



Legislation Text

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THE CHAIR

Substitute resolution authorizing the issuance of Industrial Development Revenue Bonds, Series 2007 (Pettit National Ice Center, Inc. Project), in the 10th Aldermanic District. This substitute resolution provides details relating to and authorizes the issuance of Industrial Development Revenue Bonds, i.e., \$2,250,000 principal amount of Industrial Development Revenue Bonds, Series 2007 (Pettit National Ice Center, Inc. Project) to finance costs related to acquisition of the recreational ice skating facility in the City at 500 South 84th Street, which is being acquired by Pettit National Ice Center, Inc., a Wisconsin nonprofit corporation.

Whereas, The City of Milwaukee, Wisconsin, (referred to herein as the "City") is a municipal corporation organized and existing under and pursuant to the laws of the State of Wisconsin and is authorized by Section 66.1103, Wisconsin Statutes, as amended (hereinafter sometimes referred to as the "Act"), to construct, equip, re-equip, acquire by gift, lease or purchase, install, reconstruct, rebuild, rehabilitate, improve, supplement, replace, maintain, repair, enlarge, extend or remodel industrial projects including recreational facilities, and to enter into revenue agreements for the same in order to promote the rights to gainful employment, business opportunities and general welfare of its inhabitants; and

Whereas, The City is authorized by the Act to issue industrial development revenue bonds payable solely from funds made available therefor by an eligible participant pursuant to the terms of a revenue agreement entered into with the City; and

Whereas, The principal of, premium, if any, and interest on bonds issued under authority of the Act do not constitute an indebtedness of the City within the meaning of any state constitutional provision or statutory limitation, and do not constitute or give rise to a charge against the City's general credit or taxing powers or a pecuniary liability of the City; and

Whereas, On November 14, 2006, the Common Council of the City of Milwaukee ("Common Council") duly adopted an initial resolution, File No. 060865, relating to the financing with proceeds of Industrial Development Revenue Bonds (the "Bonds") of a portion of the costs of the acquisition of the recreational ice skating facility commonly known as the Pettit National Ice Center (referred to herein as the "Project"), located in the City at 500 South 84th Street, to be owned and operated by Pettit National Ice Center, Inc., a Wisconsin nonprofit corporation (referred to herein as the "Borrower"); and

Whereas, Following publication of a notice thereof in the official newspaper of the City, a public hearing was held and conducted on December 5, 2006, by an official of the Department of City Development in a manner that provided a reasonable opportunity to be heard for persons with differing views on both issuance of the Bonds and the location and nature of the facility to be financed with the Bonds; and

Whereas, Subsequent to the adoption by the Common Council of the aforesaid initial resolution, the Borrower proceeded with its plans for the Project and caused to be prepared for review by representatives of the City and the City Attorney, drafts of the following documents:

1. Financing and Bond Purchase Agreement (a copy of which is attached to this Common Council File as Exhibit B, incorporated herein by reference and referred to herein as the "Revenue Agreement") among the City, the Borrower and TCF National Bank (the "Bond Purchaser") pursuant to which (i) the City agrees to issue the Bonds and lend the proceeds thereof to the Borrower to finance the Project and related costs, (ii) the Borrower agrees to repay such loan with interest (in repayment amounts sufficient to meet debt service on the Bonds), as set forth therein, and (iii) the Bond Purchaser agrees to purchase the Bonds.

2. Mortgage, Assignment of Leases and Rents, and Security Agreement from the Borrower to the Bond Purchaser in which the Borrower grants a mortgage lien on certain of Borrower's real property and a security interest in certain of Borrower's personal property (referred to herein as the "Mortgage"); and

Whereas, The issuance of the Bonds by the City and the pledge of the payments and other revenues from the Borrower under the Revenue Agreement, as herein recited and provided, is pursuant to the provisions of the Act; and

Whereas, The Borrower has made representations to the City supported by the appropriate documentation that the cost of the Project to be financed with the Bonds, together with related costs, is an amount expected to exceed \$2,250,000; and

Whereas, The Act authorizes the issuance of the Bonds to finance costs incurred by the Borrower with respect to the Project; and

Whereas, The revenues from the Revenue Agreement shall be used to meet payments of the principal of, premium, if any, and interest on the Bonds, and the issuance and sale of the Bonds by the City shall be subject to the execution and delivery by the Borrower of the Revenue Agreement; now, therefore, be it

Resolved, By the Common Council of the City of Milwaukee, that:

1. Determinations. The Common Council hereby finds and determines that:

a. The anticipated cost of the Project including all costs in connection therewith permitted to be financed with the Bonds under the Act exceeds \$2,250,000.

b. The loan payments to be made by the Borrower in each year in accordance with Section 8.01 of the Revenue Agreement are sufficient to pay the principal of, premium, if any, and interest on the Bonds.

c. Except as provided in Section 10.06 of the Revenue Agreement, no reserve fund need be established or maintained in connection with the retirement of the Bonds or the maintenance of any property financed as part of the Project.

d. The issuance of the Bonds to finance costs of the Project is hereby declared to be a public purpose and in the best interests of the City in that, without limitation, the right to gainful employment, business opportunities and general welfare of the residents of the City will be thereby promoted and commerce and industry in the City, and in particular in the area of the City where the Project is located, will be stimulated and revitalized.

e. The anti-discrimination provision contained in Section 10.18 of the Revenue Agreement is hereby approved by the City.

2. Issuance of Bonds. The City shall issue its Bonds in the original aggregate principal amount of Two Million Two Hundred Fifty Thousand Dollars (\$2,250,000) for the purpose of

financing costs of the Project permitted to be financed in accordance with the Act. The Bonds shall be sold to the Bond Purchaser in accordance with the terms and conditions set forth in the Revenue Agreement. The Bonds shall be issued pursuant to the Act and shall mature and bear interest as provided in the Revenue Agreement. All details pertaining to the Bonds set forth in the Revenue Agreement are hereby adopted as and for the details approved by the City. The issuance of the Bonds is hereby approved for purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended.

The Bonds do not constitute general obligation indebtedness of the City. The Bonds shall not constitute an indebtedness of the City within the meaning of any state constitutional provision, statutory limitation or Charter provision or limitation, and shall not constitute or give rise to a pecuniary liability of the City or a charge against the City's general credit or taxing powers; and such limitations shall be plainly stated on the face of each of the Bonds. The Bonds and the interest thereon and any other costs and expenses of the City in connection therewith shall be payable solely from the payments and other revenues that may be available therefor under the terms of the Revenue Agreement or, in the event of default thereon, as otherwise provided in the Revenue Agreement and permitted by law. The Bonds shall not be considered to be so-called "moral obligation" bonds of the City of the character payable at the discretion of the City.

The Bonds shall be executed on behalf of the City by the Mayor and countersigned by the City Comptroller and City Clerk or persons authorized by law to sign on their behalf. The Bonds shall have impressed or imprinted thereon the corporate seal of the City. Facsimile signatures and seals may be used as permitted by law.

3. Approval and Execution of Documents. Subject to such changes or revisions therein as the City Attorney may approve or require, and as Foley & Lardner LLP, as Bond Counsel, may approve, the Revenue Agreement, in substantially the form as submitted herein, and the Mortgage are hereby approved. The Mayor, City Comptroller and City Clerk, or persons authorized by law to sign on their behalf, are authorized on behalf of the City to execute and deliver the Revenue Agreement. The Mayor, City Comptroller and City Clerk and persons authorized by law to sign on their behalf and other officials of the City are hereby authorized to prepare or to have prepared and to execute, file and deliver, as appropriate, all such documents, financing statements, opinions, certificates of incumbency, non-litigation, arbitrage and other necessary certificates, affidavits and closing or post-closing instruments (including but not limited to amendments of the Revenue Agreement not requiring the consent of the Bondowners pursuant to Sections 1301 and 1302 of the Revenue Agreement) as may be required by this Resolution or deemed necessary by said officials or by the City Attorney. The City Attorney is authorized to deliver to Bond Counsel the opinion of the City Attorney in customary form.

4. Certain Provisions of the Revenue Agreement. The Revenue Agreement provides, among other things, that:

a. The maintenance and repair of the Project (including all property financed as part of the Project), insurance with respect to the Project (including all property financed as part of the Project), taxes and payments-in-lieu of taxes, if any, in connection with the Project and other charges with respect to the Project will be provided by the Borrower. The City has no obligation with respect thereto. The proceeds of any recovery under the foregoing insurance policies shall be used as provided in the Revenue Agreement.

b. The Borrower shall make payments pursuant to the Revenue Agreement (directly to the Bond Purchaser or subsequent owner of the Bonds and for the account of the City) in amounts sufficient to pay, when due, the principal of, premium, of any, and interest on the Bonds.

5. Administration. The City Comptroller shall bear the administrative responsibility and have the obligation of supervising all administrative obligations which devolve upon the

City with respect to this Resolution and the Revenue Agreement and shall promptly inform the Common Council if debt service payments are not made, as and when required, and as to all other matters of interest arising from the transaction referred to in this Resolution. The City Comptroller shall consult with the City Attorney's Office from time-to-time, as may be necessary, in order to perform the City Comptroller's duties in accordance with legal requirements.

6. Supervision of Bond Sale. The Commissioners of the Public Debt shall superintend the sale of the Bonds in accordance with the provisions of this Resolution.

7. Governing Law. The Revenue Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. There shall be no recovery of money damages against the City for any breach of any such contract or instrument except if, as and to the extent permitted therein and by applicable law.

8. Limited Liability. No act or failure to act on the part of the City shall ever result in any liability (i) to any purchaser or any owner of any Bond, (ii) to any underwriters, in cases where the Bonds are sold through or with the assistance of underwriters, or (iii) to any other person or entity claiming any right by reason of any interest in any Bond or Bonds except where the City's act or failure to act is due to willful misfeasance, bad faith or reckless disregard of those limited obligations which are imposed on the City by the Act and are expressly provided in this Resolution.

9. Indemnity of the City. The City declares that it would not have adopted this Resolution or executed any instrument in implementation of or contemplated by this Resolution without the following indemnity provisions. In the Revenue Agreement, the Borrower agrees to indemnify and hold harmless the City from and against, among other things, any and all losses, claims, damages, expenses (including counsel fees) and liabilities arising from, in connection with, or the result of, the adoption of this Resolution, the issuance of the Bonds, the execution and delivery of the Revenue Agreement and the performance and observance by or on behalf of the City of those things on the part of the City agreed to be performed or observed thereunder. Nothing in the foregoing indemnity shall protect the City against its own default, gross negligence or willful misconduct.

If any action shall be brought against the City in respect of which indemnity may be sought under the foregoing indemnity against the Borrower, the City shall promptly notify the Borrower in writing, and the Borrower shall assume the defense thereof including the employment of counsel and the payment of all expenses. In any such action, the City shall have the right to employ separate counsel, but the fees and expenses of such counsel shall be at the expense of the City unless the Borrower and the City shall have mutually agreed to the employment of such counsel. The Borrower shall not be liable for any settlement of such action effected without its written consent, but if settled with the written consent of the Borrower or if there be a final judgment for the plaintiff in any action, the Borrower agrees to indemnify and hold harmless the City from and against any loss or liability by reason of such settlement or judgment.

In the event it should become necessary to interpret or construe the meaning of any word, phrase or sentence or other provision or requirement of this indemnity, such interpretation and construction shall be in accordance with the laws and statutes of the State of Wisconsin. Any ambiguity in the language of this indemnity will be resolved in favor of the City except to the extent when to do so, would manifestly conflict with the intent of the parties or result in substantial injustice. If any question of validity or enforcement of this indemnity should arise, the laws and statutes of the State of Wisconsin shall apply.

10. Opinion of Bond Counsel. Contemporaneously with the closing of the issuance of the Bonds, Foley & Lardner LLP, as Bond Counsel, shall deliver to the City a certificate,

dated the closing date, to which shall be attached an executed counterpart of said Bond Counsel's opinion in form satisfactory to the City Attorney, and which certificate shall certify that the City may in all respects rely upon said opinion to the same extent as though addressed specifically to the City.

11. Additional Bonds. Notwithstanding any provision relating to the issuance of additional bonds at any future time, the City shall not have any obligation to issue such additional bonds and such additional bonds shall not be issued without the adoption of a resolution by the Common Council wherein the issuance of such additional bonds is expressly authorized.

12. No Representations. No representations or warranties are made by the City as to the financial condition of the Borrower or as to any other thing or matter other than as expressed herein.

13. Repeal. If and to the extent that any prior resolution of the Common Council is inconsistent with this Resolution, such prior resolution, but only to the extent of such inconsistency, is hereby repealed.

14. Publication of Notice. Notice of the sale of the Bonds, in the form of Exhibit A, a copy of which is attached to this Common Council File, shall be published forthwith in the City's official newspaper (for the publication of notices under Chapter 985 of the Wisconsin Statutes) as a class 1 notice under Chapter 985 of the Wisconsin Statutes. The City Clerk shall obtain proof, in affidavit form, of such publication, and shall compare the Notice, as printed, with the form of Exhibit A to ascertain that no mistake has been made therein.

15. Fee. Issuance of the Bonds is expressly conditioned on the City being paid, upon issuance, a fee equal to 0.5 percent of the principal amount of the Bonds issued, less any application fee previously paid to the City.

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11/17/06