

BONDING PROCEDURES

MUNICIPAL STREETS SEMINAR

Ahlers & Cooney, P.C.

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&
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2013

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- Minniette is a native of Baxter, Iowa. She received her Bachelor of Arts, with High Distinction, in English and Psychology from the University of Iowa in May 1999. In December 2008, Minniette received her J.D., with Honors, from Drake Law School, and she joined the firm as an Associate in April 2009. Minniette's primary practice concentrations are in tax-exempt finance and securities law, with a focus on transactions for cities, counties, community colleges and municipal utilities. Not only does Minniette assist clients throughout Iowa with the issuance of governmental bonds, but she also advises clients with respect to issues involving economic development, permissible expenditures, utility issues, and public contracting. Minniette has experience with a variety of transactions including parity utility revenue bonds, sales tax revenue bonds, tax credit bonds and general obligation bonds.

"CAPITAL FINANCING ALTERNATIVES"

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INTRODUCTION

The purpose of this outline is to set out briefly the major capital financing alternatives available to Iowa cities under existing law. The outline is not intended to be a comprehensive discussion on the subject matter. Chapter and Section references throughout this outline are to the Code of Iowa 2013, as amended. Reference may be made to the Code for more detail on each subject.

CAPITAL FINANCING ALTERNATIVES
AVAILABLE TO IOWA MUNICIPALITIES

I. PROVISIONS RELATED TO PUBLIC BONDS AND DEBT OBLIGATIONS
(76)

A. Chapter 76

1. Bonds are no longer required to mature serially. In other words, cities can now issue General Obligation Term Bonds. (Section 76.1)

II. GENERAL OBLIGATION BONDS (384.24)

A. ESSENTIAL CORPORATE PURPOSE BONDS (384.24[3]).

1. PURPOSES:

General infrastructure such as streets, sewers, drains, bridges, sidewalks, waterworks, cemeteries; Equipment for the police, fire, street and civil defense departments; Improvements to existing parks and airports; Refunding of outstanding debt.

2. ISSUANCE PROCESS:

- (a) Public hearing on issuance required. (Section 384.25)
- (b) No referendum required.
- (c) Public sale of bonds required. (Section 75.2)

B. GENERAL CORPORATE PURPOSE BONDS (384.24[4]).

1. PURPOSES:

General buildings - city hall, fire station, municipal garage, public library; most city enterprises; electric and gas utilities; airports and parks; other public purposes which are not essential in nature (Section 384.24)

2. ISSUANCE PROCESS:

- (a) Mandatory referendum required for all except "small issues". (Section 384.26)

- (b) Reverse referendum procedure permitted for small issues - based on amount of issue and size of city. Cities with 5,000 residents or less can use reverse referendum procedure for issues of \$400,000 or less. Cities of 75,000 or less can issue up to \$700,000 under reverse referendum procedure. Cities of more than 75,000 residents can issue up to \$1 million by reverse referendum. (Section 384.26)
- (c) Public sale required. (Section 75.2)

C. SECURITY- -SOURCE OF PAYMENT:

General obligation bonds are secured by the full faith and credit of the issuer payable from the levy of unlimited ad valorem taxes on all taxable property within the city. The bondholders are entitled to be repaid before the government expends money for any other purposes and, therefore, there is a minimal risk of default. Most states limit the amount of general obligation debt that a local government can issue. The Iowa constitutional limitation is not to exceed 5% of the actual value of properties in the issuing city.

III. REVENUE BONDS (384.80)

A. PURPOSES:

City utility improvements and extensions - water, gas, sewer, electric, storm sewer. Also city enterprises (such as airports, solid waste, parking systems, and civic or recreational systems). (Section 384.80)

B. ISSUANCE PROCESS:

1. Public hearing on issuance required. (Section 384.83)
2. Either public sale or exchange for outstanding revenue pledge orders or revenue bonds.
3. No referendum required.

C. SECURITY--SOURCE OF PAYMENT:

Revenue bonds are issued to finance special purpose projects or facilities that have specific revenue sources and definable user base. Revenue bonds may be used when a project's revenues are significant and predictable. The burden of cost of the project is shifted from all the taxpayers to persons who use the services. The level of general obligation debt is not increased.

The repayment of revenue bonds relies on the revenues generated for user charges generated from a financed project.

IV. SPECIAL ASSESSMENT BONDS (384.37 et seq.)

A. PURPOSES:

Construction of public improvements as defined in Division IV of the City Code of Iowa - streets, sanitary and storm sewers, sidewalks, malls, water utility improvements. (Section 384.37)

B. ISSUANCE PROCESS (384.37 - 384.79):

1. Required to follow special assessment procedure set out in Division IV of the City Code of Iowa, except where a petition and waiver is signed by all property owners proposed to be assessed.
2. No additional hearing required on issuance when final assessments are determined.
3. Public sale of bonds required. (Chapter 75)
4. No election required.

C. SECURITY -- SOURCE OF PAYMENT:

Special assessment bonds are payable only from assessments against properties benefited by the public improvement.

V. CAPITAL LOAN NOTES. (Section 384.24A)

A. PURPOSES:

A city may use the provisions of Section 384.24A in the City Code of Iowa regarding loan agreements and issue capital loan notes in lieu of bonds to provide funds. Capital loan notes are available for any public purpose. Such notes may be sold at public or private sale.

B. ISSUANCE PROCESS:

The issuance process used for a loan agreement depends upon:

1. The fund from which payments will be made;
2. The size of the city and the loan; and,
3. The percent of the last certified general fund budget required to make payments on the proposed loan and all existing loans.

Loan payments payable from the debt service fund, or payable from the general fund in an amount exceeding ten percent of the last certified budget when added to existing loan payments in any year, must follow the same authorization procedure as a general obligation bond for the same purpose.

Loan agreements for personal property payable from the general fund in an amount less than ten percent of the last certified general fund budget when added to all existing loan payments, must follow the authorization procedures of Section 384.25.

Loan agreements for real property payable from the general fund in an amount less than ten percent of the last certified general fund budget when added to all existing loan payments, must follow the authorization procedure of Section 384.25 if the principal amount of the loan does not exceed the following limits:

1. \$400,000 for cities of 5,000 residents or less.
2. \$700,000 for cities of between 5,000 and 75,000 residents.
3. \$1 million for cities with populations over 75,000 residents.

Loan agreements for real property payable from the general fund in excess of these limits but still within the ten percent limitation require:

1. Public hearing (Section 384.24A(4) (b) (1)).
2. Reverse referendum.

Loan agreements payable from net revenues of city utilities, city systems, city enterprises or combined city enterprises can be authorized by a governing body under the procedure of Section 384.83.

C. SECURITY:

Same as bonds issued for the same purpose but may also contain provisions similar to those sometimes found in loan agreements between private parties (e.g. additional security).

VI. PROJECT NOTES. (Section 76.13)

A. PURPOSES:

Issued in anticipation of the receipt of proceeds of bonds or notes, grants from any state or federal agency, income or revenues to be received or expended for a project during construction period or a combination of the above. Often used as an interim financing tool. Can be used as a short-term permanent financing tool.

B. ISSUANCE PROCESS:

1. Public hearing on issuance of permanent financing required (Section 384.25 or 384.83); mandatory referendum except "small issues" or reverse referendum (384.26).
2. Public or private sale.

C. SECURITY:

Security is the pledge of future receipts of the permanent financing, which pledges an identified revenue stream for security (i.e. general obligation or revenue).

VII. URBAN RENEWAL BONDS AND TAX INCREMENT FINANCING.
(Section 384.24(3) (q) and Chapter 403)

A. PURPOSES:

Carrying out an Urban Renewal or Economic Development Project under authority of Chapter 403. (Urban Renewal, Section 384.24(3) (q); Economic Development, Chapter 15A.)

B. ISSUANCE PROCESS:

1. General Obligation, public hearing with right to petition for an election. (403.12 requires public sale, but can be exempt from federal and state tax.)
2. TIF Revenue (403.9 payable solely and only from incremental taxes captured under 403.19); same procedure as for other revenue issues.

C. SECURITY:

Incremental taxes levied and to be collected against property located within the Urban Renewal Project area. May be issued as general obligation bonds under certain circumstances.

D. UNIQUE CHARACTERISTIC:

Tax increment revenue bonds may be exempt from federal and state tax. (403.9 and 403.12) TIF revenue bonds count as constitutional debt.

VIII. LEASE AND LEASE PURCHASE. (Section 364.4)

A. PURPOSES:

Lease or lease-purchase real or personal property for a term which does not exceed the economic life of the property.

B. ISSUANCE PROCESS:

1. Same as general obligation bonds.
2. Public or private sale.

C. SECURITY:

Generally the same as loan agreement/capital loan note.

IX. HOTEL AND MOTEL TAX BONDS. (Chapter 422A)

A. PURPOSES:

Acquisition of sites for, or constructing, improving, enlarging, equipping, repairing, operating, or maintaining of recreation, convention, cultural, or entertainment facilities, including, but not limited to memorial buildings, halls and monuments, civic center convention buildings, and auditoriums, coliseums, and parking areas or facilities located at those recreation, convention, cultural, or entertainment facilities.

B. ISSUANCE PROCESS:

1. Election required - requires majority vote, not 60 percent.
2. Public or private sale.

C. SECURITY:

Hotel and Motel Tax (only after an election is held to impose tax).

X. SELF-SUPPORTED MUNICIPAL IMPROVEMENT DISTRICT OBLIGATIONS (386)

A. PURPOSES:

To accomplish governmental purposes on a self-liquidating basis within a defined district of contiguous property within the city. A self-supported municipal improvement district must be comprised only of property in districts which are zoned for commercial or industrial uses and properties within a duly designated historic district.

B. ISSUANCE PROCESS:

1. Must follow all provisions of Chapter 386 to establish the district by ordinance following public hearing.
2. Establish taxes to be levied within the district:
 - (a) operation tax
 - (b) capital improvement tax
 - (c) debt service tax

C. SECURITY -- SOURCE OF PAYMENT:

Self-supported municipal improvement district bonds are payable from the levy of unlimited ad valorem taxes on all taxable property except residential property (unless the SSMID is a duly designated historic district) within the district.

XI. LOCAL OPTION TAXES. (Chapter 423B)

A. PURPOSES:

Any lawful purpose of City (sales and services tax) - public transit or street (vehicle).

B. PROCESS:

Election required at any time other than regular City election - majority vote required.

C. LOCAL SALES AND SERVICE TAX:

Additional tax not exceeding 1% on items already taxed by the State can be pledged.

D. LOCAL VEHICLE TAX:

Tax on every registered vehicle in the State (rate specified on ballot) at time of vehicle registration renewal.

XII. SPECIAL TAXES.

A. CAPITAL IMPROVEMENTS FUND (384.7)

B. ADDITIONAL TAXES (384.12):

Since more burden is being placed on local government to provide and finance services, you may wish to refresh your recollection of the special taxes available to be levied under Section 384.12 of the City Code of Iowa which may exceed the \$8.10 limit.

SPECIAL ASSESSMENT PROCEDURES

General Outline Re Special Assessment Procedural Steps On Public Improvement Programs Initiated By Iowa Cities

1. Mayor and City Council hold preliminary Council meetings to discuss possibility of proceeding with a special assessment improvement program, including the scope of said program.
2. City has preliminary discussions with Consulting Engineers re type of program, estimated costs, etc.
3. Decision made by City to proceed with the public improvement program. (Council may initiate program or program may be initiated by petition of all property owners to be assessed for the cost, subject, of course, to Council approval.) Iowa Code Sections 384.38 and 384.41.
4. Consulting Engineers and Bond Counsel formally employed by City to furnish services on public improvement program.
5. Engineer directed to prepare preliminary plat and schedule of assessments, estimate of costs, and preliminary plans and specifications, and to furnish necessary data to Bond Counsel needed to prepare legal proceedings.
- 5A. Engineer presents trial draft of plat and schedule to City Council may appoint Valuation Committee (which could be entire Council or special committee per Iowa Code Section 384.46) to determine property valuations.
- 5B. Engineer meets with Valuation Committee, or takes other steps to determine property and values recommended to the Council for adoption. Valuations are to be set at the fair market value of property with the proposed public improvement completed.
6. Preliminary plans and specifications and preliminary plat and schedule of assessments and estimate of costs are officially filed in City Clerk's Office.
7. At first official Council meeting on legal proceedings for project, preliminary resolution for construction of program, resolution fixing value of lots, resolution adopting preliminary plat and schedule and estimate of costs, and preliminary plans and specifications, introduced and adopted, by Council, and proposed

resolution of necessity for program proposed and introduced. Date of hearing fixed in resolution of necessity.

8. Notice to property owners re proposed resolution of necessity is to be published for two consecutive weeks, the first publication to be not less than ten days before date of hearing on resolution of necessity; and, also said notice is to be mailed to each property owner at the address shown in the records of the County Auditor, by ordinary mail, the date of mailing to be at least fifteen days before the date of said hearing.

9. Council holds hearing on resolution of necessity. After hearing all objections and endorsements and considering all filed written objections, action is taken to officially close the public hearing. The Council may adopt or amend and adopt the proposed resolution of necessity. If necessary, the Council may defer action on this matter until a subsequent meeting.

10. After resolution of necessity adopted either as proposed or as amended, the Council then adopts resolution directing Engineer to prepare detailed plans and specifications and the Attorney to prepare the form of contract and notice to bidders.

11. Detailed plans and specifications and form of contract and notice to bidders officially place on file in Clerk's Office.

-]
-] Can
-] Be
-] Executed
-] In Same
-] Meeting
-] With
-] Adoption
-] of Resolution
-] of Necessity

12. Council then adopts resolution ordering notice of bidders and hearing on plans, specifications and form of contract. The date for receipt of bids, amount of bid security, date of hearing and date to consider bids are also set at this meeting.

13. Notice to bidders (also sometimes referred to as "Notice of Hearing and Letting") is to be published once, such publication to be not less than four nor more than twenty days before date fixed for hearing and letting.

-] Action
-] By
-] City Clerk

Engineers will also give information re proposed project letting to trade journals, etc.

-] Engineer

- 14. Resolution of necessity and preliminary plat and schedule of assessments filed in County Treasurer’s Office per Iowa Code Sections 384.51 and 384.65(5).] Action By
] City Clerk
- 15. Certificate executed by Clerk re amount of agricultural deferment requests filed by property owners.] City
] Clerk
- 16. Council holds public hearings on plans, specifications, etc., per published notice. After hearing completed, Council adopts resolution entitled “Resolution Adopting Plans, Specifications, Form Of Contract And Estimated Cost”.]
]
]
]
Construction bids usually opened after hearing action Completed. Bids evaluated by Consulting Engineers and Report made to Council. In some cases bids opened by Engineer or City Official prior to hearing and letting, Tabulated and report filed with Council for action at this]
]
] Meeting
]
If satisfactory bids received, Council adopts resolution Entitled “Resolution Making Award of Contract”. If Necessary, the Council may want to defer action to this Matter until a subsequent meeting.]
]
]
]
- 17. Council adopts resolution approving executed contract and bond.
- 18. Construction takes place.
- 19. Interim Financing steps may be taken by City.
- 20. Engineers review completed work and files Certificate of Completion and final estimate of costs with City.
- 21. Within 15 days after the Certificate of Completion is filed the Council must adopt resolution accepting or rejecting the work. Typically, the Final Plat and Schedule of Assessments has been filed by the Engineer in Clerk’s Office before this, and the Council also adopts a Resolution Levying Final Assessments and providing for the payment thereof. (Amendments may be made at this time, if needed.)

22. Notice of filing final plat and schedule is to be mailed and published. Before this takes place, certificate of levy and a copy of final plat and schedule is filed in County Treasurer's and Building Permit Official's Offices.

Notice of filing is published for two consecutive weeks, the first publication shall be not more than fifteen days from date of filing final plat and schedule with County Officials. On or before second publication of notice, Clerk must send out ordinary mail copy of notice to each property owner.

23. Assessments may be paid in full or in part without interest within thirty days after date of certification.
24. After close of thirty day collection period, and Special Assessment Statement on condition of Assessments is received Bond Counsel will determine amount of S.A. Bonds and/or G.O. Bonds to be sold and issued, subject to Council approval.

Cash collected during collection period may be used to pay project costs.

25. Steps taken to issue and sell S.A. and/or G.O. Bonds to provide funds to pay project costs.

“Flint” Formula - Recent Developments in Case Law

Happe v. City of Urbandale, 2007 WL 3376887 (Iowa App. 2007).

Gray v. Indianola, 797 N.W.2d 112 (Iowa 2011).

Belling v. City of Urbandale, 2011 WL 2694711 (Iowa App. 2011).

Nelson v. City of Hampton, 802 N.W.2d 224 (Iowa 2011).

ANSWERS TO COMMON QUESTIONS ON SPECIAL ASSESSMENTS

Special assessments, simply stated, are charges to owners of real property by a governmental agency for street, sewer, water, or drainage improvements that benefits their property. The underlying principle is that an assessment should be less than or equal to the benefits from nearby improvements.

In practice, application of this principle is very difficult, due to the many perspectives which can exist on the concept of "benefit" and because the government is bound to observe due process of law. The result is that a complex body of law has been written by the legislature and confirmed by the courts to assure that all affected property owners are treated, a) equally and, b) fairly.

Before formal legal proceedings are initiated, some communities hold informal citizen meetings to discuss possible public improvement projects. In this way, both the City Officials and the property owners can express their views and ask questions. Although this is not required, it is usually beneficial, particularly, if City Officials are undecided as to the scope of the improvement project.

Listed below are typical questions of property owners. Also listed are the answers to those questions in as brief a summary as possible.

1. Question: Why are special assessments used rather than other tax money?

Answer: If a public improvement directly benefits a property by providing a service, improves the appearance or increases the value of that property, then the Code of Iowa permits that property owner may be specially assessed at least for a part of the cost of the improvement. The benefits conferred may be different for two equally valued properties due to the size of the property, location, or current and future potential use of those properties.

Other citizens in the community may indirectly benefit from the improvement (such as a paved street) but are not assessed. However, where cash funds are available, cities do levy property taxes to repay the General Obligation Bonds sold to finance unassessed costs.

Special assessments thereby allow cities to stretch their construction budgets without using all of their G.O. Bonding capacity.

2. Question: May property owners vote on special assessment projects?

Answer: No. Chapter 384, Division IV, of the Iowa Code does not provide for a referendum election. The law empowers the City Council to assess property specially benefited for public improvements deemed necessary. However, property owners are provided certain protections such as being notified of public hearings to be held, their right to object, and their right to appeal.

Also, local City Officials are responsible to their constituents, and are aware of public sentiment. In addition, the law provides that the "Resolution of Necessity" must be adopted by at least a 3/4 vote of the full Council. Where property owners file written objections representing owners subject to 75% of the proposed assessments, then a unanimous vote of the Council is required.

3. Question: What property is subject to assessment?

Answer: All property, public and private, which receives a benefit may be assessed, except highways, streets and alleys and property owned by the U.S. Such public property as schools, churches, county and state lands are normally subject to assessment. Railroads and railway property are also assessable with special provisions for track crossings.

The crux of the matter is benefit. The law provides that property may be assessed in accordance with the benefits conferred upon the property and not in excess of such benefits. The assessment may not exceed 25% of the present fair market value of the property with the proposed public improvement completed.

4. Question. Who determines which property to assess and the amount of assessment?

Answer: The City Council with the aid of the Engineer. The Council instructs the Engineer as to the boundary of the benefited district. This may be in the form of past policy such as assessing to the middle of a block or some other general policy. In addition, the Council will also instruct the Engineer as to the costs which are to be assessed to these benefited property owners.

The Engineer prepares a Plat and Schedule of all property to be assessed and calculates the individual assessments based on past assessment policy within the community and/or other accepted methods which distribute the assessments in accordance to the conferred benefits.

The City Council also values the property to be assessed. They may appoint a three member appraisal committee knowledgeable in real estate values within the City to aid them in appraising the property. This valuation is reported to the Engineer and is shown on the Schedule. The valuation shown does not affect property tax valuations nor does it affect the assessment except to the extent that it

places a ceiling on the assessment which may not exceed 25% of the valuation as fixed by the City Council.

5. Question: When are property owners notified of pending public improvements to be assessed?

Answer: All Council meetings and proceedings are open to the public. In addition the law requires that all property owners of property subject to assessment must be notified by certified mail at least fifteen days prior to the date of a public hearing. Property owners and interested citizens may file written objection with the City Clerk, and/or may appear personally to make oral objection to the project, costs, or proposed assessments. However, failure to receive official notice does not nullify the assessment proceedings if an honest attempt has been made to notify the affected property owners.

The Plat and Schedule on file with the City Clerk is available for inspection by all property owners, before, during, or after the public hearing. The Plat and Schedule shows all property to be assessed for the improvement. In addition, it lists the owners name, legal description of property, the valuation as fixed by the Council, and the amount proposed to be assessed to each lot under separate ownership.

6. Question: How and when are the assessments paid?

Answer: If the Council adopts the "Resolution of Necessity" and later awards contracts for actual construction, then the assessments will be due and payable after construction is completed. Property owners are again notified by certified mail, that the Council has levied the final assessments and that the assessments are due and payable for a thirty day period without penalty or interest at the office of the City Clerk.

Those assessments which are not paid during the thirty day period are then listed on the County Auditor's tax rolls and are collected in annual installments along with interest at present not exceeding twelve per. cent per annum. The Council determines the number of annual installments (not to exceed fifteen years) in which the assessments are collected. The assessments are collected with property taxes by the County Treasurer with the taxes payable July 1, and due by September 30 of each year. The unpaid assessments may be paid in full with accrued interest at anytime should the property owner wish to do so. If the assessment installments are not paid when due, they are subject to collection with penalty the same as delinquent property taxes and are a lien on the property.

7. Question: What other costs may a property owner have to pay?

Answer: Depending upon the type of improvements, several other costs may occur. Sewer or water service lines, which are in poor working condition or likely to require repair, should be replaced prior to street construction. City Councils may require repairs or installation of these service lines upon proper notification to property owners or may assess the installation costs.

Likewise, sewer and water main installation improvements do not normally include individual service connections which are paid for by the property owner. In addition, the City may have a connection fee payable by the property owner.

Other improvement expenses, such as sidewalks, lawn terrace, reseeded, driveway improvements, tree plantings, etc., are normally optional to the individual property owners. A normal procedure followed in design and construction is to replace or repair existing driveways along street improvements with similar construction. If a better quality of repair is desired by the property owner, he will have to bear the cost.

8. Question: What preparations should a property owner make?

Answer: Depending on the type of improvements, a property owner may be aware of special problems or conditions in his neighborhood that may affect the design or construction. Property owners should notify the Engineer or City Officials of these problems or conditions.

If utility services are going to be replaced, plans should be made to do so by the property owner before project construction in the area.

During construction, driveway openings should be marked or discussed with the Engineer's Inspector on the project.

Depending on the type of improvement, the scope of the project and weather conditions, all residents should be prepared for some inconvenience and lack of access. Particularly in street improvements, residents along the streets may

be forced to park their autos and walk until the project allows access to their property.

9. Question: May property again be assessed for future repairs and improvements?

Answer: Yes. All improvements or repairs which confer a benefit to private property may be assessed. However, in practice, a major improvement is assessed only. Minor repairs are not normally assessed, but legally may be assessed.

Also different types of improvements may confer separate benefits and are assessable. As an example, a sewer main may be assessed one year. The next year, street paving may be assessed. If both improvements benefit the property, each may be assessed.

10. Question: What recourse does a property owner have if he believes he should not be assessed or that his assessment is too high?

Answer: The law provides for appeal to the Courts within certain time limitations by affected property owners. Legal assistance is recommended for those property owners who wish to check their legal rights or to file a Court appeal.

Cities are aware of their legal responsibility in special assessment procedures and make an effort to protect property owners' legal rights as well as treat all citizens equally and fairly.