

## RESOLUTION R-47-12

### A RESOLUTION ADOPTING A BOND RECORD-KEEPING POLICY FOR THE CITY OF WHEATON, DUPAGE COUNTY, ILLINOIS

WHEREAS, the City of Wheaton, DuPage County, Illinois (the "City"), has issued and is expected to continue to issue bonds or other obligations (collectively, the "Tax Exempt Obligations") the interest on which is excludable from gross income for federal income tax purposes; and

WHEREAS, the City may at some time in the future issue bonds or other obligations, other than Tax Exempt Obligations, that enable the issuer or holder to receive federal tax benefits, including, but not limited to, qualified tax credit bonds and specified tax credit bonds (the "Tax-Advantaged Bonds" and, collectively with the Tax Exempt Obligations, the "Obligations");

WHEREAS, incidental to its issuance of the Obligations, the City has covenanted or will covenant, generally to take all action necessary to comply with applicable federal tax rules and regulations relating to such Obligations, including covenants (i) necessary to preserve the excludability of interest on the Tax Exempt Obligations from gross income for federal income taxation purposes, (ii) pertaining to the entitlement of the City to receive direct payments from the United States Treasury of applicable percentages of interest due and owing on the Tax-Advantaged Bonds, and (iii) necessary to preserve the entitlement of the holders of certain Tax-Advantaged Bonds to credits against income tax liability, respectively; and

WHEREAS, it is necessary and in the best interest of the City to maintain sufficient records to demonstrate compliance with such covenants and to adopt policies with respect thereto:

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Wheaton, DuPage County, Illinois, in the exercise of its home rule powers, as follows:

*Section 1. Incorporation of Preambles.* The Mayor and City Council of the City (the "Council") hereby finds that all of the recitals contained in the preambles to this Resolution are full, true and correct and does incorporate them into this Resolution by this reference.

*Section 2. Compliance Officer Is Responsible for Records.* The Director of Finance of the City (the "Compliance Officer") is hereby designated as the keeper of the records of the City with respect to the Obligations, and such officer shall report to the Council at least annually that he or she has all of the required records in his or her possession, or is taking appropriate action to obtain or recover such records.

*Section 3. Closing Transcripts.* For each issue of the Obligations, the Compliance Officer shall receive and shall keep and maintain, a true, correct and complete counterpart of each and every document and agreement delivered in connection with the issuance of the

Obligations, including without limitation (a) the proceedings of the City and the Council authorizing the Obligations, (b) any offering document with respect to the offer and sale of the Obligations, (c) any legal opinions with respect to the Obligations delivered by any lawyers, and (d) all written representations of any person delivered in connection with the issuance and initial sale of the Obligations.

*Section 4. Arbitrage Rebate Liability.* The Compliance Officer shall review the agreements of the City with respect to each issue of the Obligations and shall annually prepare a report for the Council stating whether or not the City has any rebate liability to the United States Treasury and estimating the extent of such liability, and setting forth any applicable exemptions that each issue of the Obligations may have from rebate liability. In order to discharge this duty, the Compliance Officer is expressly authorized, without further official action of the Council, to hire outside, independent professional counsel to assist in such review. Such report shall be updated annually and delivered to the Council.

*Section 5. Recommended Records.* The Compliance Officer shall review the records related to each issue of the Obligations and shall determine what requirements the City must meet in order to maintain (a) the tax-exemption of interest paid on the Tax Exempt Obligations, (b) its entitlement to direct payments by the United States Treasury of the applicable percentages of each interest payment due and owing on any Tax-Advantaged Bonds, and (c) applicable tax credits or other tax benefits arising from any Tax-Advantaged Bonds. The Compliance Officer shall then prepare a list of the contracts, requisitions, invoices, receipts and other information that may be needed in order to establish that (aa) the interest paid on the Tax Exempt Obligations is entitled to be excluded from gross income for federal income tax purposes, (bb) the City is entitled to receive from the United States Treasury direct payments of the applicable percentages of interest payments coming due and owing on any Tax-Advantaged Bonds, and (cc) the entitlement of holders of any Tax-Advantaged Bonds to any tax credits or other tax benefits, respectively. Notwithstanding any other policy of the City, such retained records shall be kept for as long as the Obligations relating to such records (and any obligations issued to refund the Obligations) are outstanding, plus three years, and shall at least include:

- (i) complete copies of the bond transcripts delivered when any issue of the Obligations is initially issued and sold;
- (ii) copies of account statements showing the disbursements of all bond proceeds for their intended purposes;
- (iii) copies of account statements showing all investment activity of any and all accounts in which the proceeds of any issue of Obligations has been held;
- (iv) copies of all bid requests and bid responses used in the acquisition of any special investments, including guaranteed investment contracts, used for the proceeds of any Obligations, including any swaps, swaptions, or other financial derivatives entered into with respect to any Obligations, in order to establish that such instruments were purchased at *fair market value*;

(v) copies of any subscriptions to the U.S. Treasury for the purchase of State and Local Government Series (SLGS) obligations;

(vi) copies of all Federal Information Reporting Forms (including, but not limited to, Forms 8038, 8038-G, 8038-B, 8038-TC, 8038-T, 8038-R, 8281 and 1097-BTC) and Forms 14127 and 8038-CP prepared and filed by or on behalf of the City and relating to the Obligations;

(vii) any calculations or estimates of liability for *arbitrage rebate* that is or may become due with respect to any issue of Obligations, and any calculations prepared to show that no arbitrage rebate is due, together, if applicable, with account statements or cancelled checks showing the payment of any rebate amounts to the United States Treasury together with any applicable IRS Form 8038-T;

(viii) copies of all contracts of the City, including any leases, with respect to the use of any property owned by the City and acquired or financed with the proceeds of the Obligations, any part of which property is used by a private person at any time when such Obligations are or have been outstanding; and

(ix) copies of all records relating to any required compliance with federal prevailing wage standards for projects financed with the proceeds of Tax-Advantaged Bonds.

*Section 6. Allocations of Obligation Proceeds to Expenditures.* The Compliance Officer shall compile an allocation of all spent proceeds of the Obligations and earnings thereon to particular expenditures. The Compliance Officer acknowledges that such allocations need not follow a direct tracing of the Obligations proceeds and may be changed up to 18 months after the earlier of the date of expenditure to which such proceeds were or will be allocated or, if later, placed in service. No such reallocation may be made after the date that is 60 days after the fifth anniversary of the date the relevant Obligations were issued, or 60 days after the retirement in full of such issue of the Obligations, if earlier. Such allocations may include allocations to expenditures made prior to the issuance of the Obligations. At such time as the Compliance Officer determines that there will be no additional expenditures of proceeds of the Obligations and that the Compliance Officer will not or cannot reallocate such proceeds to expenditures because the time limits set forth above have expired, the Compliance Officer shall declare such allocation to be a final allocation of Obligation proceeds to expenditures. The Compliance Officer shall maintain all such allocations of proceeds to expenditures, including any final allocation with the records it must maintain.

*Section 7. List of Financed Facilities.* The Compliance Officer shall on the basis of the then operative allocation of Obligation proceeds to expenditures compile a list of Obligation financed facilities. Such list shall include: (a) a complete description of such facilities including the location of such facilities, the expected useful life of such facilities, the expected or actual placed in service date of such facilities, the cost of such facilities, the amount of Obligation proceeds spent for such facilities (which shall be the same as the cost of the facilities if acquired exclusively with Obligation proceeds, but which may be less than the cost of such facilities if

such facilities are only partially acquired with Obligation proceeds). If any of the financed facilities are improvements to existing buildings that do not enlarge such buildings and are not improvements of space occupied exclusively for a private business use, the Compliance Officer shall put such building on the list and mark such building as partially funded with proceeds of the Obligations. If any such facilities become worn out, destroyed, obsolete or otherwise no longer useable by the City, the list shall so indicate. If any such facility is disposed of, the list shall include the date it was disposed of, the manner of disposal, the sale price if sold and the person to whom the facility was disposed. Any such disposal shall be recorded within 30 days of the date the Compliance Officer learns of any such disposal. The Compliance Officer acknowledges that tax covenants with respect to the Obligations may require that any such disposal be followed by a remedial action.

*Section 8. Contracts Related to Obligation Financed Facilities.* The Compliance Officer shall obtain and keep copies of all contracts that may provide for the use of Obligation financed facilities (including buildings that are partially financed with Obligation proceeds). Such contracts shall include leases, licenses, management contracts or service contracts if the management or other services to be provided will be performed in or with the Obligation financed facilities. The Compliance Officer shall compile a list of such contracts. The list shall include the particular Obligation financed facilities that may be subject to such contracts. The Compliance Officer shall cause such contracts to be reviewed either by staff of the City or by an outside consultant to determine if such contracts violate any tax covenants made with respect to the Obligations. The list of contracts shall include the determinations of whether such contracts cause any private use of such facilities. If the Compliance Officer cannot reasonably determine whether such contract causes private use, it shall so note on the list of such contracts. If any such contract is determined to cause private use of a facility, the Compliance Officer shall determine or cause to be determined for each calendar year, the percentage of such facility so privately used. Such determination may be made in consultation with counsel or other consultants. The Compliance Officer shall record the method used to determine such quantity of private use along with the final annual amount of private use.

*Section 9. Remedial Actions.* The Compliance Officer acknowledges that if private use (including use in an unrelated trade or business) exceeds the limits related to each issue of the Obligations, a remedial action may be required in accordance with the United States Treasury Regulations. The Compliance Officer shall (with the aid of staff and outside consultants and counsel) determine if such remedial actions are either warranted or possible. The Compliance Officer shall prepare or cause to be prepared a memorandum describing any such remedial action or proposed remedial action. The memorandum shall describe whether such remedial action will serve to cure any particular private use concerns. If any actions are required by the City for such remedial action, the memorandum shall include a full description of such required actions. A copy of any such memorandum shall be given to the Council. Following any such remedial action, the Compliance Officer shall prepare a report describing the effect of such remedial action. The list of Obligation financed facilities may need to be revised as a result of such remedial action and the Compliance Officer will so revise such list.

*Section 10. Voluntary Closing Agreement Program.* The Compliance Officer acknowledges that if private use exceeds relevant limits and a remedial action is not undertaken

or is not possible or if another violation of the tax covenants of the City occurs, then the City may be required to enter into a Voluntary Closing Agreement with the Internal Revenue Service ("IRS"). The Compliance Officer shall (with the aid of staff and outside consultants and counsel) determine if a Voluntary Closing Agreement is either warranted or possible. The Compliance Officer shall prepare or cause to be prepared a memorandum describing any proposed application for a Voluntary Closing Agreement or proposed Voluntary Closing Agreement. The memorandum shall describe whether such remedial action will serve to cure any particular tax violation and the nature of such violation. If any actions are required by the City for such Voluntary Closing Agreement application, the memorandum shall include a full description of such required actions. A copy of any such memorandum shall be given to the Council. The City may retain counsel to attempt to obtain a Voluntary Closing Agreement. Following the execution of any such Voluntary Closing Agreement, the Compliance Officer shall prepare a report describing the effect of such Voluntary Closing Agreement. The list of Obligation financed facilities may need to be revised as a result of such Voluntary Closing Agreement and will be so revised by the Compliance Officer.

*Section 11. IRS Examination.* In the event the IRS commences an examination of any Obligations, the Compliance Officer, in cooperation with the City's general counsel, is expressly authorized, without further official action of the Council, to respond to inquiries of the IRS and to hire outside, independent professional counsel to assist in the response to the examination. The Compliance Officer or the City's general counsel shall advise the Council of any such examination when, as and in such manner as the Compliance Officer may deem appropriate, it being hereby expressly agreed and understood that the Compliance Officer and the City's general counsel shall maintain such confidentiality for so long and as they shall deem necessary in order best to protect the interests of the City.

*Section 12. IRS Compliance Checks.* In the event the IRS commences a Compliance Check or other action short of an examination of the City or of any Obligations, the Compliance Officer, in cooperation with the City's general counsel, is expressly authorized, without further official action of the Council, to respond to inquiries of the IRS and to hire outside, independent professional counsel to assist in the response to the Compliance Check. The Compliance Officer and the City's general counsel shall advise the Council of any such Compliance Check when, as and in such manner as they may deem appropriate, it being hereby expressly agreed and understood that the Compliance Officer and general counsel shall maintain such confidentiality for so long and as the Compliance Officer and general counsel shall deem necessary in order best to protect the interests of the City.

*Section 13. Annual Review.* The Compliance Officer shall conduct an annual review of contracts and other records described in Section 5 of this Resolution to determine for each series of Obligations then outstanding whether each such issue of Obligations complies with the tax requirements applicable to such issue, including restrictions on private business use, private payments and private loans. The Compliance Officer is expressly authorized, without further official action of the Council, to hire outside, independent professional counsel to assist in such review. To the extent that any violations or potential violations of tax requirements are discovered incidental to such review, the Compliance Officer may make recommendations or take such actions as the Compliance Officer shall reasonably deem necessary to assure the timely

correction of such violations or potential violations through remedial actions described in the United States Treasury Regulations or the Tax Exempt Bonds Voluntary Closing Agreement Program described in Treasury Notice 2008-31 or any similar program instituted by the IRS.

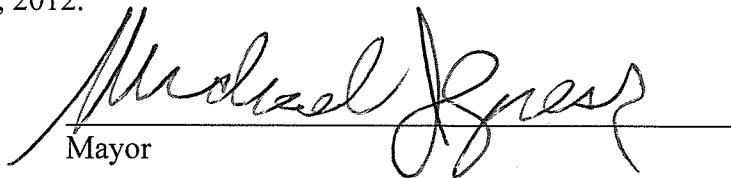
*Section 14. Training.* The Compliance Officer shall undertake to maintain a reasonable level of knowledge concerning the rules related to the Obligations so that such officer may fulfill the duties described herein. The Compliance Officer may consult with counsel, attend conferences and presentations of trade groups, read materials posted on various web sites, including the web site of the Tax-Exempt Bond function of the IRS, and use other means to maintain such knowledge. Recognizing that the Compliance Officer may not be fully knowledgeable in this area, the Compliance Officer may consult with outside counsel, consultants and experts to assist him or her in exercising his or her duties hereunder. The Compliance Officer will endeavor to make sure that staff of the City is aware of the need for continuing compliance. The Compliance Officer will provide copies of this Resolution and the Tax Exemption Certificate and Agreement or other applicable tax documents for each of the Obligations then currently outstanding (the "Tax Agreements") to other staff members who may be responsible for taking actions described in such documents and to any person who is expected to be a successor Compliance Officer. The Compliance Officer will review this Resolution and each of the Tax Agreements periodically to determine if there are portions that need further explanation and, if so, will attempt to obtain such explanation from counsel or from other experts, consultants or staff.

*Section 15. Amendment and Waiver.* The City may amend this Resolution and any provision of this Resolution may be waived, without the consent of the holders of any of the Obligations and as authorized by passage of a resolution by the Council.

*Section 16. Severability.* If any section, paragraph or provision of this Resolution shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such section, paragraph or provision shall not affect any of the remaining provisions of this Resolution.

*Section 17. Repeal.* All resolutions or parts thereof in conflict herewith be and the same are hereby repealed and this Resolution shall be in full force and effect forthwith upon its adoption.

ADOPTED this 16<sup>th</sup> day of July, 2012.



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Michael J. Gray  
Mayor

ATTEST:



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Alan Bennett  
City Clerk

Roll Call Vote

Ayes:      Councilman Suess  
                 Councilwoman Ives  
                 Councilman Mouhelis  
                 Councilman Rutledge  
                 Mayor Gresk  
                 Councilwoman Pacino Sanguinetti  
                 Councilman Scalzo

Nays:      None

Absent:      None

Motion Carried Unanimously

Passed: July 16, 2012

Published: July 17, 2012

