

#58
7/25/23

(O-2023-200)

ORDINANCE NUMBER O- 21705 (NEW SERIES)

DATE OF FINAL PASSAGE AUG 03 2023

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE SUBMISSION OF AN APPLICATION TO THE CALIFORNIA INFRASTRUCTURE AND ECONOMIC DEVELOPMENT BANK FOR FINANCING A CAPITAL IMPROVEMENT PROJECT, AUTHORIZING THE INCURRING OF AN OBLIGATION PAYABLE TO IBANK FOR THE FINANCING OF A CAPITAL IMPROVEMENT PROJECT IF THE APPLICATION IS APPROVED, DECLARATION OF OFFICIAL INTENT TO REIMBURSE CERTAIN EXPENDITURES FROM THE PROCEEDS OF AN OBLIGATION, AND APPROVING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, the California Infrastructure and Economic Development Bank (IBank) administers a financing program to assist local governments with the financing of eligible projects in accordance with Section 63000 *et seq.* of the California Government Code (Act); and

WHEREAS, IBank created the Infrastructure State Revolving Fund Program (ISRF Program) pursuant to the provision of the Act; and

WHEREAS, IBank has instituted an application process for financing under its ISRF Program; and

WHEREAS, IBank's Criteria, Priorities and Guidelines for the Selection of Projects for Financing under the ISRF Program, dated February 23, 2016, and as may thereafter be amended from time to time (Criteria), establishes requirements for the financing of projects under the ISRF Program; and

WHEREAS, the City of San Diego (Applicant) desires to submit an application (Financing Application) to IBank under the ISRF Program for financing and refinancing the costs of an Organics Processing Facility at the Miramar Landfill (Project) in an amount expected not to exceed \$77.2 million; and

WHEREAS, the Act and the Criteria require the Applicant to make, by resolution of its governing body, certain findings prior to a project being selected for financing by IBank; and

WHEREAS, the Applicant expects to incur or pay certain expenditures in connection with the Project from its Refuse Disposal Enterprise Fund that are reimbursable with the proceeds of tax-exempt bonds or other tax-exempt securities under Federal Tax Law (defined below) prior to incurring indebtedness for the purpose of financing costs associated with the Project on a long-term basis (Reimbursement Expenditures); and

WHEREAS, the Applicant reasonably expects that a financing arrangement (Obligation) in an amount not expected to exceed \$40.0 million will be entered into under and memorialized by one or more financing agreements and related documents (collectively, the Financing Agreement) and that certain proceeds of the Obligation will be used to reimburse the Applicant for Reimbursement Expenditures incurred or paid prior to incurring the Obligation; and

WHEREAS, the Applicant acknowledges that IBank funds the ISRF Program, in part, with the proceeds of tax-exempt bonds and, as such, has certain compliance obligations that may in the future require it to have the Applicant enter into one or more new financing agreements to replace the Financing Agreement (collectively, the Replacement Agreement) on terms and conditions substantially identical to the original Financing Agreement; and

WHEREAS, under San Diego Charter section 99, no contract, agreement or obligation where the City incurs debt extending for a period of more than five years may be authorized except by ordinance adopted by a two-thirds majority vote of the City Council; and

WHEREAS, the Office of the City Attorney has drafted this Ordinance based on the information provided by City staff, with the understanding that this information is complete, true, and accurate; NOW, THEREFORE,

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

Section 1. The City Council hereby finds and determines that the statements set forth above in the recitals of this Ordinance are true and correct.

Section 2. The City Council hereby approves confirms, ratifies, and affirms all actions of the Applicant's representatives, employees and officers heretofore taken in connection with, or with respect to, submitting the Financing Application, and the consideration and approval of the Obligation and the Financing Agreement, if IBank approves the Financing Application and the Obligation (i) in a maximum principal amount not to exceed \$40.0 million, (ii) with a maximum interest rate (excluding default interest that may accrue under the terms of the Financing Agreement) of 6% per annum, and (iii) with a maximum maturity date no later than 35 years after the first principal payment date (collectively, the Basic Terms).

Section 3. The City Council hereby finds that the financing of the Project via the Obligation (including reimbursement to the City of the Reimbursement Expenditures) as set forth in the recitals of this Ordinance will provide significant public benefits and certifies that:

- a. The Project facilitates the effective and efficient use of existing and future public resources so as to promote both economic development and conservation of natural resources;
- b. The Project develops and enhances public infrastructure in a manner that will attract, create, and sustain long-term employment opportunities;
- c. The Project is consistent with the General Plan of the City, and the General Plan of the County of San Diego;
- d. The proposed financing is appropriate for the Project;
- e. The Project is consistent with the Criteria; and

- f. It has considered (i) the impact of the Project on California's land resources and the need to preserve such resources; (ii) whether the Project is economically or socially desirable; and (iii) whether the project is consistent with, and in furtherance of the State Environmental Goals and Policy Report (as defined in the Criteria).

Section 4. The Applicant hereby declares its official intent to use proceeds of the Obligation to reimburse itself for the Reimbursement Expenditures with the proceeds of tax-exempt bonds or other tax-exempt securities issued under the provisions of the Internal Revenue Code of 1986, as amended, and those Treasury Regulations implementing such provisions (collectively, Federal Tax Law). This declaration is made solely for the purpose of establishing compliance with applicable requirements of Federal Tax Law and its date is controlling for purposes of reimbursement under Federal Tax Law. This declaration does not bind the Applicant to make any expenditure, incur any indebtedness, or proceed with the Project.

Section 5. All of the Reimbursement Expenditures were made no earlier than sixty (60) days prior to the date of this Resolution. The Applicant will allocate proceeds of the Obligation to pay Reimbursement Expenditures within eighteen (18) months of the later of the date the original expenditure was paid or the date the Project was placed into service or abandoned, but in no event more than three (3) years after the original expenditure was paid.

Section 6. The Mayor, the Chief Operating Officer or the Chief Financial Officer of the City and each of them or any of their respective designees (Authorized Representatives), are hereby authorized and directed to act on behalf of the Applicant in all matters pertaining to the Financing Application, and if IBank approves the Financing Application and the Obligation, the execution of related financial documents, including but not limited to, the authority to: (i) pledge the Revenues of the Refuse Disposal Enterprise Fund and all legally available amounts in the

Refuse Disposal Enterprise Fund, on a parity basis with the Applicant's existing obligations, if any, to the repayment of the Obligation, (ii) provide covenants relating to, among other things, maintaining the debt service coverage ratio required by IBank, rates and charges to be pledged, and as to any other security or collateral securing the Obligation, and (iii) take any other action necessary or desirable to enable the Applicant to enter into the Financing Agreement and incur the Obligation.

Section 7. If the Financing Application and the Obligation is approved by IBank, the Authorized Representatives are authorized to negotiate, enter into and sign financing documents and any amendments thereto, including, but not limited to the Financing Agreement and the Replacement Agreement, with IBank for the purposes of financing the Obligation.

Section 8. The authority granted hereunder shall be deemed retroactive. All acts authorized hereunder and performed prior to the date of this Ordinance are hereby ratified and affirmed. IBank is authorized to rely upon this Ordinance until written notice to the contrary, executed by each of the undersigned, is received by IBank. IBank shall be entitled to act in reliance upon the matters contained herein, notwithstanding anything to the contrary contained in the formation documents of the City or in any other document.

Section 9. That the Chief Financial Officer is authorized to establish a special interest-bearing construction fund (ESD ISRF Loan – Miramar Landfill Organics Facility Fund) for the Obligation, and a special interest-bearing fund for any required debt service reserve, contingent upon the execution of the Financing Agreement for the Project.

Section 10. That the Chief Financial Officer is authorized to increase the Capital Improvements Program (CIP) budget and appropriate and expend up to \$40.0 million in the CIP L-17000 – Miramar Landfill Facility Improvements or other fund or funds, for the purpose of funding the Project.

Section 11. That the Chief Financial Officer is authorized to reduce the CIP budget by de-appropriating \$5.8 million in Fund 700040, Refuse Disposal – CIP.

Section 12. That this Ordinance is being adopted no later than sixty (60) days after the date on which the City will expend moneys for the construction portion of the Project's costs to be reimbursed with proceeds of the Obligation.

Section 13. That each Expenditure will be of a type that is legally permissible and properly chargeable to a capital account under Federal Tax Law.


Section 14. That this Ordinance is adopted as the official intent of the City in order to comply with Treasury Regulation section 1.150-2 and any other regulations of the Internal Revenue Service relating to the qualification for Reimbursement Expenditures.

Section 15. That all the recitals in this Ordinance are true and correct and the City so finds, determines and represents.

Section 16. That a full reading of this Ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage.

Section 17. That this Ordinance shall take effect and be in force on the thirtieth (30th) day from and after its final passage.

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Bret A. Bartolotta
Deputy City Attorney

BAB:jdf
06/22/2023
Or.Dept:DoF
Doc. No. 3334769

I certify that this Ordinance was passed by the Council of the City of San Diego, at this meeting
of JUL 25 2023.

DIANA J.S. FUENTES
City Clerk

By Kristine Medina
Deputy City Clerk

Approved: 8/3/23
(date)

Todd Gloria
TODD GLORIA, Mayor

Vetoed: _____
(date)

TODD GLORIA, Mayor

JUL 25 2023

Passed by the Council of The City of San Diego on _____, 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"/>
Kent Lee	<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"/>

AUG 03 2023

Date of final passage _____.

AUTHENTICATED BY:

TODD GLORIA

Mayor of The City of San Diego, California.

DIANA J.S. FUENTES

Interim City Clerk of The City of San Diego, California.

(Seal)

By Kristell Medina, 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

JUL 11 2023

AUG 03 2023

_____, and on _____.

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.

DIANA J.S. FUENTES

Interim City Clerk of The City of San Diego, California.

(Seal)

By Kristell Medina, Deputy

Office of the City Clerk, San Diego, California

21705

Ordinance Number O-_____