

AGENDA ITEM SUMMARY

FORT COLLINS CITY COUNCIL

ITEM NUMBER: 4

DATE: November 12, 2008

STAFF: Mike Freeman
Chuck Seest

SUBJECT

Resolution 2008-107 Declaring the Intent of the City of Fort Collins, Colorado to Issue Economic Development Revenue Bonds to Provide Financing for a Manufacturing Facility for Ambiance Incorporated, D/B/A Fort Collins Brewery; Prescribing Certain Terms and Conditions of Such Bonds; and Containing Other Provisions Relating to the Proposed Issuance of Such Bonds.

RECOMMENDATION

Staff recommends adoption of the Resolution.

EXECUTIVE SUMMARY

This Resolution declares the City's intent to authorize the issuance of an amount not to exceed \$5,000,000 of economic development revenue bonds for the Fort Collins Brewery project (a small manufacturing company) from the annual statewide allocation the City receives. This is not the receipt of dollars, but the intent to exercise the right to issue tax exempt bonds for purposes prescribed in the Internal Revenue Code by the federal government. Economic development revenue bonds are one type of bond that can be issued for private activity purposes. **This action does not authorize a bond issue.**

The urgency of this inducement resolution relates to expenses related to a land purchase on September 29, 2008. Fort Collins Brewery desires the ability to reimburse itself out of the tax exempt bond proceeds for expenditures that accrue before the issuance of the bonds. The Internal Revenue Code will permit such reimbursement provided that the public issuer (City of Fort Collins) adopts an inducement resolution and the expenditure accrued no earlier than 60 days prior to the date such resolution was adopted. In order to meet this requirement, the resolution needs approval prior to November 28, 2008.

The request for Council to authorize the actual bond issue will occur later this year. If the actual bond issue does move forward, it will not occur until 2009, with the source of the funds being the City's allocation for 2009. In fiscal year 2009, the City of Fort Collins is estimated to receive a private activity bond allocation of \$5,600,000. **If these bonds are authorized, they will not be an obligation of the City of Fort Collins.**

Fort Collins Brewery relocation and expansion on a site within the city limits will result in additional property taxes for the City as well as use tax on construction materials and equipment purchases.

BACKGROUND

The Project

Under the federal and state laws governing the use of tax-exempt private activity bonds, the City may issue the bonds, but may not use its own revenues to support the project. The project will generate the revenue required to repay the bonds. In the event the project does not generate sufficient revenue, the bondholders may request payment from the letter of credit provider or the insurer of the transaction. The total amount of private activity bonds to be issued will not exceed \$5,000,000. The project proponent, Fort Collins Brewery, may use its resources to pay for the bonds or issue additional taxable bonds to finance the project. Out West Properties, LLC, a Colorado Limited Liability Corporation, is an affiliated holding company that purchased the property and will construct the new facility

The proceeds of the bonds, together with the proceeds of certain taxable bonds to be issued by the City concurrently with the Bonds, will be loaned to Out West Properties, LLC (the "Borrower") to finance the acquisition of a manufacturing facility for the production of beer (the "Project"). The Project consists of a purchase of a parcel of land located in the northwest corner of Lincoln Street and Lemay Avenue. Construction of an approximately 30,000 square foot building is to be located there, as well as the purchase of certain equipment. The project will be owned by the Borrower and operated and managed by Fort Collins Brewery, an entity under common ownership with the Borrower.

In Fall 2008, Fort Collins Brewery approached the City with the concept for this project. An inquiry was made by Fort Collins Brewery as to the availability of private activity bonds for small manufacturing. Fort Collins Brewery has been operated by the current ownership group since 2003. Today, it distributes its product along the Front Range and in various states in the Midwest and as far east as Pennsylvania. The facility that Out West Properties, LLC will be constructing with the bond proceeds is being designed to achieve minimal impact on the environment.

The City's Prior Usage of Private Activity Bonds

The most recent direct usage of the City's annual allocation of private activity bonds occurred earlier this year for Custom Blending, Inc., a multi-functional manufacturer of spices, spice blends and liquid flavorings for wholesale operations and retail grocery stores. Their project was for a new facility in the City's Harmony Technology Park.

City staff is consulting Fort Collins Housing Authority and other advocates for affordable housing to determine whether they can utilize the private activity bonds. Staff will update Council later this month or when the request for authorization of the bonds comes before the Council later in the year.

In the event an affordable housing project does come forward even after the bonds for Fort Collins Brewery have been authorized, the City will recommend a project to the Colorado Housing and Financing Authority (CHFA). CHFA has sent notices out this fall that funds are available at the statewide level for housing projects.

The City's Role in Issuance of Private Activity Bonds

Under the federal tax laws and the Colorado Revised Statutes, the City's role in this transaction, should it move forward, is to be the Issuer of the Bonds.

THE BONDS SHALL BE SPECIAL, LIMITED OBLIGATIONS OF THE CITY. THE CITY WILL NOT BE OBLIGATED TO PAY THE BONDS OR THE INTEREST THEREON, EXCEPT FROM THE ASSETS OR REVENUES PLEDGED THEREFOR. IN NO EVENT SHALL THE STATE, THE CITY (OTHER THAN THE FROM THE BORROWER'S ASSETS PLEDGED THEREFORE) OR ANY POLITICAL SUBDIVISION THEREOF BE LIABLE FOR THE BONDS, AND THE BONDS SHALL NOT CONSTITUTE A DEBT OF THE STATE, THE CITY OR ANY SUCH POLITICAL SUBDIVISION THEREOF.

In the event a bond is authorized, the proceeds of the Bonds will be loaned to Out West Properties, LLC. according to the terms of a future loan agreement to provide the financing of the project.

SUMMARY OF ACTION: Inducement Resolution

The primary reason for adopting an inducement resolution is also found in federal tax law. If a municipal borrower or private activity bond beneficiary (e.g., Out West Properties, LLC) desires the ability to reimburse itself out of the tax exempt bond proceeds for expenditures that accrue before the issuance of the bonds, the Internal Revenue Code will permit such reimbursement provided that the public issuer adopts an inducement resolution and the expenditure accrued no earlier than 60 days prior to the date such resolution was adopted. Accordingly, inducement resolutions are often adopted very early in the bond process to maximize the project costs to which the tax exempt proceeds can be applied. However, as is made clear in the resolution, adoption does not create an obligation on the part of the City to authorize the bonds.

RESOLUTION NO. 2008-107

A RESOLUTION DECLARING THE INTENT OF THE CITY OF FORT COLLINS, COLORADO TO ISSUE ECONOMIC DEVELOPMENT REVENUE BONDS TO PROVIDE FINANCING FOR A MANUFACTURING FACILITY FOR AMBIANCE INCORPORATED D/B/A FORT COLLINS BREWERY; PRESCRIBING CERTAIN TERMS AND CONDITIONS OF SUCH BONDS; AND CONTAINING OTHER PROVISIONS RELATING TO THE PROPOSED ISSUANCE OF SUCH BONDS.

WHEREAS, the City of Fort Collins, Colorado (the "City") has been duly and regularly organized and is now validly existing as a home rule municipal corporation under and by virtue of the Constitution and laws of the State of Colorado and its home rule charter; and

WHEREAS, the City is authorized by the County and Municipality Development Revenue Bond Act, constituting Article 3, Title 29, Colorado Revised Statutes, as amended (the "Act"), to finance one or more manufacturing projects (which includes any land, building or other improvement and real and personal properties) to promote industry or other economic activity to mitigate unemployment and secure and maintain a balanced and stable economy; and

WHEREAS, the City is further authorized by the Act to issue revenue bonds for the purpose of defraying the cost of financing any project, including the payment of principal and interest on such revenue bonds for not exceeding three years, the funding of any reserve funds which the governing body of the City may deem advisable to establish in connection with the retirement of such revenue bonds or the maintenance of the project and all incidental expenses incurred in issuing such revenue bonds, and to secure payment of such revenue bonds as provided in the Act; and

WHEREAS, representatives of Out West Properties L.L.C. (the "Borrower"), have met with officials of the City and have advised the City of the Borrower's interest in the acquisition, construction, and equipping of a manufacturing facility for the production of craft beers, and have proposed that the City issue its economic development revenue bonds, in one or more series, to finance its new manufacturing facility of approximately 30,000 square feet (the "Project") to be located near the northwest corner of Lincoln Street and Lemay Street in the City. It is anticipated that the Project will include construction of a multi-purpose

brewery/office/restaurant facility which facility and property would be owned by the Borrower and operated and managed by Ambiance Incorporated d/b/a/ Fort Collins Brewery, an affiliate of the Borrower; and

WHEREAS, the Project constitutes a project under the Act, and the City wishes to declare its intention to authorize an issue of its economic development revenue bonds, in one or more series (the "Bonds"), for the purpose of paying the cost of financing the Project, upon such terms and conditions as are contained herein; and

WHEREAS, the City has considered the Borrower's Project proposal and, upon the expectation that the Project will mitigate unemployment and promote trade and a balanced and stable economy within the City, the City wishes to declare its present intention to authorize the Bonds for the aforesaid purposes, all upon such terms and conditions as may be agreed upon by the City and the Borrower;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FORT COLLINS, COLORADO:

Section 1. In order to benefit the residents of the City, the City hereby declares its intent to authorize the issuance of Bonds in an aggregate principal amount not to exceed \$5,000,000, which amounts are estimated to be sufficient: (a) to finance a portion of the Project; and (b) to pay certain costs incurred in connection with the issuance of the Bonds.

Section 2. The City Council of the City (the "Council") hereby find, determine, recite and declare that the Bonds shall not constitute the debt, multiple fiscal year obligation or indebtedness of the City, the State or any political subdivision of the State within the meaning of any provision or limitation of the State Constitution or statutes or home rule charter of the City and shall not constitute nor give rise to a pecuniary liability of the City or a charge against the City's general credit or taxing powers, nor shall the Bonds ever be deemed to be an obligation or agreement of any commissioner, officer, director, agent or employee of the City in such person's individual capacity, and none of such persons shall be subject to any personal liability by reason of the issuance of the Bonds.

Section 3. The Bonds shall be special, limited obligations of the City payable solely from the payments to be made by the Borrower (as described below) to the City under a Loan Agreement to be entered into by and between the City and the Borrower.

Section 4. The Council hereby finds, determine, recite and declare that the issuance of the Bonds to finance the Project will promote the public purposes set forth in the Act, including, without limitation, trade, mitigation of unemployment and a balanced and stable economy.

Section 5. The Council hereby find, determine, recite and declare the City's intent that this Resolution constitute an official indication of the present intention of the City to issue the Bonds as herein provided, subject to: (a) City or municipal zoning approval for the proposed site (which approval shall be subject to the City prescribed procedures); (b) the City's review and approval of the final form of financing documents (including any necessary credit enhancement for the Bonds); (c) the delivery of an approving opinion of bond counsel to the City and (d) the adoption of a final bond ordinance by the Council.

Section 6. This Resolution expresses the City's intent and current expectations as of the date hereof with respect to the issuance of Bonds for the Project, however, future events or extraordinary circumstances beyond the control of the City may result in the Project being financed in a manner or from sources other than the Bonds. The performance of any action necessary to be taken by the City to issue the Bonds shall be in the absolute discretion of the City and passage of this resolution does not constitute a commitment on behalf of the City to issue the Bonds and the Borrower shall have no recourse against the City or any of its Council, officers, agents or employees if the Council in their sole discretion elect not to the issue the Bonds or otherwise finance the Project.

Section 7. The appropriate officers of the City are hereby authorized to take such actions as contemplated by the Internal Revenue Code of 1986, as amended and by the Colorado Private Activity Bond Ceiling Allocation Act, constituting Article 32, Title 24, Part 17, Colorado Revised Statutes, as amended (the "Allocation Act") that may be necessary to assist the Borrower in obtaining volume cap allocation pursuant to the Allocation Act.

Section 8. All actions not inconsistent with the provisions of this Resolution heretofore taken by the Council or any officer or employee of the City in furtherance of the issuance of the Bonds are hereby ratified, approved and confirmed.

Section 9. If any section, paragraph, clause or provision of this Resolution shall be adjudged to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining sections, paragraphs, clauses or provisions of this Resolution.

Adopted by the City Council of the City this November 12, 2008.

THE CITY OF FORT COLLINS, COLORADO

Mayor

[Seal]

City Clerk

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