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Informational Guideline Release

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LEASE PURCHASE FINANCING AGREEMENTS

(G.L. c. 44, § 21C)

This Informational Guideline Release (IGR) explains to local officials the municipal finance requirements, procedures and treatment of lease purchase financing agreements authorized under G.L. c. 44, § 21C.

Topical Index Key:

Accounting Policies and Procedures
Appropriations
Borrowing
Budgets
Financial Management

Distribution:

Assessors
Municipal/District Treasurers
Accountant/Auditors
Mayors/Selectmen
City/Town Managers/Administrators/Exec. Secys.
Finance Directors
City/Town Councils
City Solicitors/Town Counsels
District Chairmen

LEASE PURCHASE FINANCING AGREEMENTS

([G.L. c. 44, § 21C](#))

SUMMARY:

These guidelines explain [G.L. c. 44, § 21C](#), added to the general laws by section 69 of the Municipal Modernization Act (Act) [St. 2016, c. 218](#). This new law establishes a procedure for a city, town or district to authorize lease purchase financing agreements, also known as tax-exempt lease purchase agreements or TELPs. Agreements that meet the requirements of [G.L. c. 44, § 21C](#) will become a binding obligation of the city, town or district as if it were debt issued under [G.L. c. 44](#) and may be refinanced by the issuance of refunding bonds in accordance with [G.L. c. 44, § 21A](#). A district for purposes of G.L. c. 44, is a water, sewer or other improvement district. [G.L. c. 44, § 1](#).

GUIDELINES:

I. LEASE PURCHASE FINANCING AGREEMENTS

A. Generally

A lease purchase financing agreement is an agreement used to finance the acquisition of equipment or some other item where a city, town or district makes payments to the owner of the equipment (usually a financing company) for its use of the equipment during the term of the agreement and, at the end of the agreement, title or ownership of the equipment is transferred to the city, town or district for no or nominal consideration.

B. Requirements of Lease Purchase Financing Agreements under [G.L. c. 44, § 21C](#)

1. Purpose

A lease purchase financing agreement must be for the purpose of:

- a. Acquiring equipment, the acquisition of which could be financed by the issuance of debt under [G.L. c. 44](#) or other general or special law; or
- b. Improving a capital asset, the improvement of which could be financed by the issuance of debt under [G.L. c. 44](#) or other general or special law.

2 Required Authorizations

a. Chief Executive Officer Recommendation

A recommendation of the chief executive officer of the city, town or district is required for the authorization of a lease purchase financing agreement. In a city, the chief executive officer is the mayor, in a town, the board of selectmen and in a district, the prudential committee, if any, otherwise, the commissioners.

b. Legislative Body Approval

Upon the recommendation of the chief executive officer described above, a two-thirds vote of the legislative body is required to authorize a city, town or district to enter into a lease purchase financing agreement. The legislative body vote should, at a minimum, identify: (1) the equipment to be acquired/capital asset to be improved; (2) the maximum term of the agreement and (3) the department authorized to enter into the agreement. The legislative body vote could authorize one or more agreements provided they are each similarly identified. (See attached sample legislative body authorization votes.)

3. Term of Agreement

The term of a lease purchase financing agreement cannot exceed the useful life of the equipment to be acquired or the capital asset improvement. The chief executive officer of the city, town or district determines the useful life.

4. Effective Date

[G.L. c. 44, § 21C](#) applies to agreements authorized on or after November 7, 2016. A lease purchase financing agreement under [G.L. c. 44, § 21C](#) must be authorized before its effective date; it cannot be authorized retroactively.

5. Applicability to Regional School Districts

Although [G.L. c. 44, § 28A](#) makes the provisions of §§ 16 through 28 of c. 44 generally applicable to regional school districts, a separate, more specific statute applies to lease/purchases of equipment for educational purposes by regional school districts. [G.L. c. 71, § 16\(p\)](#). Because a general statute yields to a statute specifically tailored for the purpose, a regional school district should follow the provisions of [G.L. c. 71, § 16\(p\)](#) and not [G.L. c. 44, § 21C](#).

II. TREATMENT OF LEASE PURCHASE FINANCING AGREEMENTS

A. Binding Obligation

An agreement that meets the requirements of [G.L. c. 44, § 21C](#), described in section I-B above, is a binding obligation of the city, town or district as if it were debt authorized

under [G.L. c. 44](#), provided the legislative body approves an appropriation, by majority vote, for the purpose of funding the payments due in the first fiscal year of the agreement. An appropriation to fund the first fiscal year payments may be included in the annual operating budget for the department or a capital budget or an appropriation may be separately approved by the legislative body. (See attached samples legislative body votes.)

Because the obligation is treated as if it is debt authorized under [G.L. c. 44](#), the amount required for payments due under the agreement after the first year may be encumbered by the accounting officer for the purpose within the appropriate departmental or capital budget. If the legislative body has not otherwise provided for such payments, they will be included by the assessors when setting the tax rate under [G.L. c. 59, § 23](#). This is the same procedure used for the payment of principal and interest on debt issued under [G.L. c. 44](#).

B. Refunding Bonds

An agreement that meets the requirements of [G.L. c. 44, § 21C](#), described in section I-B and II-A above, may be refinanced by the issuance of refunding bonds in accordance with [G.L. c. 44, § 21A](#).

LEASE PURCHASE FINANCING AGREEMENT AUTHORIZATION

Sample City/Town Legislative Body Vote – Single Agreement
(Sample should not be used without the advice of municipal counsel.)

ARTICLE/ORDER: To see if the city/town will authorize, under [General Laws Chapter 44, Section 21C](#), upon the recommendation of the (mayor/board of selectmen), a lease purchase financing agreement for the (acquisition of _____, equipment that may be acquired through the issuance of debt under G.L. c. 44 / improvement of _____, a capital asset the improvement of which may be financed by the issuance of debt under G.L. c. 44), the term of such agreement not to exceed ____ years, the useful life of the (equipment/improvement) as determined by the (mayor/board of selectmen), and the _____ department shall be authorized to enter into such agreement on behalf of the city/town, subject to approval of an appropriation for the first year payments (state funding source), or to take any other action relative thereto. (Two-thirds vote required.)

MOTION: I move that the city/town authorize, under [General Laws Chapter 44, Section 21C](#), upon the recommendation of the (mayor/board of selectmen), a lease purchase financing agreement for the (acquisition of _____, equipment that may be acquired through the issuance of debt under G.L. c. 44 / improvement of _____, a capital asset the improvement of which may be financed by the issuance of debt under G.L. c. 44), the term of such agreement not to exceed ____ years, the useful life of the (equipment/improvement) as determined by the (mayor/board of selectmen), and the _____ department shall be authorized to enter into such agreement on behalf of the city/town. (Two-thirds vote required.)

LEASE PURCHASE FINANCING AGREEMENT AUTHORIZATION

Sample City/Town Legislative Body Vote – Multiple Agreements
(Sample should not be used without the advice of municipal counsel.)

ARTICLE/ORDER: To see if the city/town will authorize, under [General Laws Chapter 44, Section 21C](#), upon the recommendation of the (mayor/board of selectmen), the following lease purchase financing agreements for the acquisition of equipment that may be acquired through the issuance of debt under G.L. c. 44 or improvement of a capital asset the improvement of which may be financed by the issuance of debt under G.L. c. 44, the term of such agreement not to exceed the useful life of the equipment or improvement as determined by the (mayor/board of selectmen), and to authorize the departments specified below to enter into such agreements on behalf of the city/town, subject to approval of an appropriation for the first year payments of the agreements as stated below, or to take any other action relative thereto. (Two-thirds vote required.)

<u>Equipment/capital asset</u>	<u>Maximum Term</u>	<u>Authorized Department</u>	<u>Appropriation</u>
Copiers	5 years	School Department	FY ____ Operating
Roll-off Truck	5 years	Public Works	FY ____ Public Works Contractual Services
Tractor	10 years	Public Works	FY ____ Capital Equipment Budget

MOTION: I move that the city/town authorize, under [General Laws Chapter 44, Section 21C](#), upon the recommendation of the (mayor/board of selectmen), the following lease purchase financing agreements for the acquisition of equipment that may be acquired through the issuance of debt under G.L. c. 44 or improvement of a capital asset the improvement of which may be financed by the issuance of debt under G.L. c. 44, the term of such agreement not to exceed the useful life of the equipment or improvement as determined by the (mayor/board of selectmen), and to authorize the departments specified below to enter into such agreements on behalf of the city/town, subject to approval of an appropriation for the first year payments of the agreements as stated below, or to take any other action relative thereto. (Two-thirds vote required.)

<u>Equipment/capital asset</u>	<u>Maximum Term</u>	<u>Authorized Department</u>	<u>Appropriation</u>
Copiers	5 years	School Department	FY ____ Operating
Roll-off Truck	5 years	Public Works	FY ____ Public Works Contractual Services
Tractor	10 years	Public Works	FY ____ Capital Equipment Budget

LEASE PURCHASE FINANCING AGREEMENT APPROPRIATION
FIRST YEAR PAYMENTS
(When Funding Not Included in Other Appropriations)

Sample City/Town Legislative Body Vote
(Sample should not be used without the advice of municipal counsel.)

ARTICLE/ORDER: To see if the city/town will appropriate the sum of \$ _____ from (identify funding source) for the payments required in the first fiscal year of the lease purchase financing agreement authorized by the city/town under [General Laws Chapter 44, Section 21C](#), for the (acquisition of _____ / improvement of _____) or to take any other action relative thereto. (Majority vote required.)

MOTION: I move that the city/town appropriate the sum of \$ _____ from (identify funding source) for the payments required in the first fiscal year of the lease purchase financing agreement authorized by the city/town under [General Laws Chapter 44, Section 21C](#), for the (acquisition of _____ / improvement of _____). (Majority vote required.)