

## REPORT TO CITY COUNCIL

**DATE:** JUNE 22, 2022  
**TO:** HONORABLE MAYOR AND MEMBERS OF THE CITY COUNCIL  
**FROM:** NATHAN HAMBURGER, CITY MANAGER  
**BY:** CHRISTY TRUELSEN, DIRECTOR OF FINANCE  
**SUBJECT:** AMEND MUNICIPAL SECURITIES POST-ISSUANCE DISCLOSURE POLICY

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In May 2014, the City Council adopted a Financial Policy which requires that each financial policy be updated every three years, reviewed by the Finance Sub-Committee, and considered by the City Council for final approval. This year, the City Attorney recommended changes to the Municipal Securities Post-Issuance Disclosure Policy, eliminating a section that was no longer relevant. The recommended changes were reviewed by the City Finance Subcommittee and a further discussion was held at the Budget Workshop on June 8, 2022.

### RECOMMENDATION

Staff respectfully requests that the City Council adopt the recommended changes to the Municipal Securities Post-Issuance Disclosure Policy.



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## **TAX-ADVANTAGED BONDS POST-ISSUANCE COMPLIANCE PROCEDURES**

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### **A. Purpose**

The City of Agoura Hills, California (the "City") is committed to providing timely and consistent dissemination of financial information in accordance with the continuing disclosure undertakings of the City and its related entities (e.g., Agoura Hills Public Financing Authority), entered into in furtherance of Securities and Exchange Commission ("SEC") Rule 15c2-12 (the "Rule" or "SEC Rule 15c2-12"). As used herein, the term "City" may include the City and/or its related entities, as the context may require.

This policy affirms the City's commitment to post-issuance disclosure. The goal is to establish and maintain guidelines for presenting related financial reports and events to interested third parties, financial institutions and the general public in compliance with the Rule and the City's continuing disclosure undertakings.

### **B. Scope**

This policy covers all City employees and officials of the City. It covers disclosure documents filed with the Municipal Securities Rulemaking Board (the "MSRB").

### **C. Responsibility of the Disclosure Working Group**

The City has established a Disclosure Working Group ("DWG") consisting of the City's City Manager, Director of Finance, Finance Manager and Treasurer and others from the Finance Department as designated by the Director of Finance. The DWG shall keep a file of all continuing disclosure undertakings (including continuing disclosure agreements and certificates and relevant annual disclosure covenants in Indentures or Trust Agreements), as well as the related Official Statements. Annually in connection with its continuing disclosure filings required by the continuing disclosure undertakings of the City and its related entities, the DWG will systematically review filings, reports and other public statements to determine whether any updating or correcting of information is appropriate. The DWG will review and recommend updates to the City Council, if necessary, to this disclosure policy. Finally, the DWG will react quickly to developments and events that affect the City and notify its dissemination agent, when appropriate.

The City's primary spokesperson related to the City's financial information, debt and financings, and other financial reports and events is the City's City Manager. Others within the City may, from time to time, be designated by the City Manager as spokespersons on

behalf of the City and respond to specific inquiries. It is essential that the DWG be fully apprised of all material developments of the City in order to evaluate, discuss those events and determine the appropriateness and timing for release.

The City or its designated agent will provide continuing disclosure documents and related information to the MSRB's EMMA System <http://dataport.emma.msrb.org>. The continuing disclosure documents, which include annual financial statements, operating data of the City and its related entity issuers and Event Notices (as defined in Section E below), will be posted to the EMMA website by the City's Disclosure Dissemination Agent, Digital Assurance Certification, LLC ("DAC"), or its successor, upon the approval of the City's Director of Finance.

#### **D. Annual Reporting Date Requirements**

The Director of Finance shall review the continuing disclosure undertaking (to the extent not otherwise exempt therefrom under the Rule) for each separate issue of the outstanding municipal securities of the City or its related entities and identify the following:

- (i) the date by which the Annual Report must be filed;
- (ii) the contents that need to be included in the Annual Report;
- (iii) the Event Notices that must be filed; and
- (iv) when Event Notices are required to be filed.

For a current list of the City's debt issues, including those which are not subject to the Rule, please refer to the notes found in the City's most current Audited Financial Statements regarding Long-Term Liabilities.

#### **E. Event Notice Requirements**

Unless otherwise specified, the City's Director of Finance will be responsible for monitoring the occurrence of the events specified in this Section E, determining (if necessary) their materiality, and notifying the Dissemination Agent of the occurrence of a reportable event for further filing of a notice (each, an "Event Notice") with the MSRB.

##### **1. Event Notices for Debt Issued on or after February 27, 2019.**

For any debt issues (subject to SEC Rule 15c2-12) issued on or after February 27, 2019, notice of the following events would need to be provided to the City's Disclosure Dissemination Agent, for further filing with the MSRB, *within ten (10) business days of their occurrence.*

- Any of the 14 types of events listed in Section E.2. below.
- Incurrence of a financial obligation of the obligated person (i.e., City or a related entity of the City), if material, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation, any of which affect the security holders, if material.
- Default, event of acceleration, termination event, modification of terms, or other similar events under the terms of the financial obligation of the obligated person (i.e., City or a related entity of the City), any of which reflect financial difficulties.

For purposes of the foregoing, “financial obligation” means (i) a debt obligation (including a lease entered into as a vehicle to borrow money, but excluding ordinary financial and operating liabilities incurred in the normal course of business), (ii) a derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) a guarantee of (i) or (ii); provided, the term “financial obligations” shall not include (a) municipal securities as to which a final official statement has been posted on the EMMA website in accordance with the Rule, and (b) monetary obligations resulting from a judicial, administrative, or arbitration proceeding.

In connection with the events described in the last two bullet points above (which relate to amendments to the Rule adopted by the SEC in 2018), for any new continuing disclosure undertaking executed on or after February 27, 2019 with respect to a debt issue (the “Debt”), the Director of Finance shall, before the Debt issuance date, review the City’s financial records and create a list (each, a “Financial Obligations List”) of the existing financial obligations (as such term is defined in the Rule) at such time of the City and its related entities. The Financial Obligations List will generally include those financial obligations identified in the long-term debt notes (and which remain outstanding at the time) found in the City’s most current Audited Financial Statements, as well as any additional financial obligations incurred since the date of such Audited Financial Statements. The Financial Obligations list shall be updated continuously during the term of such Debt, and in connection with each update, the Director of Finance shall make the determination described in the following paragraph.

Whenever the City prepares to enter into a new financial obligation or modify the terms of an existing financial obligation, the Director of Finance shall determine whether the incurrence of such financial obligation or modification of terms would require an Event Notice under any continuing disclosure undertaking for Debt issued on or after February 27, 2019. If a determination is made that an Event

Notice would be required, the Director of Finance, in consultation with legal counsel, shall cause the Event Notice to be filed on a timely basis.

2. Event Notices for Debt Issued before February 27, 2019 and on or after December 1, 2010.

For any debt issues (subject to SEC Rule 15c2-12) issued before February 27, 2019 and on or after December 1, 2010, notice of the following events would need to be provided to the City's Disclosure Dissemination Agent, for further filing with the MSRB, *within ten (10) business days of their occurrence*.

- Principal and interest payment delinquencies
- Non-payment related defaults, if material
- Unscheduled draws on debt service reserves reflecting financial difficulty
- Unscheduled draws on credit enhancements reflecting financial difficulty
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701 TEB) or other material notices or determinations with respect to the tax status of the security or other material events affecting the tax status of the security
- Modifications to rights of security holders, if material
- Bond calls, if material, and tender offers
- Defeasances
- Release, substitution, or sale of property securing repayment of the securities, if material
- Rating changes
- Bankruptcy, insolvency, receivership or similar event of the obligated person (i.e., City or a related entity of the City).
- The consummation of a merger, consolidation, or acquisition involving an obligated person or the sale of all or substantially all of the assets of the obligated person, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material
- Appointment of a successor or additional trustee or the change of name of a trustee, if material.

3. Event Notices for Debt Issued prior to December 1, 2010.

For any debt issues (subject to SEC Rule 15c2-12) issued prior to December 1, 2010, notice of the following events, *if determined to be material*, would need to be

provided to the City's Disclosure Dissemination Agent, for further filing with the MSRB, "in a timely manner."

- Principal and interest payment delinquencies
- Non-payment related defaults
- Unscheduled draws on debt service reserves reflecting financial difficulty
- Unscheduled draws on credit enhancements reflecting financial difficulty
- Substitution of credit or liquidity providers, or their failure to perform
- Adverse tax opinions or events affecting the tax-exempt status of the security
- Modifications to rights of security holders
- Bond calls
- Defeasances
- Release, substitution, or sale of property securing repayment of the securities
- Rating changes

4. Notices of Failure to File. In addition, the City's Director of Finance will be responsible for providing notice, in a timely manner, of a failure by the City or other obligated related entity, as applicable, to provide any of the required annual financial information by the date specified in the continuing disclosure undertaking.

#### **F. Voluntary Disclosure Requirements**

In addition to preparing annual reports and Event Notices, the City may wish to keep investors informed by providing information that is not required to be provided under its continuing disclosure undertakings entered into in furtherance of the Rule. Examples of such types of information are investments, interim financial information, capital improvement plans, fund balance policies, etc. and financial forecasts.

Because providing this information is voluntary, the City Manager will monitor events which may impact the City, so that a determination can be made by the DWG, in consultation with the City's legal counsel, if the event should be disclosed.

Information provided to potential or present owners of municipal securities is subject to federal securities laws, regulations and standards. Therefore, all proposed voluntary disclosure notices will be subject to legal review prior to any dissemination.

Evidence of the filings for any of the Event Notices described in Section E of this Policy or any voluntary disclosed notice described in this Section F, when made, shall be maintained on the DAC system, for so long as DAC is the City's Disclosure Dissemination Agent.

The City does not maintain an "Investor Relations" website.

**G. Training for Employees and Issuer Officials**

For City officials, compliance with federal securities law should be considered as important as compliance with local public meetings and records laws. Periodic review of the continuing disclosure policies of the City will be in compliance with the City's financial policy.

**H. Effective Date**

This Amended and Restated Policy shall become effective immediately upon its approval by the City Council.