

#52
7/13/2021

(O-2021-147)

ORDINANCE NUMBER O- 21349 (NEW SERIES)

DATE OF FINAL PASSAGE JUL 27 2021

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING A MASTER LEASE AGREEMENT WITH BANC OF AMERICA PUBLIC CAPITAL CORPORATION FOR THE PURPOSE OF FINANCING THE ACQUISITION OF ESSENTIAL VEHICLES AND EQUIPMENT IN AN AMOUNT NOT TO EXCEED \$30,000,000, AND TAKING OTHER ACTIONS IN CONNECTION THEREWITH, AND DECLARING ITS OFFICIAL INTENT TO REIMBURSE ITSELF FROM THE PROCEEDS OF TAX-EXEMPT LEASE-PURCHASE OBLIGATIONS.

WHEREAS, from time to time the City of San Diego (City) needs to acquire projects, vehicles, and equipment for the purpose of providing public services and frequently uses lease-purchase financing to acquire such projects, vehicles and equipment; and

WHEREAS, the City has negotiated a Master Lease Agreement (Agreement) with Banc of America Public Capital Corp (BAPCC) allowing the City to borrow funds on a tax-exempt basis in an amount not to exceed \$30,000,000 (Obligations) to finance the acquisition of essential vehicles and equipment through a lease-purchase arrangement; and

WHEREAS, the vehicles and equipment expected to be financed are described in Report to City Council, dated May 3, 2021 (Report); and

WHEREAS, the City expects to expend moneys (other than moneys derived from the issuance of tax-exempt obligations) on expenditures relating to the costs of the vehicles and equipment prior to incurring the Obligations, which expenditures will be properly chargeable to a capital account under general federal income tax principles; and

WHEREAS, the City reasonably expects to reimburse certain of such capital expenditures with the proceeds of the Obligations; and

WHEREAS, at the time of the reimbursement, the City will evidence the reimbursement in a writing which identifies the allocation of the proceeds of the Obligations to the City for the purpose of reimbursing the City for any of the capital expenditures made prior to the issuance of the Obligations; and

WHEREAS, the City expects to make the reimbursement allocation no later than eighteen (18) months after the later of (i) the date on which the earliest original expenditure is paid or (ii) the date on which the vehicles and equipment are placed in service (or abandoned), but in no event later than three (3) years after the date on which the earliest original expenditure is paid; and

WHEREAS, the City will not, within one (1) year of the reimbursement allocation, use the proceeds of the Obligations received in the reimbursement allocation in a manner that will result in the creation of replacement proceeds of the Obligations or another issue (*e.g.*, the City will not pledge or use the proceeds received for the payment of lease payments on the Obligations or another issue); and

WHEREAS, this Ordinance is intended to be a "declaration of official intent" in accordance with section 1.150-2 of the Treasury Regulation; and

WHEREAS, subject to certain exceptions, San Diego Charter section 99 (Charter Section 99) generally provides that no contract, agreement or obligation creating City indebtedness and extending for a period of more than five years may be authorized except by an ordinance adopted by a two-thirds majority of the City Council; and

WHEREAS, the Master Lease Agreement does not fit within a recognized exception to Charter Section 99, and therefore, is subject to Charter Section 99; NOW, THEREFORE,

BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. The Mayor is authorized and directed to finance the acquisition of the vehicles and equipment described in the Report under the Master Lease Agreement with BAPCC approved by this Ordinance.

Section 2. The Mayor, the Chief Operating Officer, the Chief Financial Officer or any of their designees is authorized and directed to sign, for and on behalf of the City, a Master Lease Agreement with BAPCC. The Master Lease Agreement shall be substantially in the form presented to this Council, on file in the Office of the City Clerk as Document No.

OO- 21349, with such additions and changes therein as the Chief Operating Officer or Chief Financial Officer, in consultation with the City Attorney, shall approve as being in the best interest of the City; provided however that: (i) the acquisition cost of vehicles and equipment financed under the Master Lease Agreement shall not exceed \$30,000,000; (ii) the interest rate shall not exceed five percent (5%) annually; and (iii) the lease term of the Master Lease Agreement shall not exceed ten (10) years.

Section 3. The Chief Operating Officer or the Chief Financial Officer is authorized to revise the list of vehicles and equipment to be financed under the Master Lease Agreement where such changes are in the best interest of the City.

Section 4. The Declaration of Intent is made solely for the purpose of establishing compliance with section 1.150-2 of the Treasury Regulations, and in accordance therewith the City declares its intention to incur Obligations, the proceeds of which will be used to pay, in part, for the costs of the vehicles and equipment (and related issuance costs, if any), including the reimbursement to the City for certain capital expenditures relating to the vehicles and equipment made prior to incurring the Obligations, provided however that this Declaration of Intent does

not bind the City to make any expenditure, incur any indebtedness, or proceed with the vehicles and equipment.

Section 5. A full reading of this ordinance is dispensed with prior to passage, a written copy having been available to the City Council and the public prior to the day of its passage.

Section 6. This ordinance shall take effect and be in force on the thirtieth day from and after the date of its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By /s/ Marguerite E. Middaugh
Marguerite E. Middaugh
Deputy City Attorney

MEM:jdf
06/01/2021
Or.Dept:Debt Management
Doc. No: 2673950

I hereby certify that the foregoing Ordinance was passed by the Council of the City of San Diego, at this meeting of 07/13/2021.

ELIZABETH S. MALAND
City Clerk

By /s/ Stacy D. Ready
Deputy City Clerk

Approved: 7/27/21
(date)


TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

Passed by the Council of The City of San Diego on JUL 13 2021, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Joe LaCava	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Stephen Whitburn	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery Steppe	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marni von Wilpert	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Raul A. Campillo	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sean Elo-Rivera	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage JUL 27 2021.

AUTHENTICATED BY:

TODD GLORIA
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Hy Ready*, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

JUN 22 2021, and on JUL 27 2021.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By *Hy Ready*, Deputy

Office of the City Clerk, San Diego, California
Ordinance Number O- <u>21349</u>