

ORDINANCE NO. 2669

AN ORDINANCE AMENDING CHAPTER 3.48 OF THE CHULA VISTA MUNICIPAL CODE TO PERMIT THE REFINANCING OF REGIONAL UTILITY PROJECTS UPON A FINDING OF CITY BENEFIT

WHEREAS, the City of Chula Vista (the "city") is a municipal corporation and charter city duly organized and existing under a charter (the "charter") pursuant to which the city has the right and power to make and enforce all laws and regulations in respect to municipal affairs and certain other matters in accordance with and as more particularly provided in Article XI of the Constitution of the State of California (the "Constitution") and section 200 of the charter;

WHEREAS, chapter 3.48 of the municipal code of the city (the "municipal code") authorizes the city to issue bonds for the purpose of financing or otherwise assisting the acquisition of projects located within the city to promote the health, safety and welfare of the city, to encourage industrial and commercial development within the city and to enhance the financial resources of the city;

WHEREAS, the city council of the city has heard public testimony and reviewed written materials, which together with the personal knowledge of the members of the city council, evidence the need for the city to provide financial assistance with respect to regional gas transmission and distribution facilities and electric generation, transmission and distribution facilities in order to promote the aforementioned city interests;

WHEREAS, the city council of the city, acting under and pursuant to the constitution and the charter, finds and determines that the public interest and necessity require the adoption of this ordinance to authorize issuance of revenue bonds for the purpose of refinancing regional gas transmission and distribution facilities and electric generation, transmission and distribution facilities and that providing such assistance constitutes a municipal affair of the city;

NOW THEREFORE, the City Council of the City of Chula Vista does ordain as follows:

SECTION 1. That section 3.48.010 of the municipal code be and hereby is amended in its entirety to read as follows:

**3.48.010 Findings and Determinations.**

The city council finds and determines as follows:

- A. The full employment of residents of the city, and the prevention of unemployment and underemployment of such residents, serves a vital and compelling public interest of the city 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. Basic utilities such as gas, water and electricity are necessities of life, essential to public health, safety and welfare and to industrial and commercial development within the city. City assistance in financing and refinancing improvements to gas and water transmission and distribution systems and electricity generation, transmission and distribution systems throughout the region will reduce the costs of providing such utility service within the city and thereby reduce the rates of providing such rates to be paid by industrial, commercial and residential utility customers within the city. The city's participation in such financing and refinancing also ensures that the city's future gas, water and electricity requirements will be served as regional growth places heavier demands on such services.
- D. Encouraging industrial and commercial development and the provision of basic utilities pursuant to this chapter (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, a valid exercise of the police powers of the city, and a public purpose in which the city has a peculiar and unique interest.

SECTION 2. That section 3.48.020 of the municipal code be and hereby is amended in its entirety to read as follows:

**3.48.020 Definitions.**

Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

- A. "Acquisition" and its variants means acquisition, construction, improvement, furnishing, equipping, remodeling, repair, reconstruction or rehabilitation.
- B. "Administrative expenses" means all reasonable and necessary expenses incurred by the city in the administration of the provisions of this chapter with respect to a particular project and the financing or refinancing 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.
- C. "Bonds" means any bonds, notes, interim certificates, debentures or other obligations issued either by the city pursuant to this chapter, or by any other legal entity for purposes permitted by this chapter, which obligations are payable exclusively from

revenues and other funds permitted by the applicable law under which such obligations were issued or entered into.

- D. "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.
- E. "City charter" means the charter of the city, as amended from time to time.
- F. "City council" means the city council of the city.
- G. "Costs" means, with reference to a project, any or all of the following costs incurred for the acquisition or financing 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 or financing of the project;
  - 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 twelve 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 or financing of the project;
  - 10. The refinancing of 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;

11. All costs incurred in connection with the refunding of any bonds issued with respect to a project; and
  12. 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.
- H. "Exempt organization" means an organization described in section 501(c)(3) of the Internal Revenue Code of 1986, as amended.
- I. "Finance" and its variants, including without limitation refinance and refinancing, mean 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:
1. Paying or otherwise providing for or assisting the payment of any or all of the costs of a project pursuant to this chapter; or
  2. Providing funds to be used as working capital or otherwise for general expenditures of exempt organizations pursuant to this chapter;
- J. "Participating party" means any person, corporation, partnership, firm or other entity or group of entities requiring financing for the acquisition or refinancing of a project pursuant to this chapter.
- K. "Project" means real property improved with an industrial, commercial or utility structure, including but not limited to real property to be used by an exempt organization in connection with its authorized purposes, and all property in connection therewith or incidental thereto, including all machinery, equipment and furnishings, the acquisition or refinancing of which is financed or otherwise assisted pursuant to this chapter; provided, however, that no project to be financed or refinanced may be located outside the city unless the city council shall find and determine that such project would directly benefit the citizens of the city by substantially promoting one or more of the public interests recited in section 3.48.010. Project also includes qualified residential rental property as described in and within the meaning of section 142(d) of the Internal Revenue Code of 1986, as amended, and regulations and rulings promulgated thereunder, including all property in connection therewith and incidental thereto.
- L. "Ordinance" means Ordinance No. 1970, passed and adopted by the city council of the city on February 9, 1982, pursuant to the city charter as amended from time to time.
- M. "Revenue" 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 revenue,

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.

N. "State" means the state of California.

SECTION 3. That section 3.48.030 of the municipal code be and hereby is amended in its entirety to read as follows:

**3.48.030 Powers.**

The city is authorized and empowered:

- A. To determine the location and character of any project to be financed or refinanced under the provisions of this chapter and to finance or refinance such projects;
- B. To issue bonds:
  - 1. For the purpose of financing or otherwise assisting the acquisition of projects authorized by this chapter, or
  - 2. For the purpose of providing funds to be used as working capital or otherwise to finance general expenditures of exempt organizations, or
  - 3. For the purpose of funding or refunding bonds issued by the city or any other legal entity for purposes permitted by this chapter;
- 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 chapter;
- F. To require that the full amount owed on any loan for the financing of a project pursuant to this chapter 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 chapter. Notwithstanding the foregoing, nothing in this chapter is intended or shall be construed in any way to authorize any exercise of the power of eminent domain with respect to any project;

- 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 advisors 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 chapter, to do all things necessary or convenient to carry out the purposes of this chapter.

SECTION 4. That the city clerk is hereby authorized and directed to cause a digest or a copy of this ordinance to be published at least once in a newspaper of general circulation published and circulated in the city within fifteen days after the passage of this ordinance pursuant to section 312 of the charter.

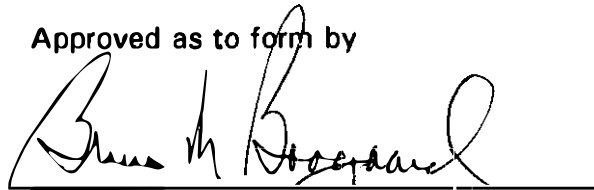
SECTION 5. This ordinance shall take effect and be in full force on the thirtieth day from and after its second reading and adoption.

Presented by



Robert Powell  
Finance Director

Approved as to form by



Bruce M. Boogaard  
City Attorney

PASSED, APPROVED, and ADOPTED by the City Council of the City of Chula Vista, California, this 16th day of April, 1996, by the following vote:

AYES: Councilmembers: Alevy, Moot, Padilla, Rindone, Horton

NAYS: Councilmembers: None

ABSENT: Councilmembers: None

ABSTAIN: Councilmembers: None

  
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Shirley Horton, Mayor

ATTEST:

  
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Beverly A. Authelet, City Clerk

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

I, Beverly A. Authelet, City Clerk of the City of Chula Vista, California, do hereby certify that the foregoing Ordinance No. 2669 its first reading at a regular meeting held on the 9th day of April, 1996 and its second reading and adoption at a regular meeting of said City Council held on the 16th day of April, 1996.

Executed this 16th day of April, 1996.

  
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Beverly A. Authelet, City Clerk