

ARTICLE 11

ECONOMIC DEVELOPMENT REVENUE BOND LAW

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ARTICLE 11

ECONOMIC DEVELOPMENT REVENUE BOND LAW

GENERAL PROVISIONS AND DEFINITIONS

SEC. 8-11.100 TITLE. This article may be cited as the City of Hayward Economic Development Revenue Bond Law.

SEC. 8-11.105 PURPOSE. The Council hereby finds and declares that it is necessary and essential to the well-being of the City that it provide financial assistance to promote the economic development of the City. Such economic development will serve the following public purposes and municipal affairs of the City: (a) the full and gainful employment of residents of the City; (b) the full and efficient utilization and modernization of existing industrial, commercial, and business facilities; (c) the development of new industrial, commercial and business facilities; (d) the growth of the City's tax base through increased property values and consumer purchasing; (e) the reduction of the need for and costs of welfare and other remedial programs; (f) the reduction of urban ills, such as crime, attributable in part to inadequate economic opportunities; (g) the stability and diversification of the City's economy; (h) preservation and revitalization of the City's central business district and other older areas of the City; (i) the lowering of the cost to City consumers of necessary goods and services; (j) the environmentally optimum disposition of waste materials of the City; and (k) the enhancement of the general economic prosperity, health, safety and welfare of the residents of the City.

The availability of the financial assistance authorized by this article will serve those purposes and the general plan of the City by providing private enterprises with new methods of financing capital outlays in the City and by ensuring that economic development within the City will reflect the local community's needs and objectives and will be environmentally optimum with respect to both the physical and social environment of the City. The City shall promote such public interests pursuant to this article without adversely affecting areas outside the City and without conflicting with efforts by the State of California to solve problems of statewide concern.

SEC. 8-11.110 DEFINITIONS. Unless the context otherwise requires, the terms defined in this article shall have the following meanings:

- a. "Bonds" means the bonds, notes, certificates, debentures and other obligations authorized to be issued by the City pursuant to this article and payable as provided in this article.
- b. "City" means the City of Hayward.
- c. "Cost" means the total of all costs incurred by or on behalf of a Participating Party to carry out all works and undertakings and to obtain all rights and powers necessary or incident to the acquisition, construction, installation, reconstruction, rehabilitation or improvement of a Facility. "Cost" may include all costs of issuance of bonds for such purposes, costs for construction undertaken by a Participating Party as its own contractor, capitalized bond interest, reserves for debt service and for repairs, replacements, additions and improvements to a Facility, and other working capital

incident to the operation of a Facility.

- d. "Council" means the City Council of the City of Hayward.
- e. "Facility" means any of the facilities, places or buildings within the City which are, or will be, maintained and operated for industrial, commercial or business purposes, conform to the general plan of the City and are approved by the City for the financing authorized by this article, such approval being given only when the City finds and determines that such financing (1) will substantially promote one or more of the public purposes listed in Sec. 8-11.105 and (2) will not have the proximate effect of the relocation of any substantial operations of the Participating Party from one area of the State to another or the abandonment of any substantial operations of such Participating Party within other areas of the State, or, if such financing will have either of such effects, then such financing is reasonably necessary to prevent the relocation of any substantial operations of the Participating Party from an area within the State to an area outside the State.

A "Facility" may be an activity which may otherwise be financed pursuant to the California Industrial Development Financing Act (Government Code § 91500 *et seq.*) to the extent said Act permits the financing of such activity under alternative authority. "Facility" includes, without limitation, real and personal property, land, buildings, structures, fixtures, machinery and/or equipment and all such property related to or required or useful for the operation of a Facility. Facility does not include any facility, place or building used or to be used primarily for sectarian instruction or study or as a place for devotional activities or religious worship.

- f. "Participating Party" means any individual, association, corporation, partnership or other entity which is approved by the City to undertake the financing of the Costs of a Facility for which this article authorizes the issuance of the Bonds.
- g. "Revenues" means amounts received by the City as payments of principal, interest, and all other charges with respect to a loan authorized by this article, as payments under a lease, sublease or sale agreement with respect to a Facility, as proceeds received by the City from mortgage, hazard or other insurance on or with respect to such a loan (or any property securing such loan), lease, sublease or sale agreement, all other rents, charges, fees, income and receipts derived by the City from the financing of a Facility authorized by this article, any amounts received by the City as investment earnings on moneys deposited in any fund securing the Bonds, and such other legally available moneys as the Council may, in its discretion, lawfully designate as Revenues.

SEC. 8-11.115 NO LIMITATION ON APPROPRIATIONS. Revenues, as defined by this article, and the expenditure of such Revenues shall not be taken into account in any manner in determining the City's compliance with Article XIII B of the California Constitution.

FINANCING FACILITIES

SEC. 8-11.200 LOANS FOR FACILITIES. The City is hereby authorized to make, purchase, or otherwise contract for the making of, a mortgage or other secured or unsecured loan, with the proceeds of Bonds and upon such terms and conditions as the City shall deem proper, to any

Participating Party for the Costs of a Facility.

SEC. 8-11.205 ACQUISITION, CONSTRUCTION, LEASING AND SELLING OF FACILITIES. The City is hereby authorized to acquire, construct, enlarge, remodel, renovate, alter, improve, furnish, equip and lease as lessee, with the proceeds of Bonds, a Facility solely for the purpose of selling or leasing as lessor such Facility to such Participating Party, and is further authorized to make any contracts for such purposes. The City is also authorized to contract with such Participating Party to undertake on behalf of the City to construct, enlarge, remodel, renovate, alter, improve, furnish and equip such Facility.

The City is authorized to sell or lease, upon such terms and conditions as the City shall deem proper, to a Participating Party any Facility owned by the City under this article, including a Facility conveyed to the City in connection with a financing authorized by this article but not being financed hereunder.

SEC. 8-11.210 APPLICATIONS FOR APPROVAL. Any person may apply to the City for approval as a Participating Party and for approval of a Facility for financing under this article. Applications shall set forth such information as the City may require in order to enable the City to evaluate the applicant, the Facility and its proposed costs.

The City Manager may, with the approval of the Council, implement priorities or guidelines to limit or focus the Facilities which the City will approve for financing under this article. The Council may decline to approve any applicant if the Council determines that any potential detriments of financing the project will outweigh any potential benefits.

SEC. 8-11.215 FEES. The City is hereby authorized to charge Participating Parties application, commitment, financing and other fees, in order to recover all administrative and other costs and expenses incurred in the exercise of the powers and duties conferred by this article. The Council shall direct the City Manager to transmit a letter agreement or contract to a Participating Party which will obligate such party to pay such fees and expenses as the Council may charge or incur hereunder.

SEC. 8-11.220 INSURANCE. The City is hereby authorized to obtain, or aid in obtaining, from any department or agency of the United States or of the State of California or any private company, any insurance or guarantee as to, or of, or for the payment or repayment of, interest or principal, or both, rents, fees or other charges, or any part thereof, on any loan, lease or sale obligation or any instrument evidencing or securing the same, made or entered into as authorized by this article; and is authorized to accept payment in such manner and form as provided therein in the event of default by a Participating Party, and to assign any such insurance or guarantee as security for Bonds.

SEC. 8-11.225 RENTS AND CHARGES. The City is hereby authorized to fix rents, payments, fees, charges and interest rates for a financing authorized by this article and to agree to revise from time to time such rents, payments, fees, charges and interest rates to reflect changes in interest rates on Bonds, losses due to defaults or changes in other expenses related to this article, including City administrative expenses.

SEC. 8-11.230 SECURITY FOR LOANS. The City is hereby authorized to hold deeds of trust or mortgages or security interests in personal property as security for loans and other obligations authorized by this article and to pledge or assign the same as security for repayment of Bonds. Such deeds of trust, mortgages or security interests, or any other interest of

the City in any Facility, may be assigned to, and held on behalf of the City by, any bank or trust company appointed to act as trustee by the City in any resolution or indenture providing for issuance of Bonds.

SEC. 8-11.235 PROFESSIONAL SERVICES. The City is hereby authorized to contract for such engineering, architectural, financial, accounting, legal or other services as may be necessary in the judgment of the City for the purposes of this article.

SEC. 8-11.240 PUBLIC WORKS REQUIREMENTS INAPPLICABLE. Except as specifically provided in this article, the acquisition, construction, installation, reconstruction, rehabilitation or improvement of a Facility financed under this article shall not be subject to any requirements relating to buildings, works or improvements owned or operated by the City, and any requirement of public competitive bidding or other procedural restriction imposed on the award of contracts for acquisition or construction of a City building, work or improvement or to the lease, sublease, sale or other disposition of City property shall not be applicable to any action taken under this article.

SEC. 8-11.245 ADDITIONAL POWERS. In addition to all other powers specifically granted by this article, the City is hereby authorized to contract for and do all things necessary or convenient to carry out the purposes of this article, provided, however, that the City shall not have the power to operate a Facility financed under this article as a business, except temporarily in the case of a default by a Participating Party.

BONDS

SEC. 8-11.300 ISSUANCE OF BONDS. The City is hereby authorized to issue Bonds in an aggregate principal amount not to exceed \$100 million and to issue such Bonds, from time to time, in such series and amounts as are determined by the Council to be necessary or appropriate to provide for the Costs of Facilities approved by the Council. Bonds shall be negotiable instruments for all purposes, subject only to the provisions of such Bonds for registration.

SEC. 8-11.305 BONDS NOT DEBT OF CITY. All of the Bonds hereby authorized to be issued shall be limited obligations of the City payable from all or any specified part of the revenues and the moneys and assets authorized in this article to be pledged or assigned to secure payment of Bonds. Such revenues, moneys or assets shall be the sole source of repayment of such issue of Bonds. Bonds issued as authorized by this article shall not be deemed to constitute a debt or liability of the City or a pledge of the faith and credit of the City but shall be payable solely from specified revenues, moneys and assets. The issuance of Bonds shall not directly, indirectly, or contingently obligate the City to levy or pledge any form of taxation or to make any appropriation for their payment.

All Bonds shall contain on the face thereof a statement to the following effect:

Neither the faith and credit nor the taxing power of the City of Hayward is pledged to the payment of the principal of or premium, if any, or interest on this bond.

SEC. 8-11.310 BOND TERMS. Bonds shall be issued as serial bonds, term bonds, installment bonds or pass-through certificates or any combination thereof. The City Manager shall determine the terms and timing of the issuance of particular Bonds in accord with the resolution of the Council approving the particular Facility to be financed thereby. Bonds shall bear such date or

dates, mature at such time or times not to exceed forty (40) years, bear interest at such fixed or variable rate or rates approved by the Participating Party whose Facility is being financed but not to exceed the maximum rate permitted by law, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America at such place or places, be subject to such terms of redemption and have such other terms and conditions as such resolution, or any indenture to be entered into by the City pursuant to such resolution, shall provide. Bonds shall be sold at either public or private sale and for such prices as the City shall determine.

SEC. 8-11.315 BOND PROVISIONS. Any resolution relating to the issuance of any Bonds, or any indenture to be entered into by the City pursuant to such resolution, may contain provisions respecting any of the following terms and conditions, which shall be a part of the contract with the holders of such Bonds:

- a. the terms, conditions and form of such Bonds and the interest and principal to be paid thereon,
- b. limitations on the uses and purposes to which the proceeds of sale of such Bonds may be applied, and the pledge or assignment of such proceeds to secure the payment of such Bonds,
- c. limitations on the issuance of additional parity Bonds, the terms upon which additional parity Bonds may be issued and secured, and the refunding of outstanding Bonds,
- d. the setting aside of reserves, sinking funds and other funds and the regulation and disposition thereof,
- e. the pledge or assignment of all or any part of the Revenues and of any other moneys or assets legally available therefor (including loans, deeds of trust, mortgages, leases, subleases, sales agreements and other contracts and security interests) and the use and disposition of such Revenues, moneys, and assets, subject to such agreements with the holders of Bonds as may then be outstanding,
- f. limitation on the use of Revenues for operating, administration or other expenses of the City,
- g. specification of the acts or omissions to act which shall constitute a default in the duties of the City to holders of such Bonds, and providing the rights and remedies of such holders in the event of default, including any limitations on the right of action by individual bondholders,
- h. the appointment of a corporate trustee to act on behalf of the City and the holders of its Bonds, the pledge or assignment of loans, deeds of trust, mortgages, leases, subleases, sale contracts and any other contracts to such trustee, and the rights of such trustee.
- i. the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of such Bonds the holders of which must consent thereto, and the manner in which such consent may be given, and

- j. any other provisions which the Council may deem reasonable and proper for the purposes of this article and the security of the bondholders.

SEC. 8-11.320 PLEDGE OF REVENUES, MONEY OR PROPERTY; LIEN. Any pledge of Revenues or other moneys or assets as authorized by this article shall be valid and binding from the time such pledge is made. Revenues, moneys and assets so pledged and thereafter received by the City shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the City, irrespective of whether such parties have notice thereof. Neither the resolution nor any indenture by which a pledge is created need be filed or recorded except in the records of the City.

SEC. 8-11.325 NO PERSONAL LIABILITY. Neither the members of the Council, the officers or employees of the City, nor any person executing any Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

SEC. 8-11.330 PURCHASE OF BONDS BY CITY. The City shall have the power out of any funds available therefor to purchase its Bonds. The City may hold, pledge, cancel, or resell such Bonds, subject to and in accordance with agreements with the bondholders.

SEC. 8-11.335 ACTIONS BY BONDHOLDERS. Any holder of Bonds issued under the provisions of this article or any of the coupons appertaining thereto, and any trustee appointed pursuant to any resolution relating to the issuance of Bonds, except to the extent the rights thereof may be restricted by such resolution or any indenture authorized thereby to be entered into by the City, may, either at law or in equity, by suit, action, mandamus or other proceedings, protect or enforce any and all rights specified in law or in such resolution or indenture, and may enforce and compel the performance of all duties required by this article or by such resolution or indenture to be performed by the City or by any officer, employee, or agent thereof, including the fixing, charging, and collecting of rates, fees, interest, and charges authorized and required by the provisions of such resolution or indenture to be fixed, charged and collected.

SEC. 8-11.340 REFUNDING BONDS. The City is hereby authorized to issue Bonds for the purpose of refunding any Bonds then outstanding.

SEC. 8-11.345 BOND ANTICIPATION NOTES. In anticipation of the sale of Bonds authorized by this article, the City is hereby authorized to issue bond anticipation notes, and to renew the same from time to time, in such series and amounts as are determined by the Council to be necessary or appropriate for the Costs of Facilities approved by the Council. Such notes shall be payable from Revenues or other moneys or assets authorized by this article to be pledged to secure payment of Bonds, and which are not otherwise pledged or from the proceeds of sale of the particular Bonds in anticipation of which they are issued. Such notes shall be issued in the same manner as Bonds. The City Manager shall determine the terms and timing of the issuance of particular bond anticipation notes in accord with the provisions of Sec. 8-11.310 and the resolution of the Council approving the particular Facility to be financed thereby. Such notes, any resolution relating to the issuance of such notes and any indenture to be entered into by the City pursuant to such resolution may contain any provisions, conditions or limitations permitted under Sec. 8-11.315.

SEC. 8-11.350 VALIDITY OF BONDS. The validity of the authorization and issuance of any Bonds is not dependent on and shall not be affected in any way by any proceedings taken by the City for the approval of any financing or the entering into of any agreement, or by the

failure to provide financing or enter into any agreement, for which Bonds are authorized to be issued under this article.

SUPPLEMENTAL PROVISIONS

SEC. 8-11.400 LIBERAL CONSTRUCTION. This article, being necessary for the welfare of the City and its inhabitants, shall be liberally construed to effect its purposes.

SEC. 8-11.405 OMISSIONS NOT TO AFFECT VALIDITY OF BONDS. Any omission of any officer or the City in proceedings under this article or any other defect in the proceedings shall not invalidate such proceedings or the Bonds issued pursuant to this article.

SEC. 8-11.410 FULL AUTHORITY. This article is full authority for the issuance of Bonds by the City for any of the purposes specified herein.

SEC. 8-11.415 ADDITIONAL AUTHORITY. This article shall be deemed to provide a complete, additional, and alternative method for doing the things authorized thereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of Bonds under the provisions of this article need not comply with the requirements of any other law applicable to the issuance of bonds. The purposes authorized hereby may be effectuated and Bonds are authorized to be issued for any such purposes under this article notwithstanding that any other law may provide for such purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations or other provisions contained in any other law.

SEC. 8-11.420 ARTICLE CONTROLLING. To the extent that the provisions of this article are inconsistent with the provisions of any general statute or special act or parts thereof the provisions of this article shall be deemed controlling.

SEC. 8-11.425 SEVERABILITY. If any provision of this article or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect any other provision or application of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are declared to be severable. The Council hereby declares that it would have adopted and passed this article and each section, subsection, sentence, clause, phrase and word hereof, irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses, phrases or words hereof be declared invalid or unconstitutional.