.** The City shall not issue Additional Bonds that are payable from and secured on an equal and ratable basis with the Bonds by a parity lien on and pledge of the Pledged Revenues and special funds. Any Additional Bonds shall be issued on a subordinate lien basis pursuant to Section 5.02.

**SECTION 2.03: Amendment to Section 5.02.** Section 5.02 of the Existing Ordinance is hereby amended by adding paragraphs (c), (d), and (e) thereto as follows:

(c) Among the obligations authorized to be issued or incurred pursuant to Section 5.02(a) are Credit Agreements. The City may enter into a Credit Agreement payable from and secured by a lien on Pledged Revenues if it obtains either (i) the consent from the insurance company insuring the payment of the 2004 Bonds or (ii) written confirmation from each Rating Agency then rating the 2004 Bonds at the request of the City that issuance of the Credit Agreement will not cause a withdrawal or reduction in the rating assigned to the 2004 Bonds. The

City may secure its obligations under a Credit Agreement by a lien on Pledged Revenues if such lien is subordinate to the lien securing the Previously Issued Bonds, the Bonds and other Parity Bonds.

(d) If the City issues Variable Rate Obligations, it shall use the following procedures for purposes of determining the maximum annual principal and interest requirement and the combined average annual principal and interest requirement for Variable Rate Obligations:

(i) Any obligation that bears interest at a variable interest rate which cannot be ascertained at the time of calculation of such debt service requirement shall, at the option of the City, be deemed to bear interest at one of the following rates: (A) an interest rate equal to the average rate borne by such obligations (or by comparable debt in the event that such obligations have not been outstanding during the preceding 24 months) for any 24-month period ending within 30 days prior to the date of calculation; (B) if the City has entered into a Credit Agreement in the nature of a Matched Interest Rate Exchange Agreement, the rate payable by the City under such Credit Agreement; or (C) an interest rate equal to the 30-Year Tax-Exempt Revenue Bond Index rate as published in The Bond Buyer on any date selected by the City within 30 days prior to the date of calculation. If such index is no longer published in The Bond Buyer, an index of tax-exempt revenue bonds with maturities of 20 years, or more, published in the financial newspaper or journal with national circulation may be selected by the City and used for this purpose.

(ii) If the City has entered into a Credit Agreement in connection with an issue of obligations payable from and secured by Pledged Revenues, and if Clause (B) of paragraph (d)(i) above does not apply, (X) payments due under the Credit Agreement, from either the City or the other party to the Credit Agreement, shall be included in such calculation except to the extent that the payments are already taken into account in the debt service calculation, (Y) any payments that would otherwise be included under the debt service calculation which are to be replaced by payments under a Credit Agreement from either the City or the other party to the Credit Agreement shall be excluded from such calculation, and (Z) payments due under a Credit Agreement that are paid at a variable rate shall be deemed to be made at a fixed rate determined in a manner consistent with the first sentence of this paragraph (d). For any calculation of historic data, only those payments actually made in the subject period shall be taken into account in making such calculation and for prospective calculations, only those payments reasonably expected to be made in the subject period shall be taken into account in making the calculation.

(e) If the City has entered into a Credit Agreement with a Credit Provider to discharge or purchase any of its obligations payable from or secured by Pledged Revenues under arrangements whereby the City's obligation to repay the amounts advanced under the Credit Agreement for the discharge or purchase is payable over more than one year from the advance under the Credit Agreement, then the portion of the obligations committed to be discharged or purchased pursuant to the Credit Agreement shall be excluded from any calculation of debt service requirements, and the principal of and interest requirements that constitute the City's reimbursement obligation shall be added.

### **ARTICLE 3 MISCELLANEOUS**

**SECTION 3.01: Benefits of Ordinance.** Nothing in this Ordinance, expressed or implied, is intended or shall be construed to confer upon any person other than the City, the Paying Agent/Registrar, any bond insurance company or the Owners of the 2004 Bonds, any right, remedy, or claim, legal or equitable, under or by reason of this Ordinance or any provision hereof, this Ordinance and all its provisions being intended to be and being for the sole and exclusive benefit of such persons.

**SECTION 3.02: Governing Law.** This Ordinance shall be construed and enforced in accordance with the laws of the State of Texas and the United States of America.

**SECTION 3.03: Effect of Headings.** The Section headings herein are for convenience only and shall not affect the construction hereof.

**SECTION 3.04: Recitals.** The recitals, including the findings therein, are hereby adopted as part of this Ordinance for all purposes.

**SECTION 3.05: Severability.** If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance would have been enacted without such invalid provision.

**SECTION 3.06: Public Meeting.** It is officially found, determined, and declared that the meeting at which this Ordinance is adopted was open to the public and public notice of the time, place, and subject matter of the public business to be considered at such meeting, including this Ordinance, was given; all as required by V.T.C.A., Government Code, Chapter 551, as amended.

**SECTION 3.07: Emergency.** The public importance of this measure and the fact that there is an urgent public need for the City to amend the Existing Ordinance to permit the sale of refunding bonds to achieve debt service savings as soon as possible and without delay for the immediate preservation of the public peace, health and safety of the citizens of the City constitute and create an emergency requiring the suspension of the rule providing for ordinances to be read on three separate days; and such rule relating to the passage of ordinances and the Charter provision relating to the effective date of ordinances are hereby suspended and this ordinance is hereby passed as an emergency measure and shall be effective immediately upon its

passage and adoption as provided by the Charter of the City.

PASSED AND ADOPTED, this \_\_\_\_\_, 2005.

CITY OF AUSTIN, TEXAS

Mayor

ATTEST:

City Clerk

(City Seal)

APPROVED:

City Attorney