

DUPLICATE ORIGINAL

ORDINANCE NO. 1970ORDINANCE OF THE CITY OF CHULA VISTA RELATING TO
THE FINANCING OF INDUSTRIAL AND COMMERCIAL
DEVELOPMENT WITHIN SAID CITY IN THE
INTERESTS OF THE PUBLIC HEALTH, SAFETY
AND WELFARE

THE COUNCIL OF THE CITY OF CHULA VISTA DOES ORDAIN AS FOLLOWS:

Section 1. Findings and Determinations. The City Council of the City of Chula Vista hereby finds and determines as follows:

A. The full employment of residents of the City of Chula Vista, and the prevention of unemployment and underemployment of such residents, serves a vital and compelling public interest of the City of Chula Vista and promotes the public health, safety and welfare of the City by reducing the incidence of crime, improving the mental and physical health and well-being of the City's residents, alleviating the financial drain upon limited public and private resources for welfare programs and unemployment assistance, and enhancing the financial resources of the City.

B. The encouragement of industrial and commercial development within the City serves a vital and compelling public interest of the City and promotes the public health, safety and welfare of the City by increasing the employment of residents of the City, increasing the tax and revenue base and thereby enhancing the financial resources of the City, and preventing physical deterioration and abandonment of industrial and commercial areas within the City. In addition, the City's participation in the financing of such development serves the public interest by ensuring that such development will reflect the needs and objectives of the community more so than if such development were undertaken without City participation.

C. Encouraging industrial and commercial development pursuant to this Ordinance (1) will promote the health, safety and welfare of the City, including those public interests enumerated above, and will improve the social, moral, economic and physical condition of the community thereby, and (2) constitutes a municipal affair of the City of Chula Vista, a valid exercise of the police powers of the City of Chula Vista, and a public purpose in which the City of Chula Vista has a peculiar and unique interest.

Section 2. Definitions. Unless the context otherwise requires, the following definitions shall govern the construction of this Ordinance:

"Acquisition" and its variants means acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation.

"Administrative Expenses" means all reasonable and necessary expenses incurred by the City in the administration of the provisions of this Ordinance with respect to a particular Project and the financing thereof, including without limitation compensation to City agents, employees and staff, fees and expenses of paying agents, trustees, bond counsel and financing consultants, and costs of printing and advertising.

"Bonds" means any bonds, notes, interim certificates, debentures or other obligations issued by the City pursuant to this Ordinance, which are payable exclusively from Revenues and other funds permitted by this Ordinance, and which are "industrial development bonds" within the meaning of Section 103(b) of the Internal Revenue Code of 1954, as amended, or any similar provision of said Code then in effect.

"City" means the City of Chula Vista, California, a chartered city in the State existing under and exercising powers pursuant to the City Charter and the constitution of the State.

"City Charter" means the charter of the City, as amended from time to time.

"City Council" means the City Council of the City.

"Costs" means, with reference to a Project, any or all of the following costs incurred for the acquisition thereof:

1. obligations of the Participating Party incurred for labor and materials in connection with the acquisition of the Project;
2. the cost of acquisition of any property, whether real or personal and improved or unimproved, including franchise rights and other intangible property, and any interests therein, required for the acquisition of the Project;
3. the cost of demolishing, removing or relocating any building or structure, and the cost of making relocation assistance payments required by law;
4. the cost of contract bonds and of insurance of all kinds that may be required or necessary during the course of the acquisition of the Project;

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5. all costs of engineering, legal and consultant services, including the costs of the Participating Party for surveys, estimates, plans and specifications and preliminary investigation therefor, and for supervising construction, as well as for the performance of all other duties required by or consequent upon the proper acquisition of the Project;

6. all costs incurred in connection with proceedings by the Participating Party necessary to comply with the California Environmental Quality Act of 1970, as amended;

7. all amounts required to fund any reserve funds for Bonds and any interest on Bonds becoming due and payable during a period not exceeding the period of acquisition of the Project and 12 months thereafter;

8. all Administrative Expenses;

9. all costs which the Participating Party shall be required to pay, under the terms of any contract or contracts, for the acquisition of the Project;

10. the refinancing of any existing indebtedness secured by an interest in any real property comprising any portion of the Project, so long as and to the extent that such refinancing does not cause interest on the Bonds to become taxable under Section 103 of the Internal Revenue Code of 1954, as amended; and

11. any sums required to reimburse the Participating Party for advances made for any of the above items or for any other costs incurred and for work done which are properly chargeable to the Project.

"Finance" and its variants means the lending of moneys or any other thing of value, or the purchase of loans or the entering into of leases or installment sale agreements, for the purpose of paying or otherwise providing for or assisting the payment of any or all of the Costs of a Project pursuant to this Ordinance.

"Participating Party" means any person, corporation, partnership, firm or other entity or group of entities requiring financing for the acquisition of a Project pursuant to this Ordinance.

"Project" means real property located within the City and improved with an industrial or commercial structure, and all property in connection therewith or incidental thereto, including machinery, equipment and furnishings, the acquisition of which is financed or otherwise assisted pursuant to this Ordinance.

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"Ordinance" means this Ordinance No. 1970, passed and adopted by the City Council of the City on February 9, 1982, pursuant to the City Charter.

"Revenues" means, with respect to a Project, all amounts received as repayment of principal, interest and all other charges received for, and all other income and revenue (including the proceeds of insurance) derived by, the City in connection with such Project, and any receipts derived from the investment of such income or revenues, including moneys deposited in a sinking, redemption or reserve fund or other fund to secure the Bonds or to provide for the payment of the principal of or interest on the Bonds and such other moneys as the City Council may in its discretion make available therefor.

"State" means the State of California.

Section 3. Powers. The City is authorized and empowered:

A. To determine the location and character of any Project to be financed under the provisions of this Ordinance, and to finance such Projects.

B. To issue Bonds for the purpose of financing or otherwise assisting the acquisition of Projects authorized by this Ordinance and for the purpose of funding or refunding Bonds.

C. To fix fees, charges and interest rates for financing any Project, and to revise such fees, charges and interest rates from time to time, and to collect interest and principal on any loan made to a Participating Party together with such fees and charges incurred in such financing, and to contract with any person, partnership, association, corporation or public agency with respect thereto.

D. To hold deeds of trust as security for financing any Project and to pledge the same as security for repayment of Bonds issued therefor.

E. To establish the terms and conditions for the financing of any Project undertaken pursuant to this Ordinance.

F. To require that the full amount owed on any loan for the financing of a Project pursuant to this Ordinance shall be due and payable upon sale or other transfer of ownership of such Project.

G. To acquire, by deed, purchase, lease, contract, gift, devise, or otherwise, any real or personal property, structures, rights, rights-of-way, franchises, easements, mortgages and other interests in property located within the State necessary or convenient for the financing or acquisition of a Project, upon such terms and conditions as it deems advisable, and to lease, sell or dispose of the same in such manner as may be necessary or desirable to carry out the objects and purposes of this Ordinance. Notwithstanding the foregoing, nothing in this Ordinance is intended or shall be construed in any way to authorize any exercise of the power of eminent domain with respect to any Project.

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H. To employ or contract for such engineering, architectural, accounting, collection, economic feasibility, or other services in connection with the servicing of loans made to Participating Parties, as may be necessary in the judgment of the City Council for the successful financing of a Project. The City may pay the reasonable costs of consulting engineers, architects, accountants, construction experts, and economic feasibility experts, if, in the judgment of the City Council, such services are necessary to the successful financing of a Project and if the City is not able to provide such services. The City may employ, contract for, and fix the compensation of financing consultants, bond counsel, and other advisers as may be necessary in its judgment to provide for the issuance and sale of Bonds.

I. In addition to all other powers specifically granted in this Ordinance, to do all things necessary or convenient to carry out the purposes of this Ordinance.

Section 4. Non-operation. The City shall not have the power to operate any Project as a business. The City shall take no more action with respect to any Project than is necessary to promote the public interests of the City recited in Section 1 of this Ordinance.

Section 5. Applications for Financing. Participating Parties may apply for financing pursuant to this Ordinance by contacting the Community Development Director or other officer or employee of the City designated by the Community Development Director. Each applicant shall supply to the satisfaction of the Community Development Director or such officer or employee all information required to evaluate the financial reliability and stability of the Participating Party and the feasibility of the proposed Project, including an estimate of the maximum amount of financing to be required, a description or itemization of the Costs of the proposed Project, and a written agreement to pay all Administrative Expenses for the proposed Project. The provisions of this Section 5 shall not apply to any financing approved by resolution of the City Council adopted prior to the date of adoption of this Ordinance.

Section 6. Acceptance of Applications. Upon receipt of an application containing all required information, agreements and undertakings, the City Council shall at such time as it deems convenient review such application and any staff recommendations with respect thereto. If the City Council chooses to approve any application for financing under this Ordinance, it shall adopt a resolution authorizing the issuance of Bonds and/or accepting and approving such application and the participation of the City in the financing of such Project, subject to the provisions of this Ordinance and the conclusion of all proceedings undertaken to consummate such financing to the satisfaction of the City. The provisions of this Section 6 shall not apply to any financing approved by resolution of the City Council adopted prior to the date of adoption of this Ordinance.

Section 7. Authorization of Bonds. The City may issue its Bonds for the purpose of financing or otherwise assisting the acquisition of Projects authorized by this Ordinance. Every issue of Bonds shall be a special

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obligation of the City, payable solely from all or any part of the Revenues of Projects.

Section 8. Issuance of Bonds. The Bonds may be issued as serial Bonds or as term Bonds, or the City Council, in its discretion, may issue Bonds of both types. The Bonds shall be authorized by resolution of the City Council and shall bear such date or dates, mature at such time or times, bear interest at such fixed or variable rate or rates, be payable at such time or times, be in such denominations, be in such form, either coupon or registered, carry such registration privileges, be executed in such manner, be payable in lawful money of the United States of America, at such place or places, and be subject to such terms of redemption as the resolution or resolutions of the City Council may provide. The Bonds may be sold at either a public or private sale and for such prices as the City Council shall determine. Pending preparation of the definitive Bonds, the City may issue interim receipts, certificates, or temporary Bonds, which shall be exchanged for such definitive Bonds.

Section 9. Terms of Bonds. Any resolution or resolutions authorizing any Bonds or any issue of Bonds may contain provisions respecting any of the following terms and conditions, which shall be a part of the contract with the holders of the Bonds:

A. The pledge of all or any part of the Revenues, subject to such agreements with Bondholders as may then exist.

B. The interest and principal to be received and other charges to be charged and the amounts to be raised each year thereby, and the use and disposition of the Revenues.

C. The setting aside of reserves or sinking funds and the regulation and disposition thereof.

D. Limitations on the purposes to which the proceeds of a sale of any issue of Bonds, then or thereafter issued, may be applied, and pledging such proceeds to secure the payment of the Bonds or any issue of Bonds.

E. Limitations on the issuance of additional Bonds, the terms upon which additional Bonds may be issued and secured, and the refunding of outstanding Bonds.

F. The procedure, if any, by which the terms of any contract with Bondholders may be amended or abrogated, the amount of Bonds the holders of which must consent thereto, and the manner in which such consent may be given.

G. Specification of the acts or omissions to act which shall constitute a default in the duties of the City to holders of its obligations, and providing the rights and remedies of such holders in the event of default.

H. The mortgaging of land, improvements, or other assets owned by a Participating Party for the purpose of securing the Bondholders.

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I. Such other terms and conditions pertaining to the issuance of the Bonds as are deemed advisable by the City Council.

Section 10. Trust Agreement. In the discretion of the City Council, any Bonds issued under the provisions of this Ordinance may be secured by a trust agreement or indenture by and between the City and a corporate trustee or trustees, which may be any trust company or bank having the powers of a trust company within or without the State. Such trust agreement or the indenture may pledge or assign the Revenues to be received or proceeds of any contract or contracts pledged, and may convey or mortgage any property. Such trust agreement or indenture may contain such provisions for protecting and enforcing the rights and remedies of the Bondholders as may be reasonable and proper and not in violation of law, including such provisions as may be included in any resolution or resolutions of the City Council authorizing the issuance of Bonds pursuant to Section 3.03. Any bank or trust company doing business under the laws of the State which may act as depository of the proceeds of Bonds or of Revenues or other moneys may furnish such indemnity bonds or pledge such securities as may be required by the City. Any such trust agreement or indenture may set forth the rights and remedies of the Bondholders and of the trustee or trustees, and may restrict the individual right of action by Bondholders. In addition to the foregoing, any such trust agreement or indenture may contain such other provisions as the City Council may deem reasonable and proper for the security of the Bondholders.

Section 11. Personal Liability. Neither the members of the City Council nor any person executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof.

Section 12. Refunding Bonds. The City Council may provide for the issuance of Bonds any portion of which is to be used for the purpose of refunding outstanding Bonds, including the payment of the principal thereof and interest and redemption premiums, if any, thereon. The proceeds of Bonds issued to refund any outstanding Bonds may, in the discretion of the City Council, be applied to the retirement of such outstanding Bonds at maturity, or the redemption (on any redemption date) or purchase of such outstanding Bonds prior to maturity, upon such terms and subject to such conditions as the City Council shall deem advisable.

Section 13. Repayment of Bonds. Revenues shall be the sole source of funds pledged by the City for repayment of Bonds issued hereunder. Bonds issued hereunder shall not be deemed to constitute a debt or liability of the City or a pledge of the faith and credit of the City but shall be payable solely from Revenues. All Bonds shall contain on the face thereof a statement to the following effect:

"Neither the faith and credit nor the taxing power of the City of Chula Vista is pledged to the payment of the principal of or interest on this Bond."

The issuance of Bonds shall not directly, indirectly or contingently obligate the City Council to levy or pledge any form of taxation or to make any appropriation for their payment.

Section 14. Authority to Assist Projects. The City may provide financing to any Participating Party for, or otherwise assist the acquisition of, duly approved Projects pursuant to this Ordinance. At the discretion of the City Council the financial assistance provided hereunder may take any form deemed advisable for the successful financing of the Project, including without limitation in the form of a loan, lease or installment sale.

Section 15. Financing Agreements. The City may enter into agreements with any Participating Party with respect to the financing of a Project, which agreements may provide that the architectural and engineering design of the Project shall be subject to such standards as may be established by the City and that the acquisition of the Project shall be subject to such supervision as the City deems necessary. The terms and conditions of such agreements may be as mutually agreed upon, but shall not be inconsistent with the provisions of this Ordinance. Any such agreement may provide the means or methods by which any mortgage taken by the City shall be discharged, and it may contain a covenant by the Participating Party to complete the Project whether or not Bond proceeds are sufficient therefore, and such other terms and conditions as the City may require. The City is authorized to fix, revise, charge, and collect interest and principal and all other rates, fees, rents, installment purchase payments and charges with respect to the financing of a Project. Such rates, fees, rents, installment purchase payments, charges, and interest shall be fixed and adjusted so that the aggregate thereof will provide funds sufficient with other revenues and moneys which it is anticipated will be available therefor, if any, to do all of the following:

A. Pay the principal of and interest on outstanding Bonds issued to finance such Project, as the same shall become due and payable.

B. Create and maintain reserves required or provided for in any resolution authorizing such Bonds. A sufficient amount of the Revenues derived from the Project may be set aside at such regular intervals as may be provided by the resolution or trust agreement in a sinking or other similar fund, which shall be pledged to, and charged with, the payment of the principal of and interest on such Bonds as the same shall become due, and the redemption price or the purchase price of Bonds retired by call or purchase as therein provided. Such pledge shall be valid and binding from the time the pledge is made. The rates, fees, interest, and other charges, revenues, or moneys so pledged and thereafter received by the City shall immediately be subject to the lien of such pledge without any physical delivery thereof or further act, and the lien of any such pledge shall be valid and binding as against all parties having claims of any kind in tort, contract, or otherwise against the City, irrespective of whether such parties have notice thereof. Neither the resolution, the trust agreement nor any agreement by which a pledge is created need be filed or recorded except in the records of the City. The use and disposition of moneys to the credit of such sinking or

other similar fund shall be subject to the provisions of the resolution or trust agreement authorizing the issuance of such Bonds.

C. Pay Administrative Expenses to the extent not paid from Bond proceeds.

Section 16. Trust Funds. All moneys received pursuant to the provisions of this Ordinance, whether proceeds from the sale of Bonds or Revenues, shall be deemed to be trust funds to be held and applied solely for the purposes of this Ordinance. Any bank or trust company in which such moneys are deposited shall act as trustee of such moneys and shall hold and apply the same for the purposes specified in this Ordinance, subject to the terms of the resolution or trust agreement authorizing the Bonds.

Section 17. Liberal Construction. This Ordinance, being necessary for the health, welfare and safety of the City and its residents, shall be liberally construed to effect its purposes. Furthermore, the City Council hereby declares that this Ordinance is an exercise of the power granted to the City by the City Charter and the Constitution of the State and is an exercise by the City of its powers as to municipal affairs and its police powers, and this Ordinance shall be liberally construed to uphold its validity under the laws of the State.

Section 18. Supplemental and Additional Powers. This Ordinance shall be deemed to provide a complete, additional, and alternative method for doing the things authorized thereby, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of Bonds under the provisions of this Ordinance need not comply with the requirements of any other law applicable to the issuance of bonds.

Section 19. Actions to Determine Validity of Bonds and Proceedings. An action may be brought pursuant to Chapter 9 (commencing with Section 860 of Title 10 of Part 2 of the Code of Civil Procedure) to determine the validity of Bonds and the legality and validity of all proceedings previously taken and proposed to be taken for the authorization, issuance, sale, and delivery of the Bonds and for the payment of the principal thereof and interest thereon.

Section 20. Amendment of Ordinance. This Ordinance shall not be amended so as to have a material, adverse affect upon the rights of the holders of any outstanding Bonds theretofore issued hereunder, or the rights of Participating Parties with respect to whom Projects have theretofore been financed hereunder, without the written consent of such Bondholders and Participating Parties; provided, however, that this Ordinance may be amended at any time (a) to make such provisions for the purpose of curing any ambiguity, or of curing, correcting or supplementing any defective provision herein contained, as the City may deem necessary or desirable; or (b) if such amendment does not materially impair or adversely affect the interests of any such Bondholder or Participating Party in the opinion of the City Council; or (c) if such amendments apply solely to Bonds not theretofore issued hereunder or Participating Parties with respect to whom Projects have not theretofore been financed hereunder.

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Section 21. Partial Invalidity. If any Section, paragraph, sentence, clause or phrase of this Ordinance shall for any reason be held illegal or unenforceable, such holding shall not affect the validity of the remaining portions of this Ordinance. The City Council hereby declares that it would have adopted this Ordinance and each and every other Section, paragraph, sentence, clause or phrase hereof and authorized the proceedings authorized to be taken pursuant thereto irrespective of the fact that any one or more Sections, paragraphs, sentences, clauses, or phrases of this Ordinance may be held illegal, invalid or unenforceable.

Section 22. This ordinance shall take effect and be in full force on the thirty-first day from and after its adoption.

PASSED AND ADOPTED this 9th day of February, 1982, by the following vote:

AYES: Councilmen Scott, Cox, Gillow, Campbell, McCandliss

NAYES: Councilmen None

ABSENT: Councilmen None

Gregory R. Cox
Mayor of the City of Chula Vista

ATTEST Jennie M. Fulasz
City Clerk

STATE OF CALIFORNIA)
COUNTY OF SAN DIEGO) ss.
CITY OF CHULA VISTA)

I, _____, City Clerk of the City of Chula Vista, California, DO HEREBY CERTIFY that the above is a full, true and correct copy of Ordinance No. 1970, and that the same has not been amended or repealed. DATED _____

City Clerk

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ORDINANCE NO. 1970

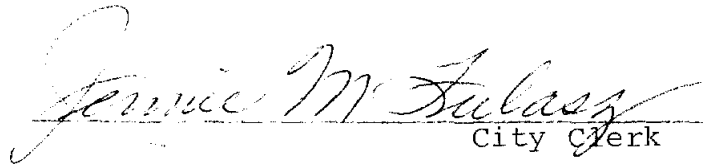
AN ORDINANCE OF THE CITY OF CHULA VISTA RELATING TO
THE FINANCING OF INDUSTRIAL AND COMMERCIAL DEVELOPMENT
WITHIN SAID CITY IN THE INTERESTS OF THE PUBLIC HEALTH,
SAFETY AND WELFARE

By a unanimous vote on February 9, 1982, the City Council
placed the ordinance on second reading and adoption.

The ordinance sets up the procedures and requirements
for the issuance of Industrial Development Bonds in order
to provide financing for industrial and commercial develop-
ment within the City of Chula Vista. It delineates the
requirements for applications for the financing; authoriza-
tion of bonds; the issuance and terms of the bonds;
liability and repayment of bonds; and the financing agree-
ment.

Copies of the ordinance are available at the office of
the City Clerk, City Hall, 276 Fourth Avenue, Chula Vista.

dated: 2/11/82


City Clerk