

REQUESTED BOARD ACTION:

Consent

Ordinance

Resolution

X

Consideration/  
Discussion

Presentation

SHORT TITLE TO RATIFY ALL PRIOR ACTS OF BOARD OF DIRECTORS AND OFFICERS OF THE POMPANO BEACH FINANCE CORPORATION (the "Corporation").

Summary of Purpose and Why:

The placement of this item on the agenda was at the request of Special Counsel for the planned financing of the pier parking garage/pier street east of A1A project, as it is typical for Corporations to have such an item placed on the agenda for consideration. Prior acts may have included filing of annual reports with the Florida Department of State or failure to hold annual meetings and present budget information for the Corporation, as required in the bylaws. Of course the Corporation has not had any activity since the retirement of the 1992 Certificates of Participation, which were issued to finance the construction of City Hall. The Corporation was initially created to facilitate the issuance of Certificates of Participation (COPs), a financing structure whereby a lessor/lessee structure is established, with the City serving as lessee and the Corporation as the lessor. The City in essence makes lease payments to the Corporation and investors purchase an interest in the annual required lease payments, subject to annual appropriation by the City Commission. Please refer to Finance Department Memo #15-35 for additional information on the COPs financing structure.

As the Corporation is a key component of the proposed financing for the Pier Parking Garage/Pier Street East of A1A Project, it is integral that any prior acts by the Board or Officers of the Corporation, which may have resulted any deviation from the requirements of the Amended and Restated Bylaws of the Corporation in the past, be ratified.

- (1) Origin of request for this action: Finance Department
- (2) Primary staff contact: Suzette Sibble Ext. 4680
- (3) Expiration of contract, if applicable: NA
- (4) Fiscal impact and source of funding: NA

DEPARTMENTAL COORDINATION  
Finance Department  
 City Manager

DATE  
2/18/15

DEPARTMENTAL RECOMMENDATION  
Approve

DEPARTMENTAL HEAD SIGNATURE  
*S. Sibble*  
*Annex. Blvd*

ACTION TAKEN BY BOARD:

<u>Ordinance</u>	<u>Resolution</u>	<u>Consideration</u>	<u>Workshop</u>
<u>1<sup>st</sup> Reading</u>	<u>1<sup>st</sup> Reading</u>	<u>Results:</u>	<u>Results:</u>
<u>2<sup>nd</sup> Reading</u>			



FINANCE DEPARTMENT  
MEMO 15-35

Date: February 4, 2015

To: Board of Directors of the Pompano Beach Finance Corporation

From: Suzette Sibble, Treasurer

Via: Dennis Beach, City Manager

A handwritten signature in black ink, appearing to read "Dennis Beach", is written over the name "Dennis Beach, City Manager".

**Re: CERTIFICATES OF PARTICIPATION (PARKING GARAGE PROJECT),  
SERIES 2015 & THE POMPANO BEACH FINANCE CORPORATION**

Introduction

The City's Finance Team has determined that the most viable and cost effective means of financing the design and construction of the Pier Parking Garage and Pier Street east of A1A is through the issuance of Certificates of Participation (COPs). Revenue bonds are another financing mechanism for financing these types of projects. However, given the City's charter restrictions mandating a voter referendum for a covenant to budget and appropriate debt service requirement governing a revenue bond debt issue, the Finance team determined that this route was not feasible given the timeline within which the financing for the project needed to be accomplished, among other factors. More importantly, given the infancy of the City's parking system, the correlation of the timing for the pier development site to come online (i.e. restaurants, shops etc.) and that development's impact on parking revenue generation for the project to be financed, it was determined that it may not be possible for the City to meet certain annual debt service coverage requirements in the early stages of debt being outstanding. It is typical for revenue bonds, whereby a particular revenue stream is pledged as security for repayment of said bonds, to require minimum annual debt service coverage (net revenues for the system/annual debt service payment). Even if the City could ultimately market revenue bonds with a lower debt service coverage requirement, it would most likely impact the rating assigned the bonds by rating agencies such as Fitch, Moody's or Standard & Poor's, which would result in a higher cost of borrowing for the City.

Under the COPs financing mechanism, the City will lease-purchase finance a new parking garage and related facilities (collectively, the "Project") through the issuance of Certificates of Participation (Parking Garage Project), Series 2015 (the "Certificates"). The Certificates represent undivided proportionate interests in lease payments to be made each year by the City

pursuant to a lease-purchase agreement (the "Lease Agreement") between the City, as lessee, and the Pompano Beach Finance Corporation, a not for profit Florida corporation formed by the City (the "Corporation"), as lessor. The lease payments, and consequently, the payments due with respect to the Certificates, will not constitute indebtedness of the City. Rather, the Certificates will be payable solely from legally available revenues of the City budgeted and appropriated each year by the City to make lease payments under the Lease Agreement. The Certificates will be issued pursuant to a Trust Agreement among the City, the Corporation and an institutional trustee (the "Trustee"). The Certificates will be sold by the City to RBC Capital Markets, LLC, the underwriter selected by the City in connection with this transaction, which will, in turn, sell the Certificates to the public.

### The Corporation

The Corporation was formed solely for the purpose of facilitating lease purchase arrangements such as the financing of the Project. The sole member of the Corporation is the City. The sole members of the Board of Directors of the Corporation are, ex-officio, the members of the City Commission of the City from time to time. The Mayor serves as the President of the Corporation, the Vice-Mayor serves as the Vice-President of the Corporation, the Finance Director serves as the Treasurer of the Corporation and the City Clerk serves as the Secretary of the Corporation. As noted below, the Corporation will only have a nominal role in the financing. It will be required to have an annual meeting to elect Board members and officers. In addition, the Corporation, by resolution, will be required to approve the various documents to which it will be a party in connection with the lease-purchase financing of the Project. The administrative costs associated with the Corporation are expected to be nominal.

### Basic Financing Structure

The City owns the site within the City on which the Project will be located (the "Site"). Pursuant to a written ground lease agreement, the City will enter into a long term ground lease of the Site to the Corporation (with an initial term that will be the same as the final maturity of the Certificates--approximately 25 years). Until an event of default or non-appropriation occurs under the Lease Agreement, the annual ground lease rental will be \$1.00. At all times, title to the Site will remain with the City, subject to the leasehold interest of the Corporation.

The Project will be constructed by the City on the Site. The City will lease back the Site and the Project from the Corporation pursuant to the Lease Agreement. The Corporation will assign all of its rights and obligations under the Ground Lease and Lease Agreement to the Trustee, other than certain retained rights. Accordingly, the Corporation will have only a nominal role in the financing.

Funds for the acquisition, construction, and installation of the Project will be provided through the issuance and sale of the Certificates. The Lease Agreement will have an initial lease term that will commence on the date the Certificates are issued and end on September 30, 2015. Thereafter, subject to the right of the City to enact a budget which does not appropriate sufficient funds to make the lease payments coming due in the next fiscal year, the Lease Agreement will have successive one-year terms.

The maximum term of the Lease Agreement will be the same as the final maturity of the Certificates (approximately 25 years). If an event of non-appropriation occurs, the City must peaceably vacate and return possession of the Site and the Project to the Corporation, or its assignee or designee, no later than the end of the then current lease term. Thereafter, the Corporation, through the Trustee, may exercise remedies with respect to the Project, including attempting to re-let the Site and the Project to a third party for the remaining term of the Ground Lease, which will automatically be extended for an additional ten-year period following the scheduled maturity date of the Certificates.

#### Annual Appropriation

The financing documents will provide that under no circumstances will the failure of the City to appropriate sufficient moneys to pay lease payments constitute a default under the Lease Agreement or require payment of a penalty, or in any way limit the right of the City to purchase or utilize, buildings, facilities or equipment similar in function to the property leased under the Lease Agreement. However, the failure of the City to appropriate each year for such payments will result in the City's having to vacate the Project for the remaining term of the Ground Lease, which will be for at least ten years after the final maturity of the Certificates. In addition, upon such an event of non-appropriation, the City may have difficulty in accessing capital markets to obtain bond financing for its other projects. In this respect, even though COPs are not legally considered debt, for all practical purposes, the City should treat the required lease payments as such so as not to impede the City's credit standing in the marketplace.