

# Agenda Report

**DATE:** AUGUST 10, 2009

**TO:** CITY COUNCIL

**THROUGH:** ECONOMIC DEVELOPMENT AND TECHNOLOGY COMMITTEE  
(AUGUST 5, 2009)

**FROM:** MICHAEL J. BECK, CITY MANAGER

**SUBJECT:** ADOPT A RESOLUTION AUTHORIZING THE CREATION OF A RECOVERY ZONE UNDER THE PROVISIONS OF THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FOR THE PURPOSE OF ISSUING RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS

## **RECOMMENDATION**

It is recommended that the City Council adopt a Resolution pursuant to Section 1401 of Title I of Division B of the American Recovery and Reinvestment Act of 2009 of the Internal Revenue Code of 1986 authorizing the creation of a Recovery Zone for the purpose of issuing Recovery Zone Economic Development Bonds.

## **BACKGROUND**

On February 17, 2009, President Obama signed the American Recovery and Reinvestment Act ("ARRA") into law and created new categories of bonds. One new category is the Recovery Zone Bonds which gives issuers the temporary ability to issue governmental obligations as either taxable bonds or tax-exempt bonds and only apply to obligations issued in 2009 and 2010. In order to issue Recovery Zone Bonds, the local jurisdiction must first designate a Recovery Zone in which the bonds must be spent. Staff is evaluating projects that may benefit from the bonds and will return to City Council with a recommendation.

A Recovery Zone is defined as:

1. Any area designated as having significant poverty, unemployment, rate of home foreclosures or general distress;
2. Any area designated as economically distressed by reason of the closure or realignment of military installation pursuant to the Defense Base Closure and Realignment Act of 1990 and;
3. Any area for which a designation as an empowerment zone or renewal community is in effect.

As Pasadena has experienced an increase in unemployment from 5.7% in 2008 to 8.6% as of March 2009 and a significant increase in commercial, retail and office vacancy, the entire geographic area of the city is the proposed Recovery Zone.

The ARRA created two types of Recovery Zone Bonds: 1) Recovery Zone Economic Development Bonds and 2) Recovery Zone Economic Development Facility Bonds, capped at \$10 billion and \$15 billion respectively.

### **Pasadena's Allocation**

\$7.4 million of Recovery Zone Economic Development Bonds

\$11.1 million of Recovery Zone Facility Bonds

### **Recovery Zone Economic Development Bonds ("RZEDBs")**

#### **Eligible Projects:**

New money governmental purpose projects or programs (including various types of capital expenditures, expenditures for job training and educational programs), but not available for 501(c)(3) nonprofit or private activity purposes.

#### **Key Elements:**

- A taxable bond that provides issuers a direct federal subsidy of 45% of interest.
- Federal Davis-Bacon prevailing wage rules apply to projects.

RZEDBs are taxable government bonds issued before January 1, 2011 if 100% of the available project proceeds are to be used for one or more qualified economic development purposes. A qualified economic development purpose means expenditures promoting development or other economic activity in a recovery zone, including capital expenditures paid or incurred with respect to property located in such zone, expenditures for public infrastructure and construction of public facilities, and expenditures for job training and educational programs. RZEDBs are at once both a new species of taxable governmental (non-private activity) bonds and a subspecies of Build America Bonds ("BABs"). As a species of taxable government bonds, holders of bonds receive taxable interest. As a subspecies of BABs, issuers are entitled to receive a cash subsidy from the federal government equal to 45% of the interest payable on the RZEDBs.

## Tax-Exempt Recovery Zone Facility Bonds ("RZFBs")

### Permitted Borrowers:

For profit companies.

### Eligible Projects:

Private use depreciable property (i.e. equipment, buildings) the original use of which in the Recovery Zone commences with the taxpayer.

### Key Elements:

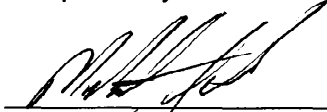
- Issued on a tax-exempt basis.
- The bond financed property may be privately owned and operated for purposes not limited to those of traditional exempt facility or small issue private activity tax-exempt bonds.
- The property must be constructed, reconstructed, renovated or acquired after the area is designated a Recovery Zone.
- Land may NOT be financed because it is not depreciable.

Typically, the bonds would be issued by the city to a for-profit company which would be the true borrower and assume the risk. RZFBs mean any bonds issued before January 1, 2011 if (1) 95% or more of the net proceeds are used for recovery zone property and (2) the issuer designates such bonds as counting against the issuer's volume limitation for such bonds. Generally, with some exceptions, any capital asset used in business will qualify for financing.

### FISCAL IMPACT

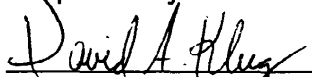
The designation of a Recovery Zone will create a unique investment opportunity that could result in additional revenue to the City.

Respectfully submitted,



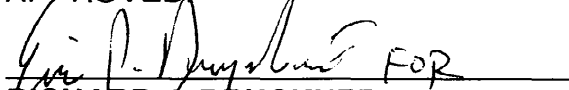
**MICHAEL J. BECK**  
City Manager

Prepared by:



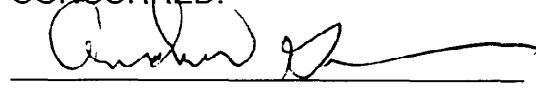
**DAVID A. KLUG**  
Redevelopment Manager

APPROVED:



**RICHARD J. BRUCKNER**  
Director of Planning & Development

CONCURRED:



**ANDREW GREEN**  
Director of Finance

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PASADENA AUTHORIZING THE CREATION OF A RECOVERY ZONE UNDER THE PROVISIONS THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009 FOR THE PURPOSE OF ISSUING RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS; DESIGNATION OF THE LOCAL SUB-ALLOCATION OF THE VOLUME CAP WITH RESPECT TO THE RECOVERY ZONE ECONOMIC DEVELOPMENT BONDS OF THE CITY PASADENA

WHEREAS, Section 1401 of Title I of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) (“ARRA”), added §§ 1400U-1 through 1400U-3 to the Internal Revenue Code of 1986 (the “Code”), authorizing state and local governments to issue recovery zone economic development bonds (“Recovery Zone Economic Development Bonds”); and

WHEREAS, Recovery Zone Economic Development Bonds may be issued by each state and counties and large municipalities within each state before January 1, 2011 under §§ 1400U-2 of the Internal Revenue Code (“Code”), as provided in § 1400U-1 of the Code to finance certain “qualified economic development purposes” for use within designated “recovery zones,” as described; and

WHEREAS, for purposes of §§ 1400U-1 and 1400U-2 of the Code, the term “recovery zone” means: (1) any area designated by the issuer as having significant poverty, unemployment, rate of home foreclosures, or general distress; (2) any area designated by the issuer as economically distressed by reason of the closure or realignment of a military installation pursuant to the Defense Base Closure and Realignment Act of 1990; and (3) any area for which a designation as an empowerment zone or renewal community is in effect as of the effective date of ARRA, which effective date is February 17, 2009; and

WHEREAS, Section 1400U-2(c) of the Code defines the term “qualified economic development purpose” for purposes of § 1400U-2 of the Code to mean any expenditures for purposes of promoting development or other economic activity in a recovery zone, including (1) capital expenditures paid or incurred with respect to property located in the recovery zone, (2) expenditures for public infrastructure and construction of public facilities, and (3) expenditures for job training and educational programs; and

WHEREAS, eligible issuers of Recovery Zone Economic Development Bonds include States and political subdivisions as defined for purposes of § 103 of the Code; and

WHEREAS, §1400U-1(b) of the Code requires, in part, that issuers “designate” eligible recovery zones based on certain specified criteria; and

WHEREAS, I.R.S. Notice 2009-50 (“Notice 2009-50”) provides that for this purpose, any state, county, or large municipality that receives a volume cap allocation for Recovery Zone

Economic Development Bonds may make these designations of recovery zones in any reasonable manner as it shall determine in good faith in its discretion; and

WHEREAS, due to a significant decline in general economic conditions, the City of Pasadena (the "City") has encountered an increase in unemployment from 5.7% in 2008 to 8.6% in March 2009, a significant increase in home foreclosures, and has otherwise suffered significant general economic distress; and

WHEREAS, Section 1400U-1(a)(1)(A) of the Code provides that, subject to § 1400U-1(a)(1)(B) of the Code (relating to minimum allocations), generally, the Secretary of the Treasury (the "Secretary") shall allocate the \$10 billion national volume cap for Recovery Zone Economic Development Bonds among the states in the proportion that each state's 2008 state employment decline bears to the aggregate of the 2008 State employment declines for all of the States; and

WHEREAS, Section 1400U-1(a)(3)(A) of the Code provides generally that each state with respect to which an allocation is made under 1400U-1(a)(1) of the Code is required, without discretion, to reallocate such allocation among the counties and large municipalities in such state in the proportion that each county's or municipality's 2008 employment decline bears to the aggregate of the 2008 employment declines for all the counties and municipalities in such state (the "Volume Cap"); and

WHEREAS, for purposes of § 1400U-1(a)(3)(A) of the Code, the term "large municipality" means a municipality with a population of more than 100,000; and

WHEREAS, pursuant to Notice 2009-50, the Department of Treasury ("Treasury") and the Internal Revenue Service undertook to determine these required local suballocations of Volume Cap; and

WHEREAS, pursuant to Notice 2009-50, the local suballocation of volume cap determined by the Treasury to apply to the City is \$18,525,000, now therefore,

BE IT RESOLVED by the City Council of the City of Pasadena:

Section 1. That the City Council hereby finds that the entire geographic area of the City is experiencing significant poverty, unemployment, rate of home foreclosures, or general distress for purposes of §1400U-1(b) of the Code.

Section 2. That the entire geographic area of the City is hereby designated as a recovery zone for purposes of §1400U-1(b) of the Code.

Section 3. The City of Pasadena hereby authorizes the City Manager to execute, in the name of the City, the application to the State of California to receive the allocation pursuant to §§ 1400U-1 through 1400U-3 to the Internal Revenue Code of 1986.

Adopted at the regular meeting of the City Council the \_\_\_\_ day of \_\_\_\_\_, 2009, by the following vote:

AYES:

NOES:

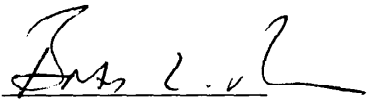
ABSENT:

ABSTAIN:

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Mark Jomsky, City Clerk

Approved as to form:

A handwritten signature in black ink, appearing to read "Brad L. Fuller", written over a horizontal line.

Brad L. Fuller  
Assistant City Attorney