

CITY OF WILKES-BARRE  
PENNSYLVANIA



# CITY COUNCIL AGENDA

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CITY COUNCIL

SPECIAL MEETING

DECEMBER 20, 2006

5:30 P.M.

PLEDGE OF ALLEGIANCE

ROLL CALL

RESOLUTIONS

ORDINANCE

PRESENTATION BY COUNCIL MEMBERS

PUBLIC DISCUSSION

ADJOURNMENT

CITY COUNCIL  
DECEMBER 20, 2006

**RESOLUTION**

Enter into a contract with Bedwick and Jones Printing, Inc. for the publication of the City calendars.

Authorizing the issuance of a Tax and Revenue Anticipation Note, Series of 2007 in an aggregate principal amount of one million seven hundred thousand dollars (\$1,700,000).

**ORDINANCES**

FILE OF COUNCIL NO. 23 OF 2006 – AN ORDINANCE OF THE CITY OF WILKES-BARRE, LUZERNE COUNTY, PENNSYLVANIA, ESTABLISHING SEX OFFENDER RESIDENCY RESTRICTIONS AND PENALTIES FOR VIOLATIONS. (SECOND AND FINAL READING)



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

That, the proper City officials are hereby authorized to enter into a contract with Bedwick and Jones Printing Inc., 425 New Commerce Boulevard, Wilkes-Barre, PA 18703, for the publication of the City calendars in the amount of \$10,195.00.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS



Wilkes-Barre, Pa. \_\_\_\_\_

Resolution No. \_\_\_\_\_

*BE IT RESOLVED* by the City Council of the City of Wilkes-Barre:

AUTHORIZING THE ISSUANCE OF A TAX AND REVENUE ANTICIPATION NOTE, SERIES OF 2007 IN AN AGGREGATE PRINCIPAL AMOUNT OF ONE MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$1,700,000); PROVIDING FOR THE DATED DATE, INTEREST RATE, MATURITY DATE, PAYMENT AND PLACE OF PAYMENT IN RESPECT OF THE NOTE; ACCEPTING THE PROPOSAL ATTACHED HERETO AS EXHIBIT "B" FROM THE FINANCIAL INSTITUTION OR ENTITY NAMED THEREIN FOR THE PURCHASE OF THE NOTE; NAMING A SINKING FUND DEPOSITARY/PAYING AGENT; AUTHORIZING THE PROPER OFFICERS OF THE CITY TO EXECUTE AND DELIVER THE NOTE AND CERTAIN OTHER DOCUMENTS AND CERTIFICATES IN CONNECTION THEREWITH; DESIGNATING THE NOTE AS A "QUALIFIED TAX-EXEMPT OBLIGATION" UNDER SECTION 265 (B) OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED; AUTHORIZING AND DIRECTING THE PREPARATION, CERTIFICATION AND FILING OF THE NECESSARY DOCUMENTS WITH THE DEPARTMENT OF COMMUNITY AND ECONOMIC DEVELOPMENT OF THE COMMONWEALTH OF PENNSYLVANIA; SETTING FORTH A FORM OF THE NOTE.

Whereas, City of Wilkes-Barre, Luzerne County, Pennsylvania (the "City"), anticipates receiving taxes and other revenues during the fiscal year ending December 31, 2007, which taxes and other revenues are currently uncollected; and

Whereas, the City has estimated, on a monthly basis, its expected taxes, revenues and expenditures for the fiscal year ending December 31, 2007, and has determined that during a portion of such fiscal year it will experience a "cumulative cash flow deficit" as such phrase is defined in the regulations promulgated under Sections 103 and 148 of the internal Revenue Code of 1986, as amended (the "Code"); and

Whereas, the City has determined to borrow monies for the purpose of funding, in part, such cumulative cash flow deficit by issuing a note to be repaid from the anticipated taxes and revenues, all in accordance with the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, Act 53 Pa.C.S., Chapters 80 – 82, as reenacted and amended (the "Debt Act"); and

Whereas, the City has received an acceptable proposal for the purchase of its Tax and Revenue Anticipation Note as hereinafter described; and

Whereas, as required by Section 8126 of the Deb Act, officials of the City have heretofore made an estimate of the taxes and revenues to be received during such fiscal year ending December 31, 2007, and, by their execution of a certificate with respect thereto dated this date, have certified to such estimate.

Submitted by \_\_\_\_\_

ROLL CALL

YEAS

RESOLUTIONS

NAYS

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Wilkes-Barre, Luzerne County, Pennsylvania (the "Council"), in lawful session duly assembled, as follows:

Section 1. For the reasons and purposes recited above, the City hereby exercises its power and authority to borrow money and authorizes the issuance and sale of its Tax and Revenue Anticipation Note, Series of 2007, in an aggregate principal amount of One Million Seven Hundred Thousand Dollars (\$1,700,000) (the "Note") in anticipation of the receipt of current taxes and revenues during the fiscal year ending December 31, 2007, such Note to be issued, sold and delivered as hereinafter provided.

Section 2. The Mayor and City Controller of the City, attested by the City Clerk, are hereby authorized and directed, in the name and on behalf of the City, to prepare and file with the Department of Community and Economic Development of the Commonwealth of Pennsylvania a certified copy of this Resolution, a certificate setting forth the taxes and revenues remaining to be collected in the fiscal year ending December 31, 2007, and a true copy of the accepted Proposal (hereinafter defined) for the purchase of the Note, all as set forth in and required by Section 8128 of the Debt Act. The Mayor and City Controller of the City, attested by the City Clerk, are also hereby authorized and directed, in the name and on behalf of the City, to prepare and verify a certificate, in accordance with Sections 103 and 148 of the Code and the regulations applicable thereto, setting forth the anticipated use of the proceeds, to prepare and deliver to the Purchaser of the Note the certificate required by Section 8127 of the Debt Act relating to the total amount of the City's tax and revenue anticipation notes outstanding on the date of delivery of the Note, and to take any and all other action, and to execute and deliver any and all other documents and instruments, as may be necessary, proper or desirable to effect the issuance and sale of the Note as contemplated herein. The certification made on the date of adoption of this Resolution by the aforementioned officials of the City, relating to the amount of taxes and other revenues remaining to be collected by the City in the fiscal year ending December 31, 2007, is hereby ratified and approved.

Section 3. The Note shall be designated "City of Wilkes-Barre, Luzerne County, Pennsylvania, Tax and Revenue Anticipation Note, Series of 2007", shall be in registered form, without coupons, shall be prepayable prior to maturity, shall be in the denomination of One Million Seven Hundred Thousand Dollars (\$1,700,000), shall be dated the date of issuance, shall bear interest at the rate of interest set forth in the Proposal from the date of delivery until maturity, shall mature on December 31, 2007, and shall be payable as to principal and interest at the place and in the manner and be otherwise in substantially the form set forth in the form of Note attached as Exhibit "A" hereto and the Proposal attached as Exhibit "B" hereto.

Section 4. The Note, when issued, will be a general obligation of the City District. In accordance with the provisions of Section 265(b) of the Internal Revenue Code of 1986, as amended (the "Code"), the City hereby finds, determines and designates the Note as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code, for the purposes of such Section 265(b) of the Code. The City determines that it and all entities with which it is aggregated under Section 265(b)(3)(E) of the Code have not issued, and do not reasonably expect to issue, tax-exempt obligations which, in the aggregate, exceed or will exceed Ten Million Dollars (\$10,000,000) during the calendar year 2007. The City also determines that

it will not engage in any action or inaction which will or may cause the Note to fail or cease to constitute a "qualified tax-exempt obligation" under Section 265(b)(3) of the Code.

Section 5. The Note shall be executed by the Mayor and City Controller of the City, shall have the corporate seal of the City affixed thereto, and shall be duly attested by the City Clerk. The Mayor and City Controller of the City are further authorized and directed to deliver the Note to the Purchaser hereinafter named upon the terms and conditions hereinafter provided and to execute and deliver such other documents and instruments, attested to by the City Clerk, and to take such other action as may be necessary or appropriate to effect the issuance and sale of the Note in accordance with this Resolution and the Debt Act.

Section 6. The Note shall be a general obligation of the City, and, together with any other tax and revenue anticipation notes issued, or to be issued, by the City during the City's fiscal year ending on December 31, 2007, shall, upon issuance thereof, be equally and ratably secured by a pledge of, security interest in, and a lien and charge on, the taxes and other revenues to be received by the City during the period when the Note is outstanding; and the Mayor and City Controller of the City, attested by the City Clerk, are hereby authorized and directed to prepare and file, or to have filed, such financing statements as may be necessary to fully perfect such pledge, security interest, lien and charge pursuant to the Pennsylvania Uniform Commercial Code and Section 8125 of the Debt Act.

Section 7. The City hereby covenants that it will not make any use of the proceeds of the Note or do or suffer any other action which, if such use or action had been reasonably expected on the date of issuance of the Note, would cause the Note to be an "arbitrage bond" or a "private activity bond" as such terms are defined in Section 148 or Section 141 of the Code and the regulations applicable thereto and further covenants that it will comply with Section 148 and Section 141 of the Code, and with any regulations applicable thereto, throughout the term of the Note, including without limitation, any requirements relating to a rebate of certain excess earnings pursuant to Section 148(f) of the Code of any regulations applicable thereto now existing or promulgated hereafter. In connection therewith, the Mayor and City Controller of the City, attested by the City Clerk, are hereby authorized and directed to execute and to deliver, in the name and on behalf of the City, any and all documents or other instruments which Stevens & Lee, Bond Counsel, may reasonably request to provide its opinion that the Note is not an "arbitrage bond" or a "private activity bond" within the meaning of Section 148 and Section 141 of the Code and the regulations applicable thereto.

Section 8. The formal proposal (the "Proposal") of Manufacturers and Traders Trust Company (the "Purchaser"), presented to the Council is attached hereto as Exhibit "B", is hereby accepted and the Note is hereby awarded to the Purchaser at an private sale for the aggregate purchase price of \$1,700,000. The terms of the Proposal are incorporated herein by reference with the same effect as if set forth in full at this place. The Mayor and City Controller, attested by the City Clerk, are hereby authorized and directed to, accept the Proposal, in the name of and on behalf of the City, by executing the City's acceptance on an original copy of the Proposal, to deliver a copy of the same to the Purchaser and to file the original with the records of the City. The Mayor and City Controller are hereby authorized to deliver the Note to the Purchaser upon receipt of the full principal amount of the purchase price for such Note and upon compliance with all conditions precedent to such delivery as required by the Debt Act, this Resolution and the Proposal; and such

Mayor and City Controller, attested by the City Clerk, is hereby authorized and directed to prepare, verify and deliver to the Purchaser concurrently with the delivery of the Note, the certificate required by Section 8127 of the Debt Act, a copy of which certificate shall be retained with the records of the City until all tax and revenue anticipation notes issued by the City during the fiscal year ending on December 31, 2007, shall have been paid in full.

Section 9. The form of the Note shall be substantially as set forth and attached hereto as Exhibit "A," which form is hereby incorporated by reference and adopted as it fully recited at length herein and said form is hereby approved by this Council.

Section 10. The proper officers of the City are hereby authorized, empowered and directed to contract with a bank or bank or trust company authorized to do business in the Commonwealth of Pennsylvania (the "Paying Agent") for its services as paying agent and sinking fund depository in accordance with the terms of the Proposal, this Resolution and the Debt Act. The proper officers of the City are hereby authorized to establish a sinking fund for the Note with the Paying Agent for the benefit of the holder of the Note. The City Controller or other proper officer of the City is hereby authorized and directed to make deposits to the sinking fund to be held for the payment of principal and interest on the Note no later than the date of final maturity thereof.

Thereafter, the Paying Agent shall, without further authorization or direction from the City or any of its officials, withdraw moneys from the sinking fund and apply such moneys to the payment of principal and interest then due on the Note. Deposit by the City into the sinking fund of the full amount of such money shall satisfy in full the obligation of the City to pay principal and interest with respect to the Note.

Section 11. Stevens & Lee, a professional corporation, is hereby appointed Bond Counsel in connection with the issuance and sale of the Note.

Section 12. The City Controller or other proper official of the City is hereby authorized and directed to pay at, or subsequent to, the closing for the issuance of the Note, all costs and expense of the issuance incurred by or on behalf of the City or required to be paid by the City, all in accordance with the provisions of the Purchaser's proposal.

DULY ADOPTED, THIS 14TH DAY OF DECEMBER, 2006, BY THE COUNCIL OF THE CITY OF WILKES-BARRE, LUZERNE COUNTY, PENNSYLVANIA, IN LAWFUL REGULAR SESSION DULY ASSEMBLED.

CITY OF WILKES-BARRE  
Luzerne County, Pennsylvania

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
City Controller

Attest:

\_\_\_\_\_  
City Clerk

(SEAL)

EXHIBIT "A"

NOTE

EXHIBIT "B"  
PROPOSAL FOR PURCHASE OF NOTE



CITY OF WILKES-BARRE

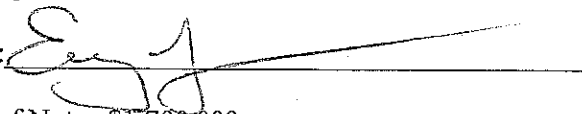
Cumulative Cash Flow  
Fiscal Year ending December 31, 2007

	(1)	(2)	(3)	(4)
	OPENING BALANCE	ESTIMATED RECEIPTS	ESTIMATED EXPENDITURES	CUMULATIVE SURPLUS/DEFICIT (1 PLUS 2 MINUS 3)
January	750,000.00	2,240,000.00	3,010,000.00	(20,000.00)
February	(20,000.00)	3,550,000.00	1,790,000.00	1,740,000.00
March	1,740,000.00	4,200,000.00	3,160,000.00	2,780,000.00
April	2,780,000.00	2,130,000.00	2,160,000.00	2,750,000.00
May	2,750,000.00	3,725,000.00	2,460,000.00	4,015,000.00
June	4,015,000.00	2,800,000.00	3,160,000.00	3,655,000.00
July	3,655,000.00	2,250,000.00	2,260,000.00	3,645,000.00
August	3,645,000.00	2,250,000.00	3,140,000.00	2,755,000.00
September	2,755,000.00	3,300,000.00	3,720,000.00	2,335,000.00
October	2,335,000.00	1,910,000.00	3,850,000.00	395,000.00
November	395,000.00	2,312,000.00	2,664,956.00	42,044.00
December	42,044.00	3,057,956.00	2,350,000.00	750,000.00
		33,724,956.00	33,724,956.00	\$0.00
HIGHEST DEFICIT FROM COLUMN (4) (SHOWN POSITIVELY)				20,000
ADD: FIVE PERCENT (5%) OF ESTIMATED TOTAL GENERAL FUND EXPENDITURES FOR FISCAL YEAR 2007				1,686,248
				<u>1,706,248</u>

City of Wilkes-Barre  
Tax Anticipation Note Quotation

Name of Bank: M&T Bank Corporation  
Address: 15 South Franklin Street, Wilkes-Barre, PA 18711  
Telephone: 570-821-7156 FAX: 570-821-8639  
Name of Bank Official: Eugene Walsh

Signature of Bank Official:



1. Principal Amount of Note: \$1,700,000.
2. Note interest rate 3.98%: non-taxable.
3. Interest on the Note shall be calculated on the basis of actual number of days elapsed, based upon a year of three hundred sixty (360) days comprised of twelve (12), thirty (30) day months.
4. The proposed settlement date is on or about January 1, 2007 maturity on December 31, 2007.
5. M&T Bank Corporation hereby certifies to the City of Wilkes-Barre that it intends to hold the Note for investment purposes and does not intend to sell the aforementioned Note.
6. The Note will be issued pursuant to a resolution to be enacted by the Mayor and City Council and in compliance with the Local Government Unit Debt Act of the Commonwealth of Pennsylvania, Act 177 of 1996, (the "Act"), and the United States Internal Revenue Code and related United States Treasury Regulations.
7. The Note will be equally and ratably secured by a pledge of, security interest in, and lien and charge on, the taxes or revenue or both of the City of Wilkes-Barre, to be received during the period when the Note(s) will be outstanding and the City shall establish a sinking fund for repayment of the Note(s), all as required by the Act.
8. The City anticipates that its revenue for the period when the Note will be outstanding will amount to at least \$1,700,000 to be received from taxes, and all other sources.
9. At the time the Note is issued, M&T Bank Corporation will receive and the City shall provide 1) a certified copy of the resolution authorizing their issuance, 2) an affidavit of no litigation, 3) an approving legal opinion signed by the Note counsel of the City, 4) evidence that the resolution and certain other documents have been filed with the Pennsylvania Department of Community and Economic Development, as required by the Act, and 5) other usual closing documents.

Accepted by:

\_\_\_\_\_  
Authorized Official

Date: \_\_\_\_\_

FILE OF COUNCIL

NO. \_\_\_\_\_ OF 2006

PRESENTED IN CITY COUNCIL \_\_\_\_\_

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AN ORDINANCE

OF THE CITY OF WILKES-BARRE, LUZERNE COUNTY, PENNSYLVANIA,  
ESTABLISHING SEX OFFENDER RESIDENCY RESTRICTIONS AND PENALTIES  
FOR VIOLATIONS.

WHEREAS, the Pennsylvania State Legislature adopted requirements for the registration of sexual offenders (commonly known as Megan's Law II), and is set forth at 42 Pa. C.S.A. , beginning at Section 9791;

WHEREAS, Megan's Law II, as noted previously, requires that persons convicted of various offenses, and persons adjudicated a sexually violent predator, must register with the Pennsylvania State Police for periods not less than ten (10) years, which registration procedure is set forth in the Statute;

WHEREAS, Megan's Law II does not contain any restrictions with respect to where persons convicted of the crimes subject to registration or persons adjudicated sexually violent offenders may reside;

WHEREAS, the Council of the City of Wilkes-Barre finds that the danger of recidivism posed by persons convicted of the crimes identified in Megan's Law II and person adjudicated as sexually violent predators is of paramount concern to the City of Wilkes-Barre;

WHEREAS, the Council of the City of Wilkes-Barre finds that persons who have committed the violations referenced in Megan's Law II, or who have been adjudicated as sexually violent predators, have a reduced expectation of privacy and furthermore, that residency restrictions for such persons provide additional protection for children and places where children congregate; and

NOW, THEREFORE, be it hereby ORDAINED and ENACTED as follows:

DEFINITIONS:

- a. Child Care Facility. A licensed day care center, child care facility or any other child care service facility exempt from licensing pursuant to the laws of the Commonwealth of Pennsylvania.
- b. Common Open Space: the area of land and/or water restricted

from future development for the purpose of protecting natural features or for providing recreational opportunities for residents of the City of Wilkes-Barre, which said Open Space is regulated, maintained and/or owned by the City of Wilkes-Barre.

- c. Community Center. A building and related facility used for educational, social, cultural, or recreational activities.
- d. Permanent Residence. A place where a person lives, abides, lodges, or resides for fourteen (14) or more consecutive days.
- e. Public Park or Recreational Facility. Any recreational facility, playground or park, owned or operated by the City of Wilkes-Barre or any other governmental agency, including, but not limited to, the Wilkes-Barre Area School District, the County of Luzerne or the Commonwealth of Pennsylvania.
- f. School. Shall mean any public or private which provides education services to a minor.
- g. Sex Offender. Shall mean any person, over the age of eighteen (18) years, who has been convicted against a minor identified in Section 9795.1 which includes, but not limited to, kidnapping, luring a child into a motor vehicle, institutional sexual assault, indecent assault, incest, prostitution, receiving sexual materials, sexual abuse of children, unlawful contact with minors, sexual exploitation of children, rape, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, and individuals convicted of any attempt to commit any of the offenses enumerated therein.
- h. Temporary Residence. A place where a person lives, abides, lodges, or resides for a period of less than fourteen days in the aggregate during any calendar year, which is not the person's permanent address or place where the person routinely lives, abides, lodges, or resides and which is not the person's permanent residence.

## 2. Residency Restriction/Prohibition

- I. It shall be unlawful for any sex offender to establish a permanent or temporary residence within 1,500 feet of any school, child care facility, common open space, community center, public park or recreational facility.
- j. For the purpose of determining the minimum distance separation, the requirement shall be measured by following a straight line from the outer property line of the permanent residence or temporary residence of the sex offender to the nearest outer property line of a school, child care facility, common open space, community center, public park or recreational facility.

3. Notice to Move. Any sex offender who resides on a permanent or temporary basis within 1,500 feet of any school, child care facility, common open space, community center, public park or recreational facility shall, within forty-five (45) days of receipt of written notice of the sex offender's non-compliance with this Ordinance, move from said location to a new location, but said location may not be within 1,500 feet of any school, child care facility, common open space, community center, public park or recreational facilities. Furthermore, it shall be a violation each day that a sex offender shall move from one (1) location in the City of Wilkes-Barre to another that is within 1,500 feet of any school, child care facility, common open space, community center, public park or recreational facilities.
4. Exceptions. This ordinance shall not apply to any person who established residence prior to the date of this Ordinance, and it shall not apply if the school, child care facility, common open space, community center, public park or recreational facilities within 1,500 feet of the sex offender's permanent residence. The provisions of this Ordinance shall not be applicable to persons incarcerated in any facility owned, maintained and/or operated by the County of Luzerne, the Commonwealth of Pennsylvania or the United States.
5. Penalties. Any person who violates the provisions of this Ordinance shall, upon conviction, before a District Judge, be sentenced to a term of imprisonment up to ninety (90) days and shall be fined not more than One thousand (\$1,000.00) dollars for each violation, plus the costs of prosecution and reasonable attorney's fees.
6. Enforcement. The Wilkes-Barre City Police Department and/or te Building Inspectors's Office shall be charged with the enforcement of this Ordinance.
7. Publication. The City Administration is herein directed by the Wilkes-Barre City Council to have prepared and placed at the Wilkes-Barre City Hall building during regular business hours a map of the City of Wilkes-Barre depicting the area where sex offenders are restricted from residing on a permanent or temporary basis.
8. Inclusion in Code. It is the intent of the Council of the City of Wilkes-Barre that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of Wilkes-Barre City and the sections of the Ordinance may be renumbered or relettered and word "ordinance" may be changed to "section" or "article" or such other appropriate work or phrase in order to accomplish the intention of the City Council.

9. Severability. The provisions of this Ordinance are severable. If any section, clause, sentence, part or provision hereof shall be determined to be illegal, invalid or unconstitutional by any court of competent jurisdiction, such decision of the court shall not impair or affect any remaining provision of the Ordinance, it being the intention of the City Council that it would have adopted the Ordinance even if the offending language had not been included.

Passed finally by the City Council of the City of Wilkes-Barre on \_\_\_\_\_

\_\_\_\_\_

This Ordinance shall become effective on \_\_\_\_\_.

ATTEST:

\_\_\_\_\_  
JAMES RYAN, CITY CLERK