

Introduced and Read: _____
Second Reading and Adoption: _____
Posted: _____
Effective Date: _____

CITY OF MOUNT RAINIER, MARYLAND

ORDINANCE NO. 1-2010

(Drafted by City Attorney)

Introduced by: _____

**An Ordinance Authorizing the Issuance and Sale of City of Mount Rainier
General Obligation Bond 1-2010 for the Purpose of Funding the Purchase of
3200 Rhode Island Avenue and 3701 Eastern Avenue, Mount Rainier, MD 20712,
Blighted Properties in the City's Urban Renewal Area, and Refinancing the City's
Infrastructure Bonds, 1997 Series A and 1996 Series A.**

WHEREAS, the City prepared and adopted the Mount Rainier Town Center Urban Renewal Plan and, by Resolution No. 3-2008, identified certain properties in the Urban Renewal Area as blighted, and authorized the acquisition of the blighted properties for slum clearance and redevelopment; and

WHEREAS, the properties specifically designated in Resolution No. 3-2008 as property to be acquired for slum or blight clearance and redevelopment, included the commercial properties located at 3200 Rhode Island Avenue and 3701 Eastern Avenue, Mount Rainier, Maryland 20712 ("the Property"); and

WHEREAS, the City entered into contracts to purchase the Property and, on December 21, 2009, the City went to settlement on its purchase of the Property; and

WHEREAS, the City paid a total of \$662,525.85 for the Property (\$478,587.79 for 3200 Rhode Island Avenue, representing a purchase price of \$470,000.00 plus closing costs, and \$183,938.06 for 3701 Eastern Avenue, representing a purchase price of \$180,000.00 plus closing costs); and

WHEREAS, the City previously borrowed money in order to acquire and construct a new City Hall and to acquire and renovate a new City Police Station and evidenced these borrowings by issuance of City of Mount Rainier Infrastructure Bond, 1996 Series A, in the original principal amount of \$320,000.00, and City of Mount Rainier Infrastructure Bond, 1997 Series A, in the original principal amount of \$722,709.00; and

WHEREAS, the 1996 and 1997 City of Mount Rainier Infrastructure Bonds now can be paid in full without penalty; and

WHEREAS, as current interest rates are lower than the interest rates the City is paying on the 1996 and 1997 City of Mount Rainier Infrastructure Bonds, the City desires to pay off these bonds; and

WHEREAS, the Council has discussed and explored various means of funding the acquisition of the Property and the refinancing of the 1996 and 1997 City of Mount Rainier Infrastructure Bonds, including the issuance of a tax-exempt general obligation bond; and

WHEREAS, SunTrust Bank is willing to provide financing for the City’s purchase of the Property and refinancing of the 1996 and 1997 City of Mount Rainier Infrastructure Bonds by a tax-exempt, bank qualified note (the “Bond”), secured by the general obligation of the City, in an amount up to \$1,500,000.00 at a current fixed interest rate of 4.3% per year for a term of fifteen (15) years, with semi-annual payments of principal and interest payable in arrears; and

WHEREAS, the Council finds that issuance of a tax-exempt general obligation bond is for a public purpose and in furtherance of the City’s governmental functions as the bond funds will be used for the City’s purchase of the Property, in a blighted area of the Mount Rainier Town Center Urban Renewal Area, and the refinancing of the City’s 1996 and 1997 Infrastructure Bonds, the funds from these 1996 and 1997 bonds having been used to acquire, construct, and/or renovate a new City Hall and new City Police Station; and

WHEREAS, under Section 708, Borrowing Power, of the City of Mount Rainier Charter, the City has the power to borrow money for any public purpose and to issue its general obligation bond, note or other evidence of indebtedness by private negotiated sale; and

WHEREAS, in order to provide funds for the acquisition of the Property and for the refinancing of the 1996 and 1997 City of Mount Rainier Infrastructure Bonds, the Council has determined that the City shall borrow up to \$1,500,000.00 on its full faith and credit and shall evidence such borrowing by the issuance and sale of its bond, to be known as “City of Mount Rainier General Obligation Bond 1-2010.”

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MOUNT RAINIER, MARYLAND, pursuant to the authority of Section 708 of the City of Mount Rainier Charter, as follows:

Section 1. Recitals.

The “Whereas” clauses of this Ordinance are incorporated and deemed a substantive part of this Ordinance.

Section 2. Authorization, Terms, Form of Bonds.

- a. The City of Mount Rainier (“City”) is a municipal corporation of the State of

Maryland organized and operating under a Charter (the "Charter") adopted in accordance with Article XI-E of the Constitution of Maryland and Article 23A of the *Annotated Code of Maryland*, as amended, (the "Maryland Code").

b. The Council of the City approves and authorizes the City's purchase of commercial properties located at 3200 Rhode Island Avenue and 3701 Eastern Avenue, Mount Rainier, Maryland 20712, in a blighted area of the Mount Rainier Town Center Urban Renewal Area, and the refinancing of City of Mount Rainier Infrastructure Bond, 1996 Series A, and City of Mount Rainier Infrastructure Bond, 1997 Series A, as set forth in this Ordinance.

c. The City is authorized and empowered by Sections 31 to 39, inclusive, of Article 23A of the Maryland Code and by Section 708 of the Charter to borrow money for any proper public purpose and to evidence such borrowing by the issuance and sale of its general obligation bonds and other permitted evidence of indebtedness.

d. The City, through its properly designated officers, shall borrow upon its full faith and credit and shall issue and sell upon its full faith and credit a general obligation bond in the principal amount of up to One Million Five Hundred Thousand Dollars (\$1,500,000.00), to be known as "City of Mount Rainier General Obligation Bond 1-2010" (the "Bond"). The proceeds of the Bond shall be used for the purpose of funding the purchase of commercial properties located at 3200 Rhode Island Avenue and 3701 Eastern Avenue, Mount Rainier, Maryland 20712, in a blighted area of the Mount Rainier Town Center Urban Renewal Area, and the refinancing of City of Mount Rainier Infrastructure Bond, 1996 Series A, and City of Mount Rainier Infrastructure Bond, 1997 Series A, and the payment of related issuance costs.

e. The Bond shall bear a fixed interest rate of 4.3% percent per annum, with interest thereon to be paid semi-annually in arrears, and with a maturity of fifteen (15) years. Payments of principal and interest on the Bond shall be amortized, semi-annually, over fifteen (15) years with payments to commence six (6) months from the date the Bond is issued. The City shall have the ability to prepay the Bond at any time.

f. All other terms and conditions of the Bond shall be substantially as indicated on the Specimen Bond, which is attached as Exhibit "A" and made a part of this Ordinance.

f. Pursuant to the provisions of Section 708.A of the Charter, the Bond shall be sold at a private negotiated sale to SunTrust Bank (the "Bank") and the Council finds that such private negotiated sale is in the best interests of the City.

Section 3. Execution.

The Bond shall be executed in the name of the City and on its behalf by the Mayor, and the corporate seal of the City shall be imprinted thereon, attested to by the Treasurer of the City. In case any official of the City whose signature appears on the Bond shall cease to be such official prior to

the authentication and delivery of any such Bond, or in the case that any such official shall take office subsequent to the date of issue of any such Bond, his or her signature, in either event, shall nevertheless be valid for the intended purposes.

Section 4. **Delivery and Registration of Bond.**

a. The Bond will be delivered as soon as practicable, upon due notice and at the expense of the City, at such place as may be agreed upon between the Bank and the City, upon payment of the principal amount of the Bonds in immediately available funds.

b. The Treasurer shall act as registrar for the Bond and shall maintain registration books for the registration and registration of transfer of the Bond. No security or bonds shall be required of the Treasurer in the performance of the duties of registrar for the Bond.

c. The City may deem and treat the person or entity in whose name any Bond shall be registered upon the books of the City as the absolute owner of such Bond, whether such Bond shall be overdue or not, for the purpose of receiving payment of, or on account of, the principal, premium, if any, of and interest on such Bonds and for all other purposes.

Section 5. **Covenants.**

a. The Mayor and the Treasurer shall be the officers of the City responsible for issuing the Bond within the meaning of Section 1.148-2(b)(2) of the Arbitrage Regulations (defined below). The Mayor and the Treasurer shall also be the officers of the City responsible for the execution and delivery (on the date of the issuance of the Bond) of a certificate or certificates of the City (a "Tax Certificate and Compliance Agreement") that complies with the requirements of Section 148 of the Internal Revenue Code of 1986, as amended ("Section 148"), and the applicable regulations thereunder (the "Arbitrage Regulations"), and such officials are hereby authorized and directed to execute and deliver a Tax Certificate and Compliance Agreement to counsel rendering an opinion on the validity of the Bond on the date of the issuance of the Bond.

b. The City shall set forth in the Tax Certificate and Compliance Agreement its reasonable expectations as to relevant facts, estimates and circumstances relating to the use of the proceeds of the Bond or of any moneys, securities or other obligations on deposit to the credit of any account of the City which may be deemed to be proceeds of the Bond pursuant to Section 148 or the Arbitrage Regulations (collectively, the "Bond Proceeds"). The City covenants that the facts, estimates and circumstances set forth in the Tax Certificate and Compliance Agreement will be based on the City's reasonable expectations of the date of the issuance of the Bond and will be, to the best of the certifying officials' knowledge, true and correct as of that date.

c. The City covenants and agrees with the registered owner or owners of the Bond that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the Bond Proceeds that would cause the Bond to be "arbitrage bonds" within the meaning of Section

148 and the Arbitrage Regulations. The City further covenants that it will comply with Section 148 and the Arbitrage Regulations which are applicable to the Bond on the date of issuance thereof and which may subsequently be made applicable thereto as long as the Bond remains outstanding and unpaid. The Mayor and the Treasurer are hereby authorized and directed to prepare or cause to be prepared and to execute any certification, opinion or other document, including, without limitation, a Tax and Section 148 Certificate, which may be required to assure that the Bond will not be deemed to be "arbitrage bonds" within the meaning of Section 148 and the Arbitrage Regulations. All officers, employees and agents of the City are hereby authorized and directed to take such actions, and to provide such certifications of facts and estimates regarding the amount and use of the proceeds of the Bond, as may be necessary or appropriate from time to time to comply with, or to evidence the City's compliance with, the covenants set forth in this Section.

d. The City further covenants that it shall make such use of the proceeds of the Bond, regulate the investment of the proceeds thereof, and take such other and further actions as may be required to maintain the excludability from gross income for federal income tax purposes of interest on the Bond.

e. The City further covenants with the registered owner or owners of the Bond (i) that it will not take any action or (to the extent that it exercises control or direction) permit any action to be taken that would cause the Bonds or any portion of the Bonds to be "federally guaranteed" within the meaning of Section 149(b) of the Internal Revenue Code of 1986, as amended (the Code") and (ii) that it will not make, or (to the extent that it exercises control or direction) permit to be made, any use of the proceeds of the Bonds or a portion of such proceeds that would cause the Bonds or a portion of the Bonds to be a "private loan bond" within the meaning of Section 141(c) of the Code.

f. The Mayor and the Treasurer may make such covenants or agreements in connection with the issuance of the Bond as they or either of them shall deem advisable in order to assure the registered owner or owners of the Bond that interest thereon shall be and remain excludable from, gross income for federal income tax purposes, and such covenants or agreements shall be binding on the City so long as the observance by the City of any such covenants or agreements is necessary in connection with the maintenance of the exclusion of the interest on the Bonds from gross income for federal income tax purposes. The foregoing covenants and agreements may include such covenants or agreements on behalf of the City regarding compliance with the provisions of the Code as the Mayor or Treasurer shall deem advisable in order to assure the registered owner or owners of the Bond that the interest thereon shall be and remain excludable from gross income for federal income tax purposes, including (without limitation) covenants or agreements relating to the investment of Bond Proceeds, the payment of certain earnings resulting from such investment to the United States, limitations on the times within which, and the purpose for which, Bond Proceeds may be expended, or the use of specified procedures for accounting for and segregating Bond Proceeds. Such covenants and agreements may be set forth in a Tax Certificate and Compliance Agreement.

Section 6. Authority to Take Action.

The Mayor, Treasurer, City Manager, City Attorney, and all other officers and employees of the City are expressly authorized, empowered and directed to take any and all action necessary to complete and close the sale and delivery of the Bond to the Bank, and to execute and deliver all documents, certificates and instruments necessary and appropriate in connection therewith, including, without limitation, any documents, certificates or instruments containing covenants or representations of the City for the benefit of the Bank that are reasonably requested by the Bank.

Section 7. Ordinance a Contract.

The provisions of this Ordinance shall constitute a contract between the City and the registered owner or owners of the Bond, and this Ordinance shall not be repealed, modified or altered in any manner materially adverse to the interests of such owner or owners while the Bond or any portion thereof remains outstanding and unpaid without the consent of the owner or owners of the Bond.

Section 8. Effective Date.

This Ordinance shall take effect from the date of its adoption, and the laws of the State of Maryland shall govern its construction and the construction of the Bonds. Any copy of this Ordinance duly certified by the City Manager, or his or her successor in office, shall constitute evidence of the contents and provisions hereof.

THIS ORDINANCE IS ADOPTED BY THE COUNCIL OF THE CITY OF MOUNT RAINIER THIS ___ DAY OF _____, 2010.

Attest:

Jeannelle B. Wallace, City Manager

Malinda Miles, Mayor

Alta Morton, Councilmember

Jimmy Tarlau, Councilmember

Bryan Knedler, Councilmember

Ivy Thompson, Councilmember