

ANDREWS KURTH

600 Travis
Suite 4200
Houston, Texas 77002
713.220.4200 Phone
713.220.4285 Fax
andrewskurth.com

717 Main Street
Suite 3700
Dallas, Texas 75201
214.659.4400 Phone
214.659.4401 Fax
andrewskurth.com

111 Congress,
Suite 1700
Austin, Texas 78701
512.320.9200 Phone
512.320.9292 Fax
andrewskurth.com

BASIC FINANCING ALTERNATIVES FOR MUNICIPALITIES IN TEXAS

Following is a brief summary, which is not intended to be complete or exhaustive, of some of the basic financing options available to cities under current Texas law. Unless otherwise provided, references to cities include both Home-Rule and General Law cities.

Tax Bonds

Authority: The legal authorities for the issuance of Tax Bonds are the following: Home-Rule Cities - Article XI, Section 5 of the Texas Constitution, numerous state statutes and the city's charter; General Law Cities - Article XI, Section 4 of the Texas Constitution and numerous state statutes.

Purposes: Cities may issue Tax Bonds for the purpose of making permanent public improvements or for other public purposes.

Security: Tax Bonds of a city are secured by and payable from a city's limited ad valorem tax, which may not exceed the following: Home-Rule Cities - \$2.50 per \$100 in assessed valuation; General Law Cities - \$1.50 per \$100 in assessed valuation. Such limited tax may be used by cities to pay both operating expenses and debt service. (Before approving an issue of bonds, a city must demonstrate to the Attorney General that it can pay debt service on its Tax Bonds from a tax that does not exceed the following "bond allowable" (generally assuming a 90% collection rate): Home-Rule Cities - \$1.50 per \$100 in assessed valuation; and General Law Cities - \$1.00 per \$100 in assessed valuation).

Limitations: Various, depending on the particular authorizing statute.

Voter Approval: Tax Bonds issued for new money purposes must be approved by a majority of a city's voters.

Refunding Bonds: Tax Bonds may be issued to refund previously issued Tax Bonds pursuant to several statutes, including Chapter 1207, Texas Government Code, as amended. Tax Bonds issued for refunding purposes are not required to be approved by a city's voters.

Attorney General Approval: Issuance of Tax Bonds is subject to the approval of the Attorney General of the State of Texas, and after such approval the bonds are incontestable.

Certificates of Obligation ("CO's")

Statutory Authority: The legal authority for the issuance of CO's is Subchapter C of Chapter 271, Local Government Code (the "CO Act").

Eligibility: To be eligible to issue CO's, a city must be a home-rule city or be authorized to levy an ad valorem tax of at least \$1.50 per \$100 of assessed valuation of taxable property. A home-rule city may use the CO Act

regardless of any provision in its charter to the contrary.

Purposes: CO's may be issued by eligible cities for (1) construction of a public work, (2) purchase of materials, supplies, equipment, machinery, buildings, land, and rights-of-way for authorized needs and purposes and (3) payment of contractual obligations for professional services and certain city employee-related expenses directly attributable to projects financed by CO's. CO's may also be issued for the payment of contractual obligations incurred to pay for: (1) interests in and rights to water or sewer treatment capacity from a governmental entity or political subdivision, (2) constructing or equipping a jail, (3) demolishing dangerous structures, and (4) restoring historic structures.

Security: CO's may be payable from ad valorem taxes, revenues or a combination of the two. A city may pledge revenues in addition to taxes if the city is authorized by the Texas Constitution or other state statutes to secure or pay any kind of general or special obligation by or from those revenues. CO's payable from a combination of taxes and revenues may be sold for cash for all purposes permitted under the CO Act. CO's payable only from taxes may be sold for cash only for the payment of contractual obligations incurred in constructing or equipping a jail, demolishing dangerous structures and restoring historic structures, but in most other instances CO's payable only from taxes must be delivered in exchange for services or property (i.e., cannot be sold for cash).

Limitations: A city generally does not need voter approval for the issuance of CO's. However, if a city held a bond election during the preceding three years and the election failed, the city is prohibited from issuing CO's for the same purpose as the failed bond election. Such a city may still finance that project through a method other than the issuance of CO's.

A city must publish notice of its intention to issue such CO's once a week for two consecutive weeks prior to the passage of the ordinance authorizing the issuance of the CO's, with the date of first publication to be before the 30th day before passage. The notice must include time and place for passage of the ordinance, maximum amount and purpose of certificates to be authorized, and the way in which CO's will be paid (e.g. tax, revenue or combination). If the city receives a petition signed by at least five percent of its qualified voters, then issuance of the CO's must be approved by voters at an election.

Voter Approval: Voter approval is not required for the issuance of CO's except when, as mentioned above, five percent of qualified voters sign and submit petition to the city.

Refunding Bonds: CO's may be refunded with Tax Bonds and/or revenue bonds issued for refunding purposes.

Attorney General Approval: Issuance of CO's is subject to the approval of the Attorney General of Texas, and after such approval the CO's are incontestable.

Tax Notes and Anticipation Notes ("Notes")

Statutory Authority: The legal authority for the issuance of Notes is Chapter 1431, Texas Government Code, as amended. (Certain cities may also utilize Chapter 1507, Texas Government Code, as amended, to issue warrants to finance current expenses).

- Purposes: Notes may be issued to (1) pay for the construction of any public work, (2) pay for the purchase of materials, supplies, equipment, machinery, buildings, lands and rights-of-way for authorized needs and purposes, (3) pay for professional services, (4) pay operating expenses or current expenses and (5) fund a city's cumulative cash flow deficit. (Proceeds of Notes may also be used to repay duly authorized interfund or other borrowings that occurred no more than 24 months before the date of the ordinance authorizing issuance of the Notes.)
- Security: Notes may be secured by and payable from ad valorem taxes, revenues, a combination of revenues and taxes, or the proceeds of bonds to be issued by a city.
(Notes that are to be payable from Tax Bonds may not be issued unless the Tax Bonds have been approved by the voters in an election and the bond proposition states that Notes may be issued.)
- Limitations: Notes issued for the purposes set out in clauses (1)-(3) above must mature before the seventh anniversary of the date the Attorney General approves such Notes. Notes issued for the purposes set out in clauses (4) and (5) above must have a maturity of less than one year from the date of Attorney General approval. Notes issued for the purpose set out in clause (4) may not exceed 75% of the revenues or taxes anticipated to be collected in the fiscal year in which the Attorney General approves the Notes.
- Voter Approval: Neither voter approval nor publication of notice is required for the issuance of Notes.
- Refunding Bonds: Notes may be refunded with Tax Bonds and/or revenue bonds issued for refunding purposes.
- Attorney General Approval: Issuance of Notes is subject to the approval of the Attorney General of Texas, and after such approval the Notes are incontestable.

Contractual Obligations

- Statutory Authority: The legal authority for the issuance of Contractual Obligations is Section 271.001 et seq., Local Government Code (the "Public Property Finance Act"), including specifically Section 271.005.
- Purposes: Contractual Obligations may be issued for the purchase or acquisition or use of personal property. Personal property includes appliances, equipment, facilities, and furnishings; and, it also includes all materials and labor incident to the installation of such property. The structure of such purchases may be a purchase for cash, a lease, a lease-purchase or an installment sale arrangement.
- Security: Contractual Obligations for personal property may be secured by a pledge of all or any part of any revenues, funds or taxes available to a city for its public purposes.
- Limitations: Contractual Obligations may not be used to finance the purchase or acquisition of real property or improvements to real property, even if necessary for the installation of the personal property being purchased or acquired with the Contractual Obligations.
- Voter Approval: Voter approval is not required for the issuance of Contractual Obligations.
- Refunding Bonds: Contractual Obligations may be refunded with Tax Bonds and/or revenue bonds issued for refunding purposes.

Attorney General Approval: Issuance of Contractual Obligations (in the form of a security) is subject to the approval of the Attorney General of Texas.

Revenue Bonds

Statutory Authority: Numerous state statutes authorize the issuance of Revenue Bonds.

Purposes: Wide variety (e.g., water/sewer systems, parks, libraries, buildings, harbor and port facilities, civic centers, auditoriums, opera houses, golf courses, parking facilities, airports, etc.).

Security: Revenue Bonds may be secured by and payable from a wide variety of revenues, depending on the particular authorizing statute.

Limitations: Each particular authorizing statute has various limitations.

Voter Approval: Voter approval is not required for the issuance of Revenue Bonds, whether for new money or refunding purposes.

Refunding Bonds: Revenue Bonds may be issued to refund previously issued Revenue Bonds pursuant to several statutes, including Chapter 1207, Texas Government Code, as amended.

Attorney General Approval: Issuance of Revenue Bonds is subject to the approval of the Attorney General of the State of Texas, and after such approval the bonds are incontestable.

Other Options

Lease Purchase Financing (Personal Property): Permitted through issuance of Contractual Obligations, as described above, or certificates of participation issued by a trustee. Unless excepted under Section 1202.007, Texas Government Code, as amended, such financings are subject to approval of the Attorney General of Texas. Exceptions to such approval include the following: obligations payable out of current revenues and taxes in the year of issuance; non-financing leases, lease-purchase and installment sale obligations; non-certificated, and non-assignable obligations.

Financings Using Non-Profit Corporations: Under Texas law there are a variety of special purpose non-profit corporations that may be sponsored by a city to finance various types of projects or programs, generally for the benefit of private entities or persons (either for-profit or non-profit). The debt of such corporations is expressly not debt of the city.

Some examples of such corporations include economic development corporations, housing finance corporations, health facilities development corporations, higher education authorities and cultural educational facilities corporations.

Another type of non-profit corporation, a public facilities corporation created under Chapter 303, Texas Local Government Code, as amended, may be sponsored by a city to facilitate the development and financing of projects for the benefit of the sponsoring city. Similarly, transportation corporations, local governmental corporations and general non-profit corporations may be used for such purposes in limited circumstances.

* * * * *

If you have any questions on any of the foregoing materials, please call Jerry Kyle at (512) 320-9271. Alternatively, please feel free to call any of the following Andrews Kurth public finance attorneys: Bob Collie at (713) 220-3946,

Rick Witte at (713) 220-3944, Gregg Jones at (713) 220-4479, Adrian Patterson at (713) 220-3849, James Hernandez at (713) 220-3942, Tom Sage at (713) 220-3833, Julie Houston at (512) 320-9281, Mark Arnold at (713) 220-3938, Tanya Fischer at (713) 220-3915, Greg Shields at (512) 320-9251, Eric Johnson at (214) 659-4503, Nathelie Ashby at (512) 320-9233, Barbara League at (713) 220-4267, Mike Swartz at (713) 220-4702, Bill Medaille at (512) 320-9267, Clay Holland at (713) 220-3868, Andrew Bethune at (512) 320-9369, Ben Morse at (713) 220-3821, Nikki Hill at (713) 220-4496, Samantha Rachlin at (713) 220-3829, or Cathleen Chang at (713) 220-3808.

Updated 6/22/2017.