

FEB 19 2009

AgSht04.25.2008

AGENDA SHEET FOR COUNCIL MEETING OF: **March 2, 2009** CITY CLERK'S OFFICE SPOKANE, WA



Submitting Dept.
Office of the City Council

Contact Person/Phone No.
Council Person Richard Rush
625-5255

Council Sponsor
Council Person Richard Rush

ADMINISTRATIVE SESSION

- Contract
- Report
- Claims

LEGISLATIVE SESSION

- Emergency Ord
- Resolution
- Final Reading Ord
- First Reading Ord
- Special Consideration
- Hearing

CITY PRIORITY

- Communications
- Economic Development
- Growth Management
- Human Services
- Neighborhoods
- Public Safety
- Quality Service Delivery
- Racial Equity/Cultural Diversity
- Rebuild/Maintain Infrastructure

- CLERK'S FILE _____
- RENEWS _____
- CROSS REF _____
- ENG _____
- BID _____
- REQUISITION _____

STANDING COMMITTEES

(Date of Notification)

- Finance _____
- Neighborhoods _____
- Planning/Community & Econ Dev _____
- Public Safety _____
- Public Works _____

Neighborhood/Commission/Committee Notified: _____

Action Taken: _____

AGENDA

WORDING:

(If contract, include the term.)

An ordinance relating to requirements for public/private partnership agreements, adopting a new chapter to title seven of the Spokane Municipal Code designated as Chapter 7.16.

BACKGROUND:

(Attach additional sheet if necessary)

This ordinance establishes parameters for the city and potential partners to follow in developing public/private partnership agreements including:

- 1) a requirement for market value appraisals;
- 2) certification of structural requirements necessary to qualify for tax-exempt financing and to ensure public and investor confidence;
- 3) a requirement for letters of credit or equivalent guaranty from for-profit entities who would benefit from the City's access to low interest, pass through loans; and
- 4) a prohibition on private agreements that would cause the City, or a public development authority created by the City, to withhold public records that are not otherwise exempt from disclosure under state law.

RECOMMENDATION:

Fiscal Impact: <input type="checkbox"/> N/A	Budget Account: <input type="checkbox"/> N/A
<input type="checkbox"/> Expenditure: \$	#
<input type="checkbox"/> Revenue: \$	#
<input type="checkbox"/> Budget Neutral	

ATTACHMENTS: Include in Packets:
On file for Review in Office of City Clerk:

SIGNATURES:

City Council Member

Division Director

Finance

Legal

For the Mayor

Council President

DISTRIBUTION: Gavin Cooley, CFO

COUNCIL ACTION:

ORDINANCE NO. C - 34404

An ordinance relating to requirements for public/private partnership agreements; adopting a new chapter 7.16 to title 7 of the Spokane Municipal Code.

WHEREAS, the City has the ability and authority to enter into public/private partnerships in which its financial credit is extended; and

WHEREAS, a number of substantive reforms are deemed necessary to demonstrate the City of Spokane's commitment to open government, accountability, and fiduciary stewardship; and

WHEREAS, such reforms are also necessary to institute improved ethical and fiduciary practices that will improve the integrity of city government and protect the interests of city taxpayers; and

WHEREAS, for the City to effectively negotiate and enter into public/private partnerships, certain parameters need to be established to protect the public interest and the City's finances; and

WHEREAS, such parameters should include:

- 1) a requirement for market value appraisals;
- 2) certification of structural requirements necessary to qualify for tax-exempt financing and to ensure public and investor confidence;
- 3) a requirement for letters of credit or equivalent guaranty from for-profit entities who would benefit from the City's access to low interest, pass through loans; and
- 4) a prohibition on private agreements that would cause the City, or a public development authority created by the City, to withhold public records that are not otherwise exempt from disclosure under state law; - - Now, Therefore,

The City of Spokane does ordain:

Section 1. That there is adopted a new chapter 7.16 to title 7 of the Spokane Municipal Code to read as follows:

**Chapter 7.16
Public/Private Partnership Agreement Requirements**

Sections:

- 7.16.010 Market Value Appraisals
- 7.16.020 Certification of Structural Requirements for Tax-Exempt Financing.
- 7.16.030 Letter of Credit
- 7.16.040 Disclosure of Public Records/Confidentiality Agreements / Open Public Meeting Requirements

7.16.010 Market Value Appraisals

- A. Consistent with the principles and purpose of the Federal Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA), the City adopts, in full, the “minimum appraisal standards,” of 12 CFR Part 34, Section 34.44. This includes, but is not limited to, a requirement that in all transactions in which City funds are transferred or put at risk that appraisals used to assess the value of property be based on market value.

- B. Pursuant to SMC 7.16.010, “market value” will be defined as “the most probable price a property will bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus.” Implicit in this definition are the consummation of a sale as of a specific date and the passing of title from seller to buyer under conditions whereby:
 - 1. Buyer and seller are typically motivated;
 - 2. Both parties are well informed or well advised, and acting in what they consider their own best interest;
 - 3. A reasonable time is allowed for exposure in the open market
 - 4. Payment is made in cash in U.S. dollars or on terms comparable thereto; and
 - 5. The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

- C. The conditions of SMC 7.16.010 and SMC 7.16.020 will apply to all situations in which the City, or a public development authority, or a non-profit corporation acting “on behalf of” the City pursuant to a Federal Revenue Ruling 63.20, purchases or leases real property, where the cost of said purchase or lease exceeds one thousand dollars annually.

7.16.020 Certification of Structural Requirements for Tax-Exempt Financing.

- A. In all transactions involving the issuance of bonds or other securities for the acquisition of public infrastructure, facilities, etc., the City will appropriately investigate and formally certify through the City Auditor that, in accordance with Internal Revenue Code (IRC) Section 141 (b)(2), no more than ten percent of bond proceeds will accrue to the benefit of private parties.

- B. Pursuant to IRS Revenue Procedure 82.66, governing transactions under Federal Revenue Ruling 63.20, the City will certify through a resolution of the

City Council that any private foundation created to operate or issue debt for public projects to be acquired "on behalf of" the City is organized and will be operated in the public interest, and that at least eighty percent of the members of the governing board of such foundation will be appointed by the Mayor and approved by a majority vote of the Spokane City Council.

- C. Consistent with the purposes of Federal Revenue Ruling 63-20 that private, not for profit corporations issuing debt for public projects being acquired "on behalf of" public agencies be primarily engaged in activities that benefit the public interest, the City Clerk shall certify that any corporation so authorized has filed with the City Clerk:
 - 1. A letter from the federal Internal Revenue Service certifying that the corporation has been granted federal tax exempt status pursuant to IRC Section 501 (c)(3), or;
 - 2. A pending Form 1023 application to the federal Internal Revenue Service for Tax Exempt Status under IRC Section 501 (c)(3).

7.16.030 Letter of Credit

- A. Pursuant to U.S. Department of Housing and Urban Development guidelines for loan security for loans extended under HUD Section 108 Loan Program, the City, without exception, will require an "unconditional, irrevocable letter of credit" from all applicants for HUD Section 108 loans, or any other loans permissible under Washington law where federal or state grant funds are leveraged as collateral in loan agreements involving third parties.
- B. In all other circumstances in which private, for-profit, entities seek City assistance through the brokering and guarantee of economic development loans, an unconditional irrevocable letter of credit will be required as collateral to protect the City's financial interests in the transaction unless the City Council, by a majority vote and after a public hearing on the matter, waives the Letter of Credit requirement in lieu of guaranty, collateral and/or such other loan security that the Council deems sufficient to protect the City's interests in the transaction(s). In any instance in which other guaranty or security is accepted in lieu of a letter of credit, the City Attorney shall be required to issue a formal finding that the proposed transaction and loan security do not violate Article VIII Section 7 of the Washington Constitution.

7.16.040 Disclosure of Public Records/Confidentiality Agreements/Open Public Meeting Requirements

- A. Consistent with the letter and spirit of the Washington Public Records Act (Chapter 42.56 RCW), the City shall not enter into confidentiality agreements with private individuals or private entities engaged in public-private partnerships

with the City. Under no condition will the City consent to withhold public records in response to lawful public records request unless such records are otherwise exempt from disclosure pursuant to Chapter 42.56 RCW.

- B. Any public development authority created pursuant to Chapter 35.21 RCW or a non-profit corporation or agency created as a result of a public-private partnership with the City shall comply with the requirements of the Open Public Meeting Act (Chapter 42.30 RCW).

PASSED BY THE CITY COUNCIL ON _____, 2009.

Council President

Attest:

Approved as to form:

City Clerk

Michael P. Piccolo

Assistant City Attorney

Mayor

Date

Effective Date