

**REQUEST FOR CITY COUNCIL CONSIDERATION**

Meeting Date: December 5, 2022

Agenda Item: 5A	Prepared by: Chris Noury, City Attorney
Agenda Section: Consent: Resolution	Date: November 30, 2022
Subject: A Resolution regarding the adoption of Tax-Advantaged Bond Compliance Policies and Procedures	Division: Legal

**Background:**

The City of North Myrtle Beach, from time to time, issues debt that is eligible for tax benefits under federal and South Carolina law (i.e., “Tax-Advantaged Bonds”). The purpose of these policies and procedures is to ensure compliance with the legal requirements applicable to Tax-Advantaged Bonds.

**Recommended Action:**

Adopt the Resolution

Reviewed by City Manager		Reviewed by City Attorney
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Council Action:  
Motion By \_\_\_\_\_ 2<sup>nd</sup> By \_\_\_\_\_ To \_\_\_\_\_

## A RESOLUTION

### **A RESOLUTION OF THE CITY OF NORTH MYRTLE BEACH, SOUTH CAROLINA, REGARDING THE ADOPTION OF TAX-ADVANTAGED BOND COMPLIANCE POLICIES AND PROCEDURES**

#### **Statement of Purpose**

The City of North Myrtle Beach, South Carolina (the “City”), from time to time, issues debt that is eligible for tax benefits under federal and South Carolina law (“Tax-Advantaged Bonds”). The purpose of these policies and procedures is to ensure compliance with the legal requirements applicable to Tax-Advantaged Bonds.

#### **Summary**

This document contains two components:

- The “Policies,” which are general statements of the goals of the City with respect to compliance with the legal requirements applicable to Tax-Advantaged Bonds; and
- The “Procedures,” which are specific operational methods to implement the Policies.

The Policies may be amended by official action of the City Council of the City upon consultation with the City’s bond counsel (“Bond Counsel”).

The City Manager will be responsible for ensuring that Tax-Advantaged Bonds comply with legal requirements applicable to Tax-Advantaged Bonds and will develop and implement the Procedures. The Procedures may be amended by the City Manager of the City in consultation with Bond Counsel.

## **PART I: TAX-ADVANTAGED BOND COMPLIANCE POLICIES**

- A. Investment and Expenditure of Bond Proceeds. The City will track the investment and expenditure of proceeds of Tax-Advantaged Bonds.
- B. Bond-Financed Facilities. The City will track the use of facilities financed by Tax-Advantaged Bonds by private users.
- C. Periodic Review. The City will periodically review compliance with the legal requirements necessary to preserve the tax advantages of such Tax-Advantaged Bonds.
- D. Potential Non-Compliance. The City will take appropriate action upon discovery of non-compliance with the legal requirements applicable to Tax-Advantaged Bonds.
- E. Retention of Professionals; Rebate Analyst. The City will engage professionals or consultants as necessary to comply with the legal requirements applicable to Tax-Advantaged Bonds, including, without limitation, the requirement to compute and pay rebate.
- F. Purchase of Investments. All investments of the proceeds of Tax-Advantaged Bonds will be purchased at Fair Market Value and will comply with other legal requirements as advised by Bond Counsel.
- G. Credit Enhancement Transactions. The City will consult with Bond Counsel prior to engaging in post-issuance credit enhancement transactions.
- H. Subsidy Payments. The City will ensure that any federal subsidy payment is timely transmitted to the appropriate account of the City.
- I. Post-Issuance Modifications. The City will consult with Bond Counsel before modifying the interest rate, maturity date, or other material terms of any outstanding Tax-Advantaged Bonds.
- J. Records Retention. The City will retain records relating to the Tax-Advantaged Bonds for the period required by law, which is currently the term of the debt plus 3 years.

**TAX-ADVANTAGED BOND PROCEDURES**

These Procedures are organized with reference to the lettered paragraphs in the Policies.

Certain procedures assign responsibilities to named officials of the City. The capitalized terms used for such officials are defined as follows:

Chief Executive Officer .....City Manager  
Chief Financial Officer .....Finance Director  
Facilities Officer .....Assistant City Manager  
Purchasing Officer .....Purchasing Agent

The named officials may delegate certain assigned responsibilities but will remain responsible for compliance with the Procedures. The official with ultimate responsibility for compliance with the Policies and Procedures will be the City Manager.

A summary of the initial responsibility assignments appears as Exhibit A to these Procedures.

Policy A:     Investment and Expenditure of Bond Proceeds.

Implementing Procedures:

1.     The Chief Financial Officer will charge debt-financed capital expenditures to a specific fund. Each debt-financed project shall have a specific fund number used to track that project, and discrete expenditures shall be further categorized by project location (by street address or name of facility) and functional description of financed improvement.
2.     The Purchasing Officer will enter purchase orders, and the Chief Financial Officer will pay and capture such purchase orders in the general ledger, by the specific account code.
3.     The Purchasing Officer will electronically scan, file, and retain all purchase orders and invoices by vendor, check number, check date, and purchase order number, if applicable.
4.     Until final allocation of bond proceeds, the Chief Financial Officer will periodically analyze each project for expenditures and will summarize the expenditures on a spreadsheet or other retainable ledger.
5.     The spreadsheet or ledger will identify facilities or equipment financed by Tax-Advantaged Bonds (“Bond-Financed Facilities”).
6.     The Chief Financial Officer will ensure that the investment of all proceeds of Tax-Advantaged Bonds is tracked by fund or account (e.g., debt service fund, debt service reserve fund, project or construction fund, etc.) and investment yield.

Policy B: Bond-Financed Facilities.

Implementing Procedures:

1. The Facilities Officer will meet periodically with the Chief Executive Officer to review and evaluate existing or pending sales, leases, management contracts, research contracts, or other arrangements that relate to the City's real or personal property (collectively, "Use Arrangements").
2. The Facilities Officer will be responsible for determining whether any Use Arrangement relates to Bond-Financed Facilities. If so, the Facilities Officer will consult with counsel to the City ("City Counsel") on the Use Arrangement's effect on the Tax-Advantaged Bonds. If the term of the Use Arrangement relating to any Bond-Financed Facilities exceeds 200 days, or if the City Counsel so recommends, the Facilities Officer shall also consult Bond Counsel for advice prior to execution of the Use Arrangement.
3. The Purchasing Director shall notify the Chief Executive Officer upon receipt of any Use Arrangements submitted for approval for any Bond-Financed Facilities.

Policy C: Periodic Review.

Implementing Procedures:

1. After the adoption of the Policy, the Chief Financial Officer will evaluate tax compliance for all outstanding Tax-Advantaged Bonds (the "Initial Evaluation"). In the Initial Evaluation, the Chief Financial Officer will identify all outstanding Tax-Advantaged Bonds and the Bond-Financed Facilities that were financed with those Tax-Advantaged Bonds. Upon the completion of the Initial Evaluation, the Chief Financial Officer will report to the Chief Executive Officer on the results of the Initial Evaluation.
2. Thereafter, the Chief Financial Officer will periodically evaluate tax compliance for all outstanding Tax-Advantaged Bonds (each, a "Periodic Evaluation"), with the same objectives and scope as the Initial Evaluation and will report to the Chief Executive Officer the results of each Periodic Evaluation.
3. Not later than 18 months after completion of any Bond-Financed Facilities, the Chief Financial Officer shall make and retain a final allocation of the expenditure of proceeds of Tax-Advantaged Bonds and other amounts used to finance such Bond-Financed Facilities.

Policy D: Potential Noncompliance.

Implementing Procedures:

If the Initial Evaluation or any Annual Evaluation discloses potential non-compliance, the Chief Executive Officer will promptly consult with City Counsel and Bond Counsel.

Policy E: Retention of Professionals; Rebate Analyst.

Implementing Procedures:

1. The City has engaged Amtec Corp. as its arbitrage rebate computation agent (the “Rebate Analyst”).
2. The Chief Financial Officer will ensure that the Rebate Analyst timely prepares returns relating to payment of arbitrage rebate and that such forms are timely submitted, and any rebatable arbitrage is timely paid, to the United States.

Policy F: Purchase of Investments.

Implementing Procedures:

The City Manager will ensure that all proceeds of Tax-Advantaged Bonds will be invested at the direction of Chief Financial Officer, who shall ensure that such proceeds are invested in compliance with federal tax requirements and that all such investments are made at Fair Market Value. The Chief Financial Officer shall consult with Bond Counsel prior to investing any proceeds of Tax-Advantaged Bonds in guaranteed investment contracts or certificates of deposit not publicly traded on any investment exchange.

Policy G: Credit Enhancement Transactions.

Implementing Procedures:

Prior to bidding for, purchasing, entering into, or otherwise engaging in any post-issuance credit enhancement transactions relating to the proceeds of or debt service on Tax-Advantaged Bonds (including, without limitation, bond insurance policies, letters of credit, guaranteed investment contracts, interest rate swaps, and market hedges), the Chief Financial Officer shall consult with Bond Counsel.

Policies H: Subsidy Payments.

Implementing Procedures:

See the implementing procedures of Policy A, above.

Policy I: Post-Issuance Modifications.

Implementing Procedures:

Prior to modifying the terms of any outstanding Tax-Advantaged Bonds (including, without limitation, changes in maturity date, interest rate, call provisions, financial or earnings covenants, or use of proceeds), the Chief Financial Officer shall consult with Bond Counsel.

Policy J: Records Retention.

Implementing Procedures:

1. Retention Period: The City shall retain records relating to Tax-Advantaged Bonds for the term of such Tax-Advantaged Bonds, plus 3 years. If Tax-Advantaged Bonds are refunded, the City shall retain records relating to the refunded bonds for the term of the refunding bonds, plus 3 years.
  
2. Records to be Retained:
  - A. The primary records regarding the issuance and sale of the Tax-Advantaged Bonds (i.e., the bond transcript and closing documents); records showing the investment and expenditure of the original proceeds of the Tax-Advantaged Bonds; records showing and/or regarding the bidding and terms of post-issuance credit enhancement; rebate computations; any filings with the IRS; any correspondence with the IRS; architectural or construction drawings and documents of the bond-financed or refinanced facilities; and any other records relating to the issuance, sale, and closing, and the investment and expenditure of the proceeds, of Tax-Advantaged Bonds.
  
  - B. Elections regarding accounting methods, rebate matters, or application of regulatory provisions.
  
  - C. Copies of any Use Arrangements including leases, naming rights agreements, title retention agreements, management contracts, sponsored research contracts, capacity reservation agreements, agreements regarding rates or charges for use of Bond-Financed Facilities, incentive payment service contracts, requirements contracts, “take” contracts, or “take or pay” contracts.
  
  - D. The Chief Financial Officer shall be custodian of the foregoing records.

**The Foregoing Procedures were last revised on \_\_\_\_\_, 2022.**

\_\_\_\_\_  
**Mike Mahaney, City Manager**

**Resolved this the \_\_\_\_\_ day of DECEMBER 2022.**

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**Marilyn Hatley, Mayor**

**Resolution: RES 22-11**

**ATTEST:**

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**Allison K. Galbreath, City Clerk**

## Exhibit A

### Summary of Responsibility Assignments

#### Chief Executive Officer

1. Ensure overall compliance with Policies and Procedures; monitor responsibility assignments and periodically review Procedures; periodically revise Procedures as necessary.
2. Meet with Facilities Officer to evaluate use of bond-financed facilities. (Policy B)
3. Ensure preparation of and review Initial Report and Periodic Reports. (Policy C)
4. Report potential non-compliance to Bond Counsel. (Policy D)
5. Ensure appropriate investment of bond proceeds by Chief Financial Officer. (Policy F)

#### Chief Financial Officer

1. Monitor, record, and allocate expenditure of bond proceeds by project location and functional description. (Policy A)
2. Until final allocation of bond proceeds, prepare a monthly report of project expenditures. (Policy A)
3. Prepare and retain separate records for investment performance of bond proceeds. (Policy A)
4. Prepare Initial Report and Periodic Reports. (Policy C)
5. Make and record final allocations of expenditures of proceeds of Tax-Advantaged Bonds. (Policy A)
6. Retain and manage relationship with Rebate Analyst. (Policy E)
7. Consult with Bond Counsel before (a) purchasing guaranteed investment contracts or non-publicly traded certificates of deposit with proceeds of, (b) entering into credit enhancement transactions with respect to, or (c) modifying the terms of, Tax-Advantaged Bonds. (Policies F and G)
8. Ensure compliance with retention policies and act as custodian of retained records. (Policy J)

#### Facilities Officer

1. Meet with Chief Executive Officer to evaluate use of Bond-Financed Facilities. (Policy B)
2. Monitor Use Arrangements and consult with counsel prior to entering into new Use Arrangements. (Policy B)

### Purchasing Officer

1. Coordinate with Chief Financial Officer on purchase orders and expenditures with respect to Bond-Financed Facilities. (Policy A)
2. Scan and file all purchase orders and invoices with respect to Bond-Financed Facilities. (Policy A)
3. Notify Chief Executive Officer of any Use Arrangements submitted for approval that relate to Bond-Financed Facilities. (Policy A)