

Herndon Parking Authority Act

Created: 1991 Acts of Assembly, c. 142.

§ 1. Short title. This act shall be known and may be cited as the “Herndon Parking Authority Act.” (1991, c. 142)

§ 2. Declaration of public necessity.--It is hereby determined and declared that the free circulation of traffic of all kinds through the streets of the Town of Herndon in the Commonwealth is necessary to the health, safety and general welfare of the public, whether residing in the municipality or traveling to, through, or from such municipality in the course of lawful pursuits; that in recent years the greatly increased use by the public of motor vehicles of all kinds has caused serious traffic congestion in the streets of the municipality; that the parking of motor vehicles in the streets has contributed to this congestion to such an extent as to constitute at the present time a public nuisance; that such parking prevents the free circulation of traffic in, through, and from the municipality, and endangers the health, safety and welfare of the general public; that this traffic congestion is not capable of being adequately abated except by provisions for sufficient off-street parking facilities; that adequate off-street parking facilities have not been heretofore provided; and that the enactment of the provisions of this act is hereby declared to be a public necessity. (1991, c. 142)

§ 3. Definitions.--As used in this act the following words and terms shall have the following meanings, unless the context shall indicate another or different meaning or intent:

“Authority” means the Authority created under the provisions of this act, or, if the Authority shall be abolished, the board, body or commission succeeding to the principal functions thereof or to whom the powers given by this act to the Authority shall be given by law.

“Bonds” or “revenue bonds” means revenue bonds, revenue refunding bonds or notes of the Authority issued under the provisions of this act.

“Cost,” as applied to parking facilities or to extensions or additions thereto, includes the cost of construction or reconstruction, the cost of all labor, materials, machinery and equipment, the cost of all lands, property, rights, easements and interests acquired by the Authority for such construction or reconstruction or the operations thereof, the cost of demolishing or removing any buildings or structures on land so acquired, including the cost of acquiring any lands to which such buildings or structures may be moved, financing charges, interest prior to and during construction, and, if deemed advisable by the Authority, for one year after completion of construction, reasonable provision for working capital, cost of engineering and legal services, cost of plans and specifications, surveys and estimates of cost and of revenues, administrative expense and such other expenses as may be necessary or incident to such construction or reconstruction, the financing thereof and the placing of the parking facilities in operation. Any obligation or expense incurred by the Authority or by the organizing municipality

prior to the issuance of bonds under the provisions of this act in connection with any of the foregoing items of cost may be regarded as a part of such cost.

“Governing body” means the council or other body by whatever name it may be known in which the general legislative powers of the municipality are vested.

“Municipality” means the Town of Herndon in the Commonwealth of Virginia.

“Parking facilities” means and includes lots, garages, parking terminals, or other facilities or structures for the off-street parking of motor vehicles, open to public use either free or for a fee, and may also include, but without limiting the generality of the foregoing, terminal facilities for trucks and busses, waiting rooms, lockers, and offices catering primarily to those using such parking facilities, and all facilities appurtenant thereto and all property, rights, easements and interests relating thereto which are deemed necessary for the construction or operation thereof; however, the words “parking facilities” shall not mean or include the sale or dispensing of products used in or for the servicing of motor vehicles. (1991, c. 142)

§ 4. Creation of the Authority.--A. The governing body of the municipality may by resolution signify its determination to organize an Authority under the provisions of this act. Such resolution may be adopted only after a public hearing thereon, notice of which hearing shall be given by publication at least once, not less than ten days prior to the date fixed for such hearing, in a newspaper having a general circulation in the municipality. Such notice shall contain a brief statement of the substance of the proposed resolution, shall set forth the proposed articles of incorporation of the Authority and shall state the time and place of the public hearing to be held thereon. Such municipality shall not be required to make any other publication of such resolution under the provisions of any other law.

Such resolution shall include articles of incorporation which shall set forth:

1. The name of the Authority;
2. A statement that such Authority is organized under this act;
3. The name of the organizing municipality; and
4. The names and addresses of the first members of the Authority appointed by the organizing municipality.

C. Passage of such resolution by the governing body shall constitute the Authority a public body and a body politic and corporate of the Commonwealth of Virginia. (1991, c. 142)

§ 5. Membership of the Authority.--The Authority organized under the provisions of this act shall be operated by a Board of Directors which shall consist of five members selected by the governing body of the organizing municipality who shall serve for terms expiring one, two, three, four, and five years, respectively, from the date of appointment, the term of each such member to be designated by the governing body. The successor of each member of the Authority shall be appointed for a term of five years; any person appointed to fill a vacancy shall be appointed to serve only for the unexpired term and any member of the Authority may be reappointed.

Each member of the Board before entering upon his duties shall take and subscribe an oath or affirmation to support the Constitution of the United States and of the Commonwealth and to discharge faithfully the duties of his office and a record of each such oath shall be filed with the Secretary of the Board.

The Board shall select from its membership one of its members as Chairman and another as Vice Chairman and shall also select a Secretary and a Treasurer who may but need not be members of the Authority. The offices of Secretary and Treasurer may be combined. The terms of office of the Chairman, Vice Chairman, Secretary and Treasurer shall be as provided in the bylaws of the Authority.

A majority of the members of the Board shall constitute a quorum and the affirmative vote of a majority of all of the members of the Board shall be necessary for any action taken by the Authority. No vacancy in the membership of the Board shall impair the right of a quorum to exercise all the rights and perform all of the duties of the Authority. The members of the Board shall serve without compensation but shall be reimbursed for the amount of actual expenses incurred by them in the performance of their duties.

The Town Manager of the organizing municipality or his designee shall serve as an ex officio, nonvoting member of the Authority. (1991, c. 142)

§ 6. General grant of powers.--The Authority created hereunder shall be deemed to be a public instrumentality exercising public and essential governmental functions to provide for the public health and welfare, and such Authority is hereby authorized and empowered to:

1. Adopt bylaws for the regulation of its affairs and the conduct of its business;
2. Adopt an official seal and alter the same at pleasure;
3. Maintain an office at such place or places as it may designate;
4. Sue and be sued in its own name, plead and be impleaded;
5. Construct, reconstruct, equip, improve, extend, enlarge, maintain, repair and operate parking facilities within the corporate limits of the organizing municipality;
6. Issue revenue bonds of the Authority as hereinafter provided to pay the cost of such construction, reconstruction, equipment, improvement, extension or enlargement;
7. Issue revenue refunding bonds of the Authority as hereinafter provided;
8. Fix and revise from time to time and charge and collect rates, rentals, fees and other charges for the services and facilities furnished by such parking facilities, and to establish and revise from time to time regulation in respect of the use, operation and occupancy of such parking facilities or part thereof;
9. Acquire in the name of the Authority by gift, or purchase, any lands or rights in lands and interest herein, and to acquire such personal property, as it may deem necessary in connection with the construction, reconstruction, improvement, extension, enlargement or operation of any parking facility;
10. Lease all or any part of such parking facilities upon such terms and conditions and for such term of years as it may deem advisable to carry out the provisions of this act; however, no enterprise involving the sale or dispensing of any product or commodity used in or for the servicing of motor vehicles shall be conducted on any space thereon;
11. Make and enter into all contracts and agreements necessary or incidental to the performance of its duties and the execution of its powers under this act, including a trust agreement or trust agreements securing any revenue bonds issued hereunder, and to employ such consulting and other engineers, superintendents, managers, construction and financial experts, accountants and attorneys and such employees and agents as may, in the judgment of the Authority, be deemed necessary, and to fix their compensation;

however, all such expenses shall be payable solely from funds made available under the provisions of this act;

12. Do all acts and things necessary or convenient to carry out the powers granted by this act;

13. Make and enter into all contracts without competition with respect to any item of cost of parking facilities, including parking structures; and

14. Sell, exchange, donate, and convey any or all of its facilities or properties whenever its members shall find any such action to be in furtherance of the purposes for which the Authority was organized. (1991, c. 142)

§ 7. Revenue bonds.--The Authority is hereby authorized to issue at one time or from time to time, revenue bonds of the Authority for the purpose of paying the cost of constructing, reconstructing, equipping, improving, extending, enlarging, maintaining, repairing or operating any one or more parking facilities. The bonds of each issue shall be dated, shall mature at such time or times not exceeding forty years from their date or dates and shall bear interest at such rate or rates not exceeding the maximum rate allowed by law, as may be determined by the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the bonds. The Authority shall determine the form of the bonds and the manner of execution of the bonds, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest, which may be at any bank or trust company within or without the Commonwealth. In any case any officer whose signature or a facsimile of whose signature shall appear on any bonds shall cease to be such officer before the delivery of such bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. Notwithstanding any of the other provisions of this act or any recitals in any bonds issued under the provisions of this act, all such bonds shall be deemed to be negotiable instruments under the laws of this Commonwealth. The Authority may sell such bonds in such manner, either at public or private sale, and for such price, as it may determine to be for the best interest of the Authority, but no such sale shall be made at a price so low as to require the payment of interest on the money received therefor at more than the maximum rate allowed by law to be paid by public bodies, computed with relation to the absolute maturity or maturities of the bonds in accordance with standard tables of bond values, excluding, however, from such computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

The proceeds of the bonds of each issue shall be used solely for the purpose for which such bonds shall have been authorized and shall be disbursed in such manner and under such restrictions, if any, as the Authority may provide in the resolution authorizing the issuance of such bonds or in the trust agreement hereinafter mentioned securing the same. If the proceeds of such bonds, by error of estimates or otherwise, shall be less than such cost, additional bonds may in like manner be issued to provide the amount of such deficit, and, unless otherwise provided in the authorizing resolution or in the trust agreement securing such bonds, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose.

The resolution providing for the issuance of revenue bonds, and any trust agreement securing such bonds, may also contain such limitations upon the issuance of additional revenue bonds as the Authority may deem proper and such additional bonds shall be issued under such restrictions and limitations as may be prescribed by such resolution or trust agreement.

Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds exchangeable for definitive bonds when such bonds shall have been executed and are available for delivery. The Authority may also provide for the replacement of any bonds which shall become mutilated or be destroyed or lost.

Bonds may be issued under the provisions of this act without obtaining the consent of any commission, board, bureau or agency of the Commonwealth of Virginia or of any political subdivision, and without any other proceedings or the happening of other conditions or things than those proceedings, conditions or things which are specifically required by this act.

Revenue bonds issued under the provisions of this act shall not be deemed to constitute a debt of the Commonwealth or of any municipality or other political subdivision of the Commonwealth or a pledge of the faith and credit of the Commonwealth or of any municipality or other political subdivision, but such bonds shall be payable solely from the funds herein provided therefor and a statement to that effect shall be recited on the face of the bonds. (1991, c. 142)

§ 8. Revenues.--The Authority shall fix, and may revise from time to time, rates, rentals, fees and other charges for the use of and for the services and facilities furnished or to be furnished by any parking facilities or parts thereof owned or operated by the Authority. Such rates, rentals, fees and charges shall not be subject to supervision or regulation by any bureau, board, commission or other agency of the Commonwealth or of any political subdivision. Such rates, rentals, fees and charges shall be fixed and revised so that the revenues of the Authority, together with any other available funds, will be sufficient at all times to (i) pay the cost of maintaining, repairing and operating the parking facilities or parts thereof owned or operated by the Authority, including reserves for such purposes, and (ii) pay the principal of and the interest on all bonds issued by the Authority under the provisions of this act as the same shall become due and payable and to provide reserves therefor.

Notwithstanding any of the foregoing provisions of this section, the Authority may enter into contracts relating to use of the services and facilities of the parking facilities on such terms as the Authority shall determine to be proper, which contracts shall not be subject to revision except in accordance with their terms. (1991, c. 142)

§ 9. Trust agreement.--In the discretion of the Authority, each or any issue of revenue bonds may be secured by a trust agreement by and between the Authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or without the Commonwealth. The resolution authorizing the issuance of the bonds or such trust agreement may pledge the revenues to be received. In connection with the issuance of such bonds or in order to secure the payment thereof, the Authority shall have power under such agreement to mortgage all or any part of its property, real or personal, then owned or thereafter acquired, to vest in the trustee thereunder the right to foreclose such mortgage and to provide the terms and conditions

upon which such trustee or the holders of bonds or any proportion thereof may exercise the right of foreclosure. Such trust agreement or resolution providing for the issuance for such bonds 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 covenants setting forth the duties of the Authority in relation to the construction, reconstruction, equipment, improvement, maintenance, repair, operation and insurance of any parking facilities, the fixing and revising of rates, rentals, fees and charges, and the custody, safeguarding and application of all moneys, and for the employment of consulting engineers in connection with such construction, reconstruction, improvement, maintenance and operation. It shall be lawful for any bank or trust company incorporated under the laws of the Commonwealth which may act as depository of the proceeds of bonds or of revenues to furnish such indemnifying bonds or to pledge such securities as may be required by the Authority. Such resolution or trust agreement may set forth the rights and remedies of the bondholders and of the trustee, if any, and may restrict the individual right of action by bondholders. Such resolution or trust agreement may contain such other provisions in addition to the foregoing as the Authority may deem reasonable and proper for the security of the bondholders. Except as in this act otherwise provided, the Authority may provide for the payment of the proceeds of the sale of the bonds and the revenues of any parking facilities or part thereof to such officer, board or depository as it may designate for the custody thereof, and for the method of disbursements thereof, with such safeguards and restrictions as it may determine. All expenses incurred in carrying out the provisions of such resolution or trust agreement may be treated as a part of the cost of operation.

All pledges of revenues under the provisions of this act shall be valid and binding from the time when such pledge is made. All such revenues so pledged and thereafter received by the Authority shall immediately be subject to the lien of such pledges without any physical delivery thereof, or further action, and the lien of such pledges shall be valid and binding as against all parties having claims of any kind in tort, contract or otherwise against the Authority, irrespective of whether such parties have notice thereof. (1991, c. 142)

§ 10. Trust funds.--All moneys received pursuant to the authority of this act shall be deemed to be trust funds, to be held and applied solely as provided in this act. Any officer to whom, or bank, trust company or fiscal agent to which, such moneys shall be paid shall act as trustee of such moneys and shall hold and apply the same for the purpose hereof, subject to such regulations as this act and the resolution authorizing the issuance of bonds or trust agreement securing such bonds may provide. (1991, c. 142)

§ 11. Remedies.--Any holder of revenue bonds issued under the provisions of this act, and the trustee under any trust agreement, except to the extent the rights herein given may be restricted by the resolution authorizing the issuance of such bonds or such trust agreement, may, either at law or in equity, by suit, action, mandamus or other proceeding, protect and enforce any and all rights under the laws of the Commonwealth or granted hereunder or under such resolution or trust agreement, and may enforce and compel the performance of all duties required by this act or by such resolution or trust agreement to be performed by the Authority or by any officer thereof, including the fixing, charging and collecting of rates, rentals, fees and charges for the use of or for the services and facilities furnished by any parking facilities. (1991, c. 142)

§ 12. Exemption from taxation.--As adequate off-street parking facilities are essential to the health, safety and general welfare of the public, and as the exercise of the powers conferred by this act to effect such purposes constitute the performance of essential municipal functions, and as parking facilities constructed under the provisions of this act constitute the performance of essential municipal functions, and as parking facilities constructed under the provisions of this act constitute public property and are used for municipal purposes, the Authority shall not be required to pay any taxes or assessments upon any such parking facilities or any part thereof, or upon the income therefrom, and any bonds issued under the provisions of this act, their transfer and the income therefrom (including any profit made on the sale thereof) shall at all times be free from taxation within the Commonwealth. (1991, c. 142)

§ 13. Revenue refunding bonds.--The Authority is hereby authorized to issue from time to time revenue refunding bonds for the purpose of refunding any revenue bonds of the Authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds. The Authority is further authorized to issue from time to time revenue bonds of the Authority for the combined purpose of (i) refunding any revenue bonds or revenue refunding bonds of the Authority then outstanding, including the payment of any redemption premium thereon and any interest accrued or to accrue to the date of redemption of such bonds, and (ii) paying all or any part of the cost of constructing any additional parking facilities or part thereof, or any improvements, extensions or enlargements of any parking facilities. The issuance of such bonds, the maturities and other details thereof, the rights and remedies of the holders thereof, and the rights, powers, privileges, duties and obligations of the Authority with respect to the same, shall be governed by the foregoing provisions of this act insofar as the same may be applicable. (1991, c. 142)

§ 14. Competing parking facilities.--So long as any bonds issued under the provisions of this act are outstanding, the municipality shall not construct, operate or maintain any parking facilities competing with parking facilities of the Authority. (1991, c. 142)

§ 15. Contributions.--The municipality is hereby authorized to make contributions or advances to an Authority which it organizes under the provisions of this act from any available moneys for any purpose of the Authority, including payment of principal and interest on its bonds. The municipality is hereby further authorized to enter into agreements with the Authority obligating the municipality to pay the Authority any part or all of the receipts from the operation of on-street parking meters and making such covenants as may be deemed necessary or desirable to ensure the successful and profitable operation of the on-street parking meters for so long as any bonds of the Authority remain outstanding. (1991, c. 142)

§ 16. Actions taken by Authority.--Any action taken by the Authority under the provisions of this act may be authorized by resolution at any regular or special meeting and each such resolution shall take effect immediately and need not be published or posted. (1991, c. 142)

§ 17. Additional method.--This act shall be deemed to provide an additional and alternative method for the doing of the things authorized hereby and shall be regarded as supplemental and additional to powers conferred by other laws, and shall not be regarded

as in derogation of or as repealing any powers now existing under any other law, either general, special or local; however, the issuance of revenue bonds or revenue refunding bonds under the provisions of this act need not comply with the requirements of any other law applicable to the issuance of bonds. (1991, c. 142)

§ 18. Severability.--The provisions of this act are severable, and if any of its provisions shall be held unconstitutional by any court of competent jurisdiction, the decision of such court shall not affect or impair any of the remaining provisions. (1991, c. 142)

§ 19. Construction.--This act, being necessary for the welfare of the Commonwealth and its inhabitants, shall be liberally construed to effect the purpose thereof. (1991, c. 142)