

ORDINANCE NO. 09-25

AN ORDINANCE OF THE CITY OF KEY WEST, FLORIDA, AUTHORIZING THE ISSUANCE OF A SERIES OF REFUNDING BONDS FOR THE PRINCIPAL PURPOSE OF CURRENTLY REFUNDING AND DEFEASING THE CITY'S OUTSTANDING TAX-EXEMPT CAPITAL IMPROVEMENT/MARINA REVENUE BONDS, SERIES 1997; PROVIDING CERTAIN OTHER MATTERS IN CONNECTION THEREWITH; PROVIDING SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COMMISSION OF THE CITY OF KEY WEST, FLORIDA:

SECTION 1. AUTHORITY FOR THIS ORDINANCE. The City of Key West, Florida (the "City") is authorized to adopt this ordinance under the authority granted by the provisions of Chapter 166, Florida Statutes, as amended, and other applicable provisions of law.

SECTION 2. FINDINGS. It is hereby found and determined that:

A. On August 31, 1992, the City enacted Ordinance No. 92-44, as amended by Ordinance No. 92-56 enacted by the City on October 20, 1992 (collectively, the "1992 Ordinance") authorizing the issuance of its Tax-Exempt Capital Improvement/Marina Revenue Bonds, Series 1993A (the "Series 1993A Bonds") to finance the acquisition of an approximately 8.8 acre site located in the City commonly known as the Key West Bight (the "Series 1993 Project"), subject to approval at a referendum of the qualified electors of the City.

B. At a referendum held on November 3, 1992 (the "Series 1993 Referendum"), the qualified electors of the City approved, by majority vote, the issuance of the Series 1993A Bonds to finance the Series 1993 Project.

C. On December 15, 1992, the City adopted Resolution No. 92-565 providing for the issuance of the Series 1993A Bonds, Additional Bonds and Refunding Bonds (the "1992 Bond Resolution") and on December 17, 1992, the City adopted Resolution No. 92-573 setting forth the terms and conditions upon which the Series 1993A Bonds were to be issued (the "Series Resolution" and collectively with the Bond Resolution, the "Series 1993 Resolution"). The Series 1993A Bonds were issued on January 5, 1993 pursuant to the 1992 Ordinance, the Series 1993 Referendum and the Series 1993 Resolution.

D. The 1992 Bond Resolution authorizes the issuance from time to time of Refunding Bonds payable from the Pledged Revenue (herein defined) on a parity with the Bonds Outstanding under the 1992 Bond Resolution. Such Refunding Bonds may be issued for the purpose of refunding Bonds Outstanding under the 1992 Bond Resolution.

E. On September 16, 1997, the City enacted Ordinance No. 97-19 (the "1997 Ordinance") authorizing the issuance of its Tax-Exempt Capital Improvement/Marina Revenue Refunding Bonds, Series 1997 (the "Series 1997 Bonds") to accomplish the advance refunding of a portion of the Series 1993A Bonds. The Series 1997 Bonds were secured on a parity basis under the 1992 Bond Resolution with the Series 1993A Bonds that remained Outstanding following the issuance of the Series 1997 Bonds (the "Unrefunded Series 1993A Bonds").

F. On September 16, 1997, the City adopted Resolution No. 97-387 providing for the issuance of the Series 1997 Bonds and setting forth the terms and conditions upon which the Series 1997 Bonds were to be issued (the "1997 Resolution"). The Series 1997 Bonds were issued on October 21, 1997 pursuant to the 1997 Ordinance and the 1997 Resolution.

G. The City hereby determines that it is necessary, desirable and in its best interest to accomplish the current refunding of the Outstanding Series 1997 Bonds (the "Refunded Bonds") to achieve overall economic benefit and savings to the City. In furtherance thereof, the City deems it to be in its best interest to issue its Tax-Exempt Capital Improvement/Marina Revenue Refunding Bonds, Series 2009 in the aggregate principal amount of not exceeding \$10,000,000 (the "Series 2009 Bonds") and to apply the proceeds thereof for the principal purpose of refunding the Refunded Bonds.

H. The principal of, premium, if any, and interest on the Series 2009 Bonds herein authorized and all sinking fund, reserve and other payments provided for the Series 2009 Bonds shall be payable solely from the Pledged Revenues, comprised of (1) the net revenue derived from the Facilities and (2) the proceeds of the Local Government Half-Cent Sales Tax received by the City from the State of Florida pursuant to Chapter 218, Part VI, Florida Statutes, subject only to a prior lien on such Pledged Revenues of the Unrefunded Series 1993A Bonds. Facilities shall mean all marina facilities, docks, berths, slips, structures, lands or interests therein, buildings, machinery, fixtures, equipment and other property, real or personal now or hereafter owned or operated by the City on the certain property as more completely described in the Bond resolution, together with any and all improvements relating to the property or any part thereof.

I. The City now desires to enact this ordinance to authorize the issuance of the Series 2009 Bonds the details of which will be set forth in one or more resolutions to be adopted by the City with respect to the Series 2009 Bonds.

SECTION 3. AUTHORIZATION OF SERIES 2009 BONDS. Pursuant to the Series 1993 Referendum, the City hereby authorizes the issuance of a series of tax-exempt Bonds in the aggregate principal amount of not exceeding \$10,000,000 to be known as the "City of Key West, Florida Capital Improvement/Marina Revenue Refunding Bonds, Series 2009" for the purpose of providing funds which will be used, together with other legally available funds, to accomplish the current refunding of the Series 1997 Bonds, to make required deposits, if any, to the funds and accounts with respect to the Series 2009 Bonds and pay costs of issuance of the

Series 2009 Bonds, including premiums for any municipal bond insurance policy and/or reserve account credit facility, if any. Due to the refunding nature of the Series 2009 Bonds, the Series 2009 Bonds do not need to be approved at further referendum. Prior to the issuance of the Series 2009 Bonds, the City shall adopt one or more resolutions setting forth the details of the Series 2009 Bonds. The Outstanding Series 2009 Bonds will be secured by the Pledged Revenues subject only to a prior lien on such Pledged Revenues of the Unrefunded Series 1993A Bonds.

SECTION 4. SEVERABILITY. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provision of law or contrary to the policy of express law, but not expressly prohibited or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions and shall in no way effect the validity of the other provisions hereof or of the Refunded Bonds.

SECTION 5. EFFECTIVE DATE. This ordinance shall be effective immediately upon its passage and adoption.

APPROVED on first reading the December 3, 2009 at a public hearing.

ADOPTED on the second reading the 15 day of December, 2009 at a public hearing.

ATTEST:


Cheri Smith, City Clerk

CITY OF KEY WEST, FLORIDA


Craig Cates, Mayor



To: Jim Scholl, City Manager
From: Roger Wittenberg, Finance Director
Cc: Shawn Smith, City Attorney
Mark Finigan, Asst City Manager
Date: 11/13/2009
Re: Key West Bight Marina Refunding Loan.

Over the next two commission meeting you will be presented with an Ordinance and a Resolution to approve in order to complete the Key West Bight Marina Refunding Loan.

Before the City of Key West, Florida may issue bonds, the Charter requires that (1) the City Commission authorize the borrowing of money by ordinance (Art. VII, § 7.01(6)); and (2) the electors of the City approve the bonds (Art. VIII, § 8.03).

The proposed Ordinance satisfies the first requirement of the Charter by authorizing the issuance of the \$10,000,000 City of Key West, Florida Capital Improvement/Marina Revenue Refunding Note, Series 2009 (the "Series 2009 Note"). Due to the refunding nature of the Series 2009 Note the second requirement of the charter was previously fulfilled when the electors approved the original issuance at a referendum held on November 3, 1992.

The proposed Resolution provides the specific details related to the issuance of the Series 2009 Note. The Resolution authorizes the refunding of the Series 1997 Bonds from proceeds of the Series 2009 Note. The Series 2009 Note is secured by the Net Revenues of the Marina and the Half-Cent Sales Tax proceeds. However, the Guaranteed Entitlement receipts that secured the Series 1997 Bonds will not secure the Series 2009 Note. The Resolution is a master resolution that allows the City to issue additional parity debt relating to the marina and pledging the same revenues of the City. The Resolution deletes certain cumbersome covenants of the 1992 Resolution and incorporates requirements from current law and the financial markets. The Resolution replaces the original master resolution adopted on December 15, 1992, which will be extinguished upon the payment of the Outstanding Series 1993A Bonds on December 1, 2010.

If you have any questions please let me know.