

ORDINANCE NO. 20050623-121D

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 will request 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 (the "Rating Confirmations"),

WHEREAS, the City has requested the written consent to this Ordinance of Financial Security Assurance Inc ("FSA"), which issued a financial guaranty insurance policy with respect to the 2004 Bonds (the "FSA Consent"),

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 ONE
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 with a Counterparty rated at least an “A” by one or more rating agency(ies) into in connection with or related to Variable Rate Obligations of the City, 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 such Variable Rate Obligations of the City, and of which the notional amount is reduced as such 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 TWO 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 all or part 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 in whole or in part by a subordinate 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 underlying/unenhanced 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, provided, however, that the City's obligation to make termination payments in respect of an interest rate exchange agreement or similar agreement must, if secured by a lien on Pledged Revenues, be secured on a basis subordinate to all bonds then outstanding and proposed to be issued that are secured by a lien on Pledged Revenues.

(d) If the City issues Variable Rate Obligations, it shall use the following procedures for purposes of determining the maximum annual principal and interest requirements and the combined average annual principal and interest requirements of Variable Rate Obligations (including any determination of Debt Service Requirements)

(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 sole discretion 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 5 years) for any 5 year period ending within 30 days prior to the date of calculation, (B) if the City has entered into a related 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 Clause (A) or Clause (B) of paragraph (d)(1) above. 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 THREE 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, FSA, 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.

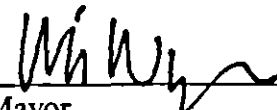
SECTION 3 05: Severability If any provision of this Ordinance or the application thereof to any circumstance shall be held to be invalid, the remainder of this Ordinance and the application thereof to other circumstances shall nevertheless be valid, and the City Council hereby declares that this Ordinance 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, subject only to receipt of the FSA Consent and the Rating Confirmations

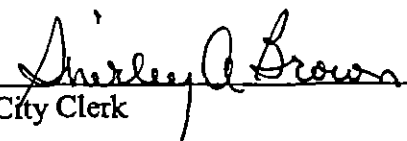
PASSED AND ADOPTED, this June 23, 2005.

CITY OF AUSTIN, TEXAS



Mayor

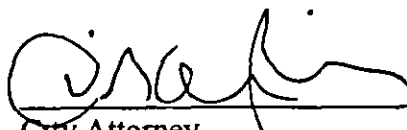
ATTEST:



City Clerk



APPROVED.



City Attorney