

City of Seattle - Recovery Zone Facility Bonds Policies and Procedures – March 16, 2010

Background:

Recovery Zone Facility Bonds (RZFBs) are a new type of tax-exempt bonds designed to spur private investment in economically distressed areas. This program was created as part of the federal stimulus package and is offered through the American Recovery and Reinvestment Tax Act of 2009 (ARRTA). Pursuant to the Recovery Act, the City of Seattle has the authority to allocate the issuance of \$19,918,000 in RZFBs for private projects. As a precondition for issuance of RZFBs, the City Council is designating a “Recovery Zone” of economically distressed areas eligible for RZFB investment. The federal government offers no specific guidelines for this designation, but based on staff analysis and consultation with the City’s bond attorneys, the legislation proposes a zone comprised of the following areas:

- All census tracts within the City that are census tracts meeting the requirements in 2009 or 2010 to qualify as “low-income communities” as defined under Section 45D(e) of the Code for purposes of the federal new markets tax credit program;
- Areas of Southeast Seattle designated by the Federal Department of Housing and Urban Development (HUD) as a Neighborhood Revitalization Strategy Area;
- Areas of Seattle designated in the Land Use Code as Manufacturing and Industrial Centers because of significant job loss within this sector since 2008; and
- All zip code areas within the City for which the number of Foreclosure Notices filed during 2009, as reported by Pacific Northwest Title, increased by more than 20% over the number of Foreclosure Notices filed during 2008. In the case of any zip code area for which the total number of Foreclosure Notices filed during 2008 was 10 or fewer, the threshold in the preceding sentence shall be satisfied if the number of Foreclosure Notices filed in 2009 is at least double the number of Foreclosure Notices filed during the same period in 2008.

Key provisions include:

- The City of Seattle will not provide bond guarantees or offer credit enhancements. RZFBs shall not constitute a debt of the City in any way or pledge any of the credit of the City to pay principal or interest thereon.
- Eligible projects shall consist of investments in depreciable property located within the City of Seattle’s Recovery Zone (RZ Property) that a qualified business purchases, constructs, reconstructs or renovates after designation of the Recovery Zone takes effect. Eligible projects include but are not limited to equipment purchase, building purchase, building construction and building renovation. Acquisition of land does not qualify as an eligible cost to be financed with bond proceeds.
- RZFB program rules specifically exclude residential rental housing projects, private or commercial golf courses, country clubs, massage parlors, hot tub facilities, suntan facilities, racetracks or other facilities used for gambling, or any store for which the principal business is the sale of alcoholic beverages for consumption off premises.
- 95% or more of the net proceeds from RZFBs are to be used for RZ Property. Up to 5% of the net proceeds may be used to cover cost of issuance or other transactional costs.
- RZFBs must be issued by the end of December 2010 (unless such deadline is extended by the federal government).

Assuming compliance with applicable federal tax laws and regulations, the RZFBs may be issued as tax-exempt bonds, and the bank/lender may claim a federal income tax exemption on the interest income. In exchange for this tax benefit, the bank/lender offers a reduced rate of interest for the loan (approximately as much as 2% below market interest).

This document describes the City of Seattle's policies and procedures in evaluating and approving projects eligible to receive RZFB allocations.

Staffing:

OED staff will be responsible for accepting applications from potential RZFB projects, assisting applicants in preparing allocation proposals and providing staff support for the Investment Committee that will evaluate the applications.

Investment Committee & Project Approval:

An Investment Committee whose members will be appointed and/or confirmed by the City Council shall review and approve applications for RZFB projects. Applications shall be considered on a rolling basis until the City's RZFB authority has been fully committed.

Allocation Criteria:

RZFB allocation decisions shall be guided by the following criteria:

- *Geographic & Tax Code Eligibility*
 - The project must be located within the boundaries of the City of Seattle Recovery Zone, as approved by City Council.
 - The project must demonstrate ability to comply with the federal tax code provisions and rules applicable to RZFBs, as evidenced by a letter from bond counsel confirming preliminary determination of eligibility.
- *Project Readiness*
 - The project must have a letter of interest from the bank/lender that would purchase the bonds.
 - The application must include evidence that the project is feasible and can be completed within the proposed timeline
 - The application must include evidence that the proceeds of the RZFBs will be spent on eligible costs within the applicable timelines set forth under the federal tax code, and must demonstrate that the project developer will put in place policies and procedures to ensure ongoing compliance with federal tax code requirements applicable to the bond-financed project.
- *Public Benefits*

Priority will be given to projects that create the following economic development benefits (listed in the order of priority):

 - Create and retain permanent jobs;
 - Increase goods and services needed by the neighborhood;
 - Serve as an anchor for future economic development in the immediate neighborhood;
 - Enhance the local tax base through increased sales and/or property taxes from future project operations; or

- Include energy efficient building or process improvements.

Allocation Proposals:

RZFB applicants shall submit allocation proposals to OED. OED staff will then review the proposals and submit them to the Investment Committee for consideration if they contain the following:

- Confirmation that the project meets the Allocation Criteria;
- Timeline with identification of milestones for completing the project (e.g., obtaining MUP, construction financing commitment, construction commencement and construction completion dates);
- Explanation of pending conditions to achieve milestones;
- Development budget (provide itemized sources and uses for all development funds (RZFB and non-RZFB funds);
- Operating pro-forma, including projected revenue and expenses;
- Letter from bond counsel confirming preliminary determination of eligibility with federal tax code provisions and rules applicable to RZFBs and
- Letter of interest from lender and explanation of lender's disbursement conditions.

Bond Issuance and Project Reporting Requirements:

Following approval of projects by the Investment Committee, the Director of the Office of Economic Development shall have the authority to administer the sub-allocation of volume cap to each approved project and the identified conduit issuer (e.g., the Seattle Industrial Development Corporation or Washington Economic Development Finance Authority), resulting in private placement of the bonds to a bank/lender. The bank/lender will then loan the bond proceeds to a project developer. The bond documents shall clearly state that the RZFBs are not an obligation of or in any way guaranteed by the City.

The project developer will be required to provide such information and reports to the City necessary to comply with the Washington State Department of Commerce's RZFB program allocation rules and with any federal requirements that are applicable to the project and require the City's involvement (if any). The City may impose deadlines in on project developers to ensure that the RZFBs are issued in a timely fashion, including conditions that would allow the City to reclaim and reallocate if a project fails to meet milestones toward issuance.

Annual Report to City Council:

The Investment Committee, supported by OED staff, shall provide an annual written report to the City Council Committee for Regional Development & Sustainability (or the successor City Council committee with lead responsibility over economic development issues), regarding projects selected for RZFB investment. Such annual written reports shall continue until all purchasing, construction, reconstruction or renovation funded with RZFBs is complete.