

THE CITY ATTORNEY

CITY OF SAN DIEGO

Jan I. Goldsmith

CITY ATTORNEY

1200 THIRD AVENUE, SUITE 1620
SAN DIEGO, CALIFORNIA 92101-4178
TELEPHONE (619) 236-6220
FAX (619) 236-7215

March 16, 2010

REPORT TO THE COMMITTEE ON BUDGET AND FINANCE

ISSUANCE OF DEBT BY CITY RELATED ENTITIES

INTRODUCTION

On January 25, 2010, the City Council considered annual updates to the City's Debt Policy ("Debt Policy"). The item was returned to staff for clarification on a number of issues, including the issuance of debt by City related entities, particularly whether the Debt Policy could impose a requirement to seek Council authorization before a related entity is able to issue debt. This report is intended to address this by discussing the various City related entities or component units that could potentially issue debt and whether such related entities must seek authorization from the City Council.

DISCUSSION

I. Related Entities

The City has several different types of related entities, as that term is defined in the Municipal Code:

"Related entities means those independent agencies, joint powers authorities, special districts, component units, or other entities created by ordinance of the City Council or by State law that issue securities, for which the City Council serves as the governing or legislative body, or for which at least one City officer serves as a member of the governing or legislative body in his or her official capacity or for which the City has agreed to provide disclosure." S.D.M.C. § 22.4102

Related entities exist within the context of disclosure responsibilities for the City, City Council, or City officials, such that the Disclosure Practices Working Group must review disclosures made by the City on behalf of such entities. Related entities, as defined, does not include some of the agencies or organizations discussed during the January 25, 2010 Committee meeting. This report will discuss such other agencies or organizations in addition to the City's related entities. It should also be noted that this report does not consider maintenance assessment districts, business improvement districts or San Diego Medical Services Enterprise, LLC.

A. Special Districts

There are currently sixteen City related entities. All related entities have debt outstanding for which the City provides disclosure. Most are special districts created by the City and where the City Council¹ serves as the legislative body of the district, such as Community Facilities Districts formed pursuant to the Mello-Roos Act or Assessment Districts formed pursuant to the Streets and Highways Code. Nine of the City's related entities fall within this category (see appendix) and such entities cannot issue additional debt without an act of the City Council. Cal Street & Highway Code §§ 8500 et seq. (Assessment and Reassessment Districts); Cal Gov Code §§ 53345 et seq. (Community Facilities Districts); and S.D.M.C. §§ 61.2000 et seq. (Open Space Park Facilities District No. 1).

B. Joint Powers Authorities

The City has three joint powers authorities ("JPAs") that currently have debt outstanding. JPAs are organized under the Joint Exercise of Powers Act and can exercise powers common to its member agencies. Cal Gov Code §§ 6500 et seq. The Joint Exercise of Powers Act contains broad grants of authority that are more specifically defined in the joint powers agreement between the contracting parties.

The Public Facilities Financing Authority ("PFFA") is a JPA formed between the City and the Redevelopment Agency of the City of San Diego ("RDA") to assist in the acquisition and construction of public capital improvements. Under the joint powers agreement between the City and the RDA, the PFFA has the power to issue debt. PFFA Joint Powers Agreement, sections 4, 7. However, the PFFA has no funding source under the joint powers agreement and no source of revenue other than what is provided to it contractually by the City or the RDA. Moreover, according to the joint powers agreement, the obligations of the PFFA are separate from those of the City or the RDA. *Id.* at section 8. Due to these limitations in the joint powers agreement, PFFA cannot create indebtedness for the City or the RDA without a corresponding action by the City Council or the Board of the RDA to authorize such indebtedness.

The City of San Diego/MTDB Authority ("MTDB Authority") is a JPA formed between the City and the Metropolitan Transit Development Board ("MTDB") (now known as the Metropolitan Transit System ("MTS")) to acquire, construct and operate public capital improvements including public mass transit guideways. Under the joint powers agreement between the City and MTDB, the MTDB Authority has the power to issue debt. MTDB Authority Joint Powers Agreement, section 21. Similar to PFFA, the MTDB Authority does not have any source of revenue under the joint powers agreement and requires a contractual obligation from the City or MTS to fund its activities. Due to these limitations in the joint

¹ For purposes of this report, references to the City Council include the City Council acting in its capacity as the Board of the Redevelopment Agency, the Housing Authority or the legislative body of a special district.

powers agreement, the MTDB Authority cannot create indebtedness for the City or MTS without a corresponding action by the City Council or the MTS Board to authorize such indebtedness.

The Convention Center Expansion Financing Authority (“CCEFA”) is a JPA formed between the City and the San Diego Unified Port District (the “Port”) to assist the City and the Port to finance, acquire, construct, operate and lease the expansion of the Convention Center. CCEFA is similar to PFFA and the MTDB Authority in that pursuant to the joint powers agreement, it is empowered to issue bonds but does not have any revenues other than what is contractually provided to it by the City or the Port. Due to these limitations in the joint powers agreement, the CCEFA cannot create indebtedness for the City or the Port without a corresponding action by the City Council or the Board of Commissioners of the Port to authorize such indebtedness. *See* CCEFA Joint Powers Agreement, section 5.

C. Corporations

The San Diego Facilities and Equipment Leasing Corporation (“FELC”) is a nonprofit public benefit corporation established by the City pursuant to the Nonprofit Public Benefit Corporation Law. Corp. Code §§ 5110 et seq. FELC was formed to assist in the financing, acquisition, construction and improvement of capital facilities improvements for the City. The City is the sole member of FELC. Pursuant to its articles of incorporation and bylaws, there is no restriction on FELC’s ability to issue debt. *See* FELC Articles of Incorporation; FELC Bylaws, section 3.1. However, similar to the JPA’s discussed above, FELC has no independent revenue. The City obligates itself contractually to make payments to support FELC’s outstanding debt. Absent an agreement between that City and FELC to fund additional debt, which would require City Council authorization, FELC would not be able to issue additional debt.

The San Diego Tobacco Settlement Revenue Funding Corporation (“Tobacco Corporation”) is a nonprofit public benefit corporation established by the City pursuant to the Nonprofit Public Benefit Corporation Law. The Tobacco Corporation was created for the purpose of purchasing the tobacco settlement revenues owed to the City under the global settlement between the various states and the tobacco companies. Under its articles of incorporation and corporate bylaws, the Tobacco Corporation has the power to issue bonds. Tobacco Corporation Articles of Incorporation, article II(c); Tobacco Corporation Bylaws, section 3.01. However, the Tobacco Corporation is only entitled to receive a certain amount of tobacco settlement revenue in each year under an agreement with the City. This is only enough to pay the debt service on the City’s outstanding tobacco revenue bonds. In order for the Tobacco Corporation to issue additional debt, the City, acting through the City Council, would need to pledge additional tobacco revenue.

D. Related Entities Created by State Law

The Housing Authority and the RDA were created by state law and the City Council serves as the legislative body for these entities. These entities may issue debt.

II. **Other Entities**

In addition to the City's related entities, the City has created several entities that are also component units of the City and may have the capacity to issue debt. These entities fall into two categories: corporations established for a particular public purpose; and entities established by the City Charter or Ordinance.

A. **Corporations**

The City has created two separate corporations, the Centre City Development Corporation ("CCDC") and the Southeastern Economic Development Corporation ("SEDC") to engage in certain redevelopment activities on behalf of the City and the RDA in certain areas of the City. Both corporations are organized under the Nonprofit Public Benefit Corporation Law and the City is the sole member of each. Under their articles of incorporation and their bylaws, both CCDC and SEDC have the capacity to issue debt. CCDC Articles of Incorporation, Article II(4); CCDC Bylaws, subsection 4; SEDC Articles of Incorporation, Article II(3); SEDC Bylaws, subsection 4. However, under their respective articles of incorporation and corporate bylaws, they can only issue debt in the name of the CCDC and SEDC and cannot financially obligate the City. *Id.*

The San Diego Data Processing Corporation ("DPC") is a nonprofit public benefit corporation established by the City for the purpose of providing data processing services to the City and other governmental entities in the San Diego region. The City is the sole member. Under its corporate bylaws, DPC has the capacity to issue debt but only in the name of DPC. DPC Bylaws, Article III, subsection 4. The corporation cannot financially obligate the City.

The San Diego Convention Center Corporation ("CCC") is a nonprofit public benefit corporation established by the City to operate and manage the San Diego Convention Center. CCC has a similar legal structure to DPC. The City is the sole member. Under its corporate bylaws, CCC has the capacity to issue debt but only in the name of CCC. CCC Bylaws, Article III, subsection 4. The corporation cannot financially obligate the City.

B. **Entities Established by City Charter or Ordinance**

The San Diego City Employees' Retirement System ("SDCERS") was established pursuant to the City Charter to administer retirement, postemployment healthcare, disability and death benefits on behalf of the City and other participating agencies. City Charter §§ 141 et seq. Neither the City Charter nor the Municipal Code allow for SDCERS to issue debt. *See id.*; SDMC §§ 22.0100 et seq.; SDMC §§ 22.0901 et seq.

The San Diego Housing Commission ("Housing Commission") was established by the City pursuant to the Housing Authority Law to assist the Housing Authority in providing low income housing assistance and other services. SDMC §§ 98.0301 et seq. The Housing Authority, as noted above, has the power to issue debt, not the Housing Commission. *See id.*

Any issuance of bonds in the name of the Housing Commission would require the authorization of the Housing Authority. *See* Health & Safety Code § 34350.

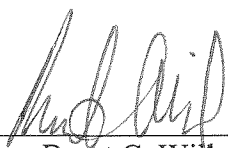
The Tourism Marketing District (“TMD”) was established by the City as an assessment district to provide for tourism development and joint marketing and promotion of San Diego as a tourism destination. SDMC §§ 61.2501. The TMD is not authorized to issue debt. SDMC § 61.2506(c)(1)

CONCLUSION

Currently, there are few City related entities or components units that have the legal capacity to issue debt without the authorization of the City Council. Those that can issue debt cannot do so in a way that would financially obligate the City. Because the Debt Policy is not legally binding on most City related entities or component units, if it is desirable to require City Council approval prior to the issuance of debt, the City should amend the organizational documents of those City related entities or component units that have the independent authority to issue debt.

Respectfully submitted,

JAN I. GOLDSMITH, City Attorney

By  _____
Brant C. Will
Deputy City Attorney

Related Entities

Legal Entity	Capacity to Issue Debt	Without City Council Authorization	Ability to Obligate City
Assessment District 4030 (Otay Mesa Industrial Park)	Yes	No	No
Assessment District 4096 (Piper Ranch Business Park)	Yes	No	No
Reassessment District No. 1991-1	Yes	No	No
Reassessment District No. 2003-1	Yes	No	No
Community Facilities District No. 1 (Miramar Ranch North)	Yes	No	No
Community Facilities District No. 2 (Santaluz)	Yes	No	No
Community Facilities District No. 3 (Liberty Station)	Yes	No	No
Community Facilities District No. 4 (Black Mountain Ranch Villages)	Yes	No	No
San Diego Open Space Park District No. 1	Yes	No	No
Public Facilities Financing Authority	Yes	No	No
City of San Diego/MTDB Authority	Yes	No	No
Convention Center Expansion Financing Authority	Yes	No	No
Facilities and Equipment Leasing Corporation	Yes	Yes	No
Tobacco Settlement Revenue Funding Corporation	Yes	Yes	No
Redevelopment Agency	Yes	No	No
Housing Authority	Yes	No	No

Other Entities

Legal Entity	Capacity to Issue Debt	Without City Council Authorization	Ability to Obligate City
Centre City Development Corporation	Yes	Yes	No
Southeastern Economic Development Corporation	Yes	Yes	No
San Diego Data Processing Corporation	Yes	Yes	No
San Diego Convention Center Corporation	Yes	Yes	No
San Diego Employees' Retirement System	No	N/A	N/A
Housing Commission ¹	No	N/A	N/A
Tourism Marketing District	No	N/A	N/A

¹ The Housing Authority could issue debt on behalf of the Housing Commission.