

FIRST PUBLISHED IN THE DAILY REPORTER ON JULY 14, 2009

ORDINANCE NO. 48-366

AN ORDINANCE AMENDING SECTION 2.05.010 OF THE CODE OF THE CITY OF WICHITA, KANSAS, RELATING TO A MASTER UNDERTAKING TO PROVIDE ONGOING DISCLOSURE IN CONNECTION WITH GENERAL OBLIGATION BONDS ISSUED BY THE CITY OF WICHITA, KANSAS, FOR DISTRIBUTION IN PUBLIC OFFERINGS.

BE IT ORDAINED BY THE GOVERNING BODY OF THE CITY OF WICHITA, KANSAS:

SECTION 1. Section 2.05.010 of the Code of the City of Wichita shall read as follows:

**2.05.010 Undertaking to Provide Ongoing Disclosure in Connection with City of Wichita General Obligation Bonds Issued for Distribution Through Public Offering.**

(a) This Section 2.05.010 establishes and constitutes a written undertaking which shall function as a master undertaking for the benefit of the holders as well as the beneficial owners of all general obligation bonds issued by the City of Wichita purchased for public distribution by one or more underwriters, on or after July 3, 1995 (the "Bonds"), as required to establish legal preconditions for sale of the Bonds through an underwriter or underwriters, under Section (b)(5)(i) of Securities and Exchange Commission ("SEC") Rule 15c2-12 (the "Rule") promulgated under the Securities Exchange Act of 1934, as amended.

(b) This Subsection (b) of Section 2.05.010 shall apply to all Bonds issued on or between July 3, 1995, and June 30, 2009.

(1) The City of Wichita, as issuer of the Bonds (the "Issuer") undertakes to provide the following information, at the times and to the recipients as provided in this Section 2.05.010(b):

- (i) Annual Financial Information;
- (ii) Audited Financial Statements; and,
- (iii) Material Event Notices.

(2) So long as the Rule continues to require an undertaking to make ongoing disclosure as established herein, or performance of prior such undertakings, then, with respect to all of the Bonds issued subject to such requirements which remain Outstanding:

(i) The Issuer shall provide the Annual Financial Information on or before December 31 of each year (the "Report Date"), beginning in December 1996, to each then existing NRMSIR and the SID, if any. The Issuer may adjust the Report Date if the Issuer changes its fiscal year by providing written notice of the change of fiscal year and the new Report Date to each then existing NRMSIR and the SID, if any; provided that the new Report Date shall be not more than 365 days after the end of the new fiscal year and provided further that the final Report Date relating to the former fiscal year and the initial Report Date relating to the new fiscal year shall not exceed one year in duration. It shall be sufficient if the Issuer provides to each then existing NRMSIR and the SID, if any, the

Annual Financial Information by specific reference to documents previously provided to each NRMSIR and the SID, if any, or filed with the Securities and Exchange Commission and, if such a document is a final official statement within the meaning of the Rule, available from the Municipal Securities Rulemaking Board ("MSRB"). The Issuer shall also provide to each NRMSIR and the SID, if any, copies of each final official statement (within the meaning of the Rule) which is produced on or after July 3, 1995, in connection with the offering of any of the Bonds, within 60 days after such official statement is finalized for distribution by the underwriter.

(ii) The Issuer shall provide the Audited Financial Statements as part of the Annual Financial Information described in the preceding paragraph of this subsection.

(iii) If a Material Event occurs, the Issuer shall provide a Material Event Notice in a timely manner to the MSRB and the SID, if any. Each "Material Event Notice" shall be so captioned, and shall prominently state the date, title and CUSIP numbers of the Bonds to which the Material Event(s) covered by the Material Event Notice pertain(s).

(iv) The Issuer shall provide, in a timely manner, to the MSRB and to the SID, if any, notice of any failure by the Issuer to provide Annual Financial Information on or before the Report Date to each then existing NRMSIR and the SID (if any) as required by the terms of this Section 2.05.010(b).

(3) The following are the definitions of the capitalized terms used in this Section 2.05.010(b) and not otherwise defined elsewhere in this Section 2.05.010(b):

(i) "Annual Financial Information" means the Issuer's Comprehensive Annual Financial Report ("CAFR"), presenting financial and statistical information for the previous fiscal year (prepared in accordance with the guidelines of the Government Finance Officers Association of the United States and Canada ("GFOA"), as the same may be from time to time amended), and operating data with respect to the Issuer, provided at least annually, of the type included in official statements relating to the Bonds (including some unaudited data).

(ii) "Audited Financial Statements" means the Issuer's general purpose financial statements for the previous fiscal year, prepared in accordance with generally accepted accounting principles ("GAAP") for governmental units as prescribed by the Governmental Accounting Standards Board ("GASB") (except as otherwise stated or disclosed in the notes thereto or as otherwise required by applicable law, as the same may be from time to time amended), which shall have been audited by such auditor(s) as shall be then required or permitted by applicable law.

(iii) "Material Event" means any of the following events, if material-, with respect to any of the Outstanding Bonds:

(A) Principal and interest payment delinquencies;

(B) Non-payment related defaults;

(C) Unscheduled draws on debt service reserves reflecting financial difficulties;

- (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (E) Substitution of credit or liquidity providers or their failure to perform;
- (F) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (G) Modifications to rights of security holders;
- (H) Bond calls;
- (I) Defeasances;
- (J) Release, substitution, or sale of property securing repayment of the securities;
- (K) Rating changes.

(iv) "Material Event Notice" means written or electronic notice of a Material Event.

(v) "NRMSIR" means a nationally recognized municipal securities information repository, as recognized from time to time by the SEC for the purposes referred to in the Rule.

(vi) "Outstanding" when used with reference to any of the Bonds shall mean, as of a particular date, all Bonds theretofore authenticated and delivered under one or more Ordinances of the City of Wichita, except: (i) theretofore canceled by the Fiscal Agent (as defined in the Ordinance(s) authorizing the issuance of such Bonds) or delivered to such Fiscal Agent for cancellation; (ii) Bonds for which payment or redemption monies or Government Securities (as defined in the Ordinance(s) authorizing the issuance of such Bonds), or both, in the necessary amounts have been deposited with the Fiscal Agent or other such depository as provided in the Ordinance(s) authorizing the issuance of such Bonds, in trust for the Owners thereof (whether upon or prior to maturity or the Redemption Date(s) of such Bonds); or (iii) Bonds in exchange for or in lieu of which Refunding Bonds have been authenticated and delivered pursuant to the terms of (and within the meaning of) the appropriate Ordinance(s).

(vii) "Redemption Date(s)" shall mean, when used with respect to any Bond(s), the date(s) established as such in the Ordinance(s) authorizing the issuance of such Bond(s).

(viii) "SID" means a state information depository as operated or designated as such by the State of Kansas for the purposes referred to in the Rule.

(4) Unless otherwise required by law and subject to technical and economic feasibility, and to annual appropriations, the Issuer will exercise its best efforts to employ such methods of information transmission as shall be requested or recommended by the designated recipients of the Issuer's information.

(5) This Section 2.05.010(b) or any provision hereof, shall be subject to nullification and repeal in the event that the Issuer first delivers to each then existing NRMSIR and the SID, if any, an opinion of nationally recognized bond counsel to the effect that those portions of the Rule that require this Section 2.05.010(b) as a condition for particular underwriter conduct, or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Bond. This Section 2.05.010(b) may be amended without the consent of the holders or beneficial owners of any Bond(s), following the delivery by the Issuer to each then existing NRMSIR and the SID, if any, of the proposed amendment and the opinion of nationally recognized bond counsel to the effect that such amendment, and giving effect thereto, will not adversely affect the adequacy of this Section 2.05.010(b) or the adequacy of the Issuer's subsequent conduct for purposes of compliance with the Rule, provided, however, that no such amendment will be made unless the following conditions are satisfied:

(i) The amendment may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the Issuer, or type of business conducted;

(ii) The undertaking, as amended, would have complied with the requirements of the Rule at the time of any primary offering to which the undertaking applies, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances;

(iii) The amendment does not materially impair the interests of holders, as determined either by parties unaffiliated with the Issuer (such as the trustee or bond counsel) or by approving vote of holders of the Bonds pursuant to the terms of the governing instrument(s) at the time of the amendment;

(iv) If the amendment changes the type of operating data or financial information provided pursuant to the Issuer's undertaking, the Annual Financial Information containing the amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided; and,

(v) If the amendment alters portions of the Issuer's undertaking specifying the accounting principles to be followed in preparing financial statements, the Annual Financial Information for the year in which the change is made will present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles, which comparison should include a qualitative (and to the extent reasonably feasible, quantitative) discussion of the differences in the accounting principles and the impact of the change in principles on the presentation of the financial information. A notice of the change in accounting principles will be sent to the NRMSIRs or the MSRB, and the appropriate SID, if any.

(6) Any failure by the Issuer to perform in accordance with this Section 2.05.010(b) shall not constitute an "Event of Default" or "Default" within the meaning of any Ordinance(s) authorizing the issuance of any of the Bonds, and the rights and remedies provided to holders or beneficial owners of the Bonds under such Ordinance(s) upon the occurrence of such a "Default" or such an "Event of Default" shall not apply to any such failure.

(7) If any of the foregoing provisions or terms of this Section 2.05.010(b), or any application thereof, is held invalid, the invalidity shall not affect other applications of the provisions or terms of this Section 2.05.010(b) which reasonably can be given effect without the invalid provision or term or the application thereof, and to this end, the provisions of this Section 2.05.010(b) are declared to be severable:

(8) None of the provisions of this Section 2.05.010(b) are in any way intended to impose upon, or result in an assumption by, the City of Wichita or any of its officers, agents or employees, of any special duty or any civil law duty of care as to which any breach or alleged breach thereof could give rise to any claim for damages in tort, and the City hereby expressly disclaims any such duty or responsibility for damages, including (but not limited to) any direct, indirect, special or consequential damages. The provisions of this Section 2.05.010(b) shall not, in any way, create liability or a basis for liability on the part of the City of Wichita, Kansas or any officer or employee thereof for any damages that result from failure of the Issuer to timely perform any portion, provision, term or condition of the written undertaking on its part established herein, or for any damages that result from reliance upon any provision of this Section 2.05.010(b) or any administrative decision lawfully made thereunder. However, nothing in this subsection shall operate or be construed to limit the rights of any holder or beneficial owner of any Bond to seek enforcement of the undertakings herein expressed through proceedings for a decree of specific performance in equity.

(c) This Subsection (c) of Section 2.05.010 shall apply to all Bonds issued after the publication of this ordinance.

(1) The following are the definitions of the capitalized terms used in this Section 2.05.010(c) and not otherwise defined elsewhere in this Section 2.05.010(c):

(i) "Annual Financial Information" means the City's Comprehensive Annual Financial Report ("CAFR"), presenting financial and statistical information for the previous fiscal year (prepared in accordance with the guidelines of the Government Finance Officers Association of the United States and Canada ("GFOA"), as the same may be from time to time amended), and operating data with respect to the City, provided at least annually, of the type included in official statements relating to the Bonds (including some unaudited data).

(ii) "Audited Financial Statements" means the City's general purpose financial statements for the previous fiscal year, prepared in accordance with GAAP for governmental units as prescribed by the GASB (except as otherwise stated or disclosed in the notes thereto or as otherwise required by applicable law, as the same may be from time to time amended), which shall have been audited by such auditor(s) as shall be then required or permitted by applicable law.

(iii) "City" means the city of Wichita, Kansas.

(iv) "EMMA" means the Electronic Municipal Market Access facility for municipal securities disclosure of the MSRB, or any other market access method approved under the Rule.

(v) "GAAP" means generally accepted accounting principles.

(vi) "GASB" means the Governmental Accounting Standards Board or its successors or assigns.

(vii) "Material Event" means any of the following events, if material, with respect to any of the Outstanding Bonds:

- (A) Principal and interest payment delinquencies;
- (B) Non-payment related defaults;
- (C) Unscheduled draws on debt service reserves reflecting financial difficulties;
- (D) Unscheduled draws on credit enhancements reflecting financial difficulties;
- (E) Substitution of credit or liquidity providers or their failure to perform;
- (F) Adverse tax opinions or events affecting the tax-exempt status of the security;
- (G) Modifications to rights of security holders;
- (H) Bond calls (other than mandatory sinking fund redemptions);
- (I) Defeasances;
- (J) Release, substitution, or sale of property securing repayment of the securities;
- (K) Rating changes.

(viii) "Material Event Notice" means notice in Prescribed Form in accordance with EMMA of a Material Event.

(ix) "MSRB" means the Municipal Securities Rulemaking Board and any successors or assigns, or any other entities or agencies approved under the Rule.

(x) "Outstanding" when used with reference to any of the Bonds shall mean, as of a particular date, all Bonds theretofore authenticated and delivered under one or more ordinances of the City, except: (i) Bonds theretofore canceled by the fiscal agent or paying agent (as defined in the ordinance(s) authorizing the issuance of such Bonds) or delivered to such fiscal agent or paying agent for cancellation; (ii) Bonds for which payment or redemption monies or government securities (as defined in the ordinance(s) authorizing the issuance of such Bonds), or both, in the necessary amounts have been deposited with the fiscal agent or paying agent or other such depository as provided in the ordinance(s) authorizing the issuance of such Bonds, in trust for the owners thereof (whether upon or prior to maturity or the Redemption Date(s) of such Bonds); or (iii) Bonds in exchange for or in lieu of which refunding bonds have been authenticated and

delivered pursuant to the terms of (and within the meaning of) the appropriate ordinance(s).

(xi) "Prescribed Form" means such electronic format accompanied by such identifying information as shall have been prescribed by the MSRB and which shall be in effect on the date of filing of the applicable information.

(xii) "Redemption Date(s)" shall mean, when used with respect to any Bond(s), the date(s) established as such in the ordinance(s) authorizing the issuance of such Bond(s).

(xiii) "Report Date" means December 31st of each year, beginning December 31, 2009.

(2) The City, as an "obligated person" within the meaning of the Rule, undertakes to provide the following information, at the times and to the recipients as provided in this Section 2.05.010(c):

- (i) Annual Financial Information;
- (ii) Audited Financial Statements; and,
- (iii) Material Event Notices.

(3) So long as the Rule continues to require an undertaking to make ongoing disclosure as established herein, or performance of prior such undertakings, then, with respect to all of the Bonds issued subject to such requirements which remain Outstanding:

(i) The City shall provide the Annual Financial Information in Prescribed Form in accordance with EMMA to the MSRB, on or before the Report Date. The City may adjust the Report Date if the City changes its fiscal year by providing written notice of the change of fiscal year and the new Report Date to the MSRB; provided that the new Report Date shall be six months after the end of the new fiscal year and provided further that the period between the final Report Date relating to the former fiscal year and the initial Report Date relating to the new fiscal year shall not exceed one year in duration. It shall be sufficient if the City provides to the MSRB the Annual Financial Information by specific reference to documents available to the public on the MSRB's Internet Web site, or filed with the SEC.

(ii) If not provided as part of the Annual Financial Information, the City shall provide the Audited Financial Statements when and if available to the MSRB in Prescribed Form in accordance with EMMA.

(iii) If a Material Event occurs, the City shall file a Material Event Notice in a timely manner in Prescribed Form in accordance with EMMA with the MSRB. Each "Material Event Notice" shall be so captioned, and shall prominently state the date, title and CUSIP numbers of the Bonds to which the Material Event(s) covered by the Material Event Notice pertain(s).

(iv) The City shall provide in Prescribed Form in accordance with EMMA in a timely manner to the MSRB notice of any failure by the City to provide Annual

Financial Information on or before the Report Date to the MSRB as required by the terms of this Section 2.05.010(c).

(4) The information listed in Subsection (c)(2) shall be provided by the City to the MSRB, at [www.emma.msrb.org](http://www.emma.msrb.org), in the Prescribed Form or by such other method of transmitting information that is approved by the SEC.

(5) This Section 2.05.010(c) or any provision hereof, shall be subject to nullification and repeal in the event that the City first delivers to the MSRB, an opinion of nationally recognized bond counsel to the effect that those portions of the Rule that require this Section 2.05.010(c) as a condition for particular underwriter conduct, or any such provision, are invalid, have been repealed retroactively or otherwise do not apply to the Bonds. This Section 2.05.010(c) may be amended without the consent of the holders or beneficial owners of any Bond(s), following the delivery by the City to the MSRB, of the proposed amendment and the opinion of nationally recognized bond counsel to the effect that such amendment, and giving effect thereto, will not adversely affect the adequacy of this Section 2.05.010(c) or the adequacy of the City's subsequent conduct for purposes of compliance with the Rule, provided, however, that no such amendment will be made unless the following conditions are satisfied:

(i) The amendment may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature, or status of the City, or type of business conducted;

(ii) The undertaking, as amended, would have complied with the requirements of the Rule at the time of any primary offering to which the undertaking applies, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances;

(iii) The amendment does not materially impair the interests of holders, as determined either by parties unaffiliated with the City (such as the trustee or bond counsel) or by approving vote of holders of the Bonds pursuant to the terms of the governing instrument(s) at the time of the amendment;

(iv) If the amendment changes the type of operating data or financial information provided pursuant to the City's undertaking, the Annual Financial Information containing the amended operating data or financial information will explain, in narrative form, the reasons for the amendment and the impact of the change in the type of operating data or financial information being provided; and,

(v) If the amendment alters portions of the City's undertaking specifying the accounting principles to be followed in preparing financial statements, the Annual Financial Information for the year in which the change is made will present a comparison between the financial statements or information prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles, which comparison should include a qualitative (and to the extent reasonably feasible, quantitative) discussion of the differences in the accounting principles and the impact of the change in principles on the presentation of the financial information. A notice of the change in accounting principles will be sent to the MSRB.

(6) Any failure by the City to perform in accordance with this Section 2.05.010(c) shall not constitute an "Event of Default" or "Default" within the meaning of any ordinance(s)

authorizing the issuance of any of the Bonds, and the rights and remedies provided to holders or beneficial owners of the Bonds under such ordinance(s) upon the occurrence of such a "Default" or such an "Event of Default" shall not apply to any such failure.

(7) If any of the foregoing provisions or terms of this Section 2.05.010(c), or any application thereof, is held invalid, the invalidity shall not affect other applications of the provisions or terms of this Section 2.05.010(c) which reasonably can be given effect without the invalid provision or term or the application thereof, and to this end, the provisions of this Section 2.05.010(c) are declared to be severable.

(8) None of the provisions of this Section 2.05.010(c) are in any way intended to impose upon, or result in an assumption by, the City or any of its officers, agents or employees, of any special duty or any civil law duty of care as to which any breach or alleged breach thereof could give rise to any claim for damages in tort, and the City hereby expressly disclaims any such duty or responsibility for damages, including (but not limited to) any direct, indirect, special or consequential damages. The provisions of this Section 2.05.010(c) shall not, in any way, create liability or a basis for liability on the part of the City or any officer or employee thereof for any damages that result from failure of the City to timely perform any portion, provision, term or condition of the written undertaking on its part established herein, or for any damages that result from reliance upon any provision of this Section 2.05.010(c) or any administrative decision lawfully made thereunder. However, nothing in this subsection shall operate or be construed to limit the rights of any holder or beneficial owner of any Bond to seek enforcement of the undertakings herein expressed through proceedings for a decree of specific performance in equity.

(9) This Section 2.05.010(c) shall inure solely to the benefit of the holders of the Bonds as required by Section (b)(5)(i) of the Rule, and shall create no rights in any other person or entity.

(10) The City shall maintain records of all disclosure made pursuant to this Section 2.05.010(c), including the content of such disclosure, the names of the entities with whom such disclosure was filed and the date of filing such disclosure.

SECTION 2. Ordinance 42-996, passed on February 27, 1996, is hereby repealed in its entirety and replaced by this ordinance.

SECTION 3. This ordinance shall be included in the Code of the City of Wichita, Kansas, and shall be effective upon its passage and publication once in the official city newspaper.

PASSED by the Governing Body of the City of Wichita, Kansas this 14<sup>th</sup> day of July, 2009.

CITY OF WICHITA, KANSAS

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Carl Brewer, Mayor

Attest:

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Karen Sublett, City Clerk

(Seal)

Approved as to Form:

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Gary E. Rebenstorf, Director of Law