

ORDINANCE NO. 1671

"AN ORDINANCE CREATING THE INDUSTRIAL DEVELOPMENT AUTHORITY OF THE CITY OF ALEXANDRIA AND VESTING IT WITH CERTAIN POWERS, PURSUANT TO AUTHORITY GRANTED BY THE GENERAL ASSEMBLY OF VIRGINIA."

WHEREAS, the General Assembly of the State of Virginia has determined in the Act (hereafter defined) to authorize the creation of industrial development authorities by the several municipalities in this Commonwealth so that such authorities may acquire, own, lease, and dispose of properties to the end that such authorities may be able to promote industry and develop trade by inducing manufacturing, industrial, governmental and commercial enterprises to locate in or remain in this Commonwealth and further the use of its agricultural products and natural resources, and to vest such authorities with all powers that may be necessary to enable them to accomplish such purposes, which powers shall in all respects be exercised for the benefit of the inhabitants of the Commonwealth, for the increase of their commerce, and for the promotion of their safety, health, welfare, convenience and prosperity, but not to authorize any such authority to operate any such manufacturing, industrial or commercial enterprise; and

WHEREAS, the Virginia Court of Appeals has sustained generally the constitutionality of the purposes and intents of the General Assembly in the Act in Industrial Development Authority v. Suthers, 208 Va. 51, 155 S. E. 2d 326 (1967); and

WHEREAS, the City Council of Alexandria has determined that the creation by the City Council of Alexandria under the Act of an industrial development authority and the vesting thereby therein the powers conferred upon industrial development authorities by the Act will promote industry and develop trade by inducing manufacturing, industrial, governmental and commercial enterprises to locate in or remain in the City of Alexandria or its environs; now, therefore,

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. Definitions. Wherever used in this Ordinance, unless a different meaning clearly appears in the context, the following terms, whether used in the singular or plural, shall be given the following respective interpretations:

(a) "Act" shall mean the Industrial Development and Revenue Bond Act, being Chapter 651 of the Acts of Assembly 1966, appearing, as amended, as Chapter 33 of Title 15.1 of the Code of Virginia 1950, as amended.

(b) "Authority" shall mean the Industrial Development Authority of the City of Alexandria created in Section 2 of this Ordinance, or if the Authority shall be abolished, the board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers given by this Ordinance shall be given by law.

(c) "Authority facilities" or "facilities" shall mean any or all medical (including, but not limited to, office and treatment facilities) and industrial facilities, located within or without or partially within or without the City, now existing or hereafter acquired or constructed by the Authority pursuant to the terms of the Act, together with an or all buildings, improvements, additions, extension, replacements, appurtenances, lands, rights in land, water rights, franchises, machinery, equipment furnishings, landscaping, utilities, approaches, roadways and other facilities necessary or desirable in connection therewith or incidental thereto, acquired or constructed by the Authority.

(d) "bonds" or "revenue bonds" shall embrace notes, bonds and other obligations authorized to be issued by the Authority pursuant to the provisions of the Act.

(e) "City" shall mean the City of Alexandria, and any successor thereto.

(f) "Commonwealth" shall mean the State of Virginia.

(g) "cost" shall mean and shall include, as applied to Authority facilities, the cost of construction, the cost of acquisition of all lands, structures, rights-of-way, franchises, easements and other property rights and interests, the cost of demolishing, removing or relocating any buildings or structures on lands acquired, including the cost of acquiring any lands to which such buildings or structures may be moved or relocated, the cost of all labor, materials, machinery and equipment, financing charges, interest on all bonds prior to and during construction and, if deemed advisable by the Authority, for a period not exceeding one year after completion of such construction, cost of engineering, financial and legal services, plans, specifications, studies, surveys, estimates of cost and of revenues, other expenses necessary or incident to determining the feasibility or practicability of constructing the Authority facilities, administrative expenses, provisions for working capital, reserves for interest and for extensions, enlargements, additions and improvements, and such other expenses as may be necessary or incident to the construction of the Authority facilities, the financing of such construction and the placing of the Authority facilities in operation. Any obligation or expense incurred by the Commonwealth or any agency thereof, with the approval of the Authority, for studies, surveys, borings, preparation of plans and specifications or other work or materials in connection with the construction of the Authority facilities may be regarded as a part of the cost of the Authority facilities and may be reimbursed to the Commonwealth or any agency thereof out of the proceeds of the bonds issued for such Authority facilities as hereinafter authorized.

(h) "enterprise" shall mean any industry for the manufacturing, processing, assembling, storing, warehousing, distributing, or selling any products of agriculture, mining, or industry and for research and development of scientific laboratories, including, but not limited to, the practice of medicine and all other activities related thereto or for such other businesses as will be in the furtherance of the public purposes of the Act.

(i) "revenues" shall mean any or all fees, rates, rentals and receipts derived by the Authority from, and all other moneys and income of whatsoever kind or character obtained by the Authority in connection with the ownership and leasing of the Authority facilities.

(j) "trust indenture" shall mean any trust agreement or mortgage under which bonds authorized pursuant to the Act may be secured.

Section 2. Creation of the Authority. Pursuant to the authority vested in this Council by the Act, there is hereby created a political subdivision of the Commonwealth the name of which shall be the "Industrial Development Authority of the City of Alexandria, Virginia".

Section 3. Board of directors of Authority. The Authority shall be governed by a board of directors in which all powers of the Authority shall be vested and which board shall be composed of seven directors, appointed by the City Council of Alexandria. The seven directors shall be appointed initially for terms of one, two, three and four years; two being appointed for one year terms; two being appointed for two year terms; two being appointed for three year terms and one being appointed for a four year term; subsequent appointments shall be for terms of four years, except appointments to fill vacancies which shall be for

the unexpired terms. Each director shall, before entering upon his duties take and subscribe the oath prescribed by Section 49-1 of the Code of Virginia 1950, amended. No director shall be an officer or employee of the City of Alexandria. The directors shall elect from their membership a chairman, a vice-chairman, and from their membership or not, as they desire, a secretary and a treasurer, or a secretary-treasurer. The directors shall receive no salary but shall be reimbursed for necessary traveling and other expenses incurred in the performance of their duties. Four members of the board of directors shall constitute a quorum of the board for the purposes of conducting its business and exercising its powers and for all other purposes, except that no facilities owned by the Authority shall be leased or disposed of in any manner without a majority vote of the members of the board of directors. No vacancy in the membership of the board shall impair the right of a quorum to exercise all the powers and perform all the duties of the board. The board shall keep detailed minutes of its proceedings, which shall be open to public inspection at all times. It shall keep suitable records of all its financial transactions and shall arrange to have the same audited annually. Copies of each such audit shall be furnished to the City Council of Alexandria and shall be open to public inspection.

Section 4. Initial appointment of directors. The following persons, none of whom is an officer or an employee of the City, are appointed to the board of directors of the Authority for the following terms which shall commence on the date of the final passage of this Ordinance:

<u>Director</u>	<u>Term</u>
Joseph M. Guiffre	One year
Col. Jelks H. Cabaniss, Jr.	One year
Lionel R. Hope	Two years
Hugh C. Mulligan	Two years
James H. Ammons, III	Three years
Thomas E. Sebrell, III	Three years
E. Waller Dudley	Four years

Section 5. Powers of the Authority. The Authority shall have such public and corporate powers as are conferred upon it by the Act, including the following powers together with all powers incidental thereto or necessary for the performance of those hereinafter stated: (a) to sue and be sued and to prosecute and defend, at law or in equity, in any court having jurisdiction of the subject matter and of the parties; (b) to adopt and use a corporate seal and to alter the same at pleasure; (c) to contract and be contracted with; (d) to acquire, whether by purchase, exchange, gift, lease or otherwise, and to improve, maintain, equip and furnish one or more Authority facilities including all real and personal properties which the board of directors of the Authority may deem necessary in connection therewith and regardless of whether or not any such facilities shall then be in existence; (e) to lease to others any or all of its facilities and to charge and collect rent therefor and to terminate any such lease upon the failure of the lessee to comply with any of the obligations thereof; and to include in any such lease, if desired, a provision that the lessee thereof shall have options to renew such lease or to purchase any or all of the leased facilities, or that upon payment of all of the indebtedness of the Authority it may lease or convey any or all of its facilities to the lessee thereof with or without consideration; (f) to sell, exchange, donate, and convey any or all of its properties whenever its board of directors shall find any such action to be in furtherance of the

purposes for which the Authority was organized; (g) to issue its bonds for the purpose of carrying out any of its powers; (h) as security for the payment of the principal of and interest on any bonds so issued and any agreements made in connection therewith, to mortgage and pledge any or all of its facilities or any part or parts thereof, whether then owned or thereafter acquired, and to pledge the revenues therefrom or from any part thereof; (i) to employ and pay compensation to such employees and agents, including attorneys, as the board of directors shall deem necessary in carrying on the business of the Authority; (j) to exercise all powers expressly given the Authority by the City Council of Alexandria and to establish bylaws and make all rules and regulations, not inconsistent with the provisions of this Ordinance and the Act, deemed expedient for the management of the Authority's affairs; (k) to appoint an industrial advisory committee to advise the Authority, consisting of such number of persons as it may deem advisable; however, such persons shall not receive any compensation for their services, but may be reimbursed for necessary traveling and other expenses incurred while on the business of the Authority; and (l) to borrow money and to accept contributions, grants, and other financial assistance from the United States of America and agencies or instrumentalities thereof, the Commonwealth, or any political subdivision, agency, or public instrumentality of the Commonwealth, for or in aid of the construction, acquisition, ownership, maintenance or repair of the Authority facilities or for the payment of principal of any bond of the Authority, interest thereon, or other cost incident thereto, and to this end the Authority shall have the power to comply with such conditions and to execute such agreements, trust indentures, and other legal instruments as may be necessary, convenient or desirable and to agree to such terms and conditions as may be imposed. The Authority shall not have power to operate any facility as a business other than as lessor, provided, however, that the Authority shall have the power to apply for, establish, operate and maintain a foreign-trade zone in accordance with the provisions of Chapter 14 (Section 62.1-159 et seq.) of Title 62.1 of the Code of Virginia 1950, as amended. Any meeting held by the board of directors at which formal action is taken shall be open to the public.

Section 6. Revenue bonds. (a) The Authority shall have the power to issue bonds from time to time in its discretion, for any of its purposes, including the payment of all or any part of the cost of Authority facilities and including the payment or retirement of bonds previously issued by it. All bonds issued by the Authority shall be payable solely from the revenues and receipts derived from the leasing or sale by the Authority of its facilities or any part thereof and the Authority may issue such types of bonds as it may determine, including (without limiting the generality of the foregoing) bonds payable, both as to principal and interest: (i) from its revenues and receipts generally; (ii) exclusively from the revenues and receipts of a particular facility; or (iii) exclusively from the revenues and receipts of certain designated facilities whether or not they are financed in whole or in part from the proceeds of such bonds. Unless otherwise provided in the proceeding authorizing the issuance of the bonds, or in the trust indenture securing the same, all bonds shall be payable solely and exclusively from the revenues and receipts of a particular facility. Bonds may be executed and delivered by the Authority at any time and from time to time, may be in such form and denominations and of such terms and maturities, may be in registered or bearer form either as to principal or interest or both, may be payable in such installments and at such time or times not exceeding forty (40) years from the date thereof, may be payable at such place or places whether within or without the Commonwealth, may bear interest at such rate or rates, may be payable at such time or times and at such place or places, may be evidenced in such manner, and may contain such provisions not inconsistent herewith, all as shall be provided and specified by the board of directors in authorizing each particular bond issue. If deemed advisable by the board of directors, there may be retained in the proceedings under which any bonds of the Authority are authorized to be issued an

option to redeem all or any part thereof as may be specified in such proceedings, at such price or prices and after such notice or notices and on such terms and conditions as may be set forth in such proceedings and as may be briefly recited on the face of the bonds, but nothing herein contained shall be construed to confer on the Authority any right or option to redeem any bonds except as may be provided in the proceedings under which they shall be issued. Any bonds of the Authority may be sold at public or private sale in such manner and from time to time as may be determined by the board of directors of the Authority to be most advantageous, and the Authority may pay all costs, premiums and commissions which its board of directors may deem necessary or advantageous in connection with the issuance thereof. Issuance by the Authority of one or more series of bonds for one or more purposes shall not preclude it from issuing other bonds in connection with the same facility or any other facility, but the proceedings whereunder any subsequent bonds may be issued shall recognize and protect any prior pledge or mortgage made for any prior issue of bonds. Any bonds of the Authority at any time outstanding may from time to time be refunded by the Authority by the issuance of its refunding bonds in such amount as the board of directors may deem necessary, but not exceeding an amount sufficient to refund principal of the bonds so to be refunded, together with any unpaid interest thereon and any costs, premiums or commissions necessary to be paid in connection therewith. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof to the payment of the bonds to be refunded thereby, or by the exchange of the refunding bonds for the bonds to be refunded thereby, with the consent of the holders of the bonds so to be refunded, and regardless of whether or not the bonds to be refunded were issued in connection with the same facilities or separate facilities, and regardless of whether or not the bonds proposed to be refunded shall be payable on the same date or on different dates or shall be due serially or otherwise.

(b) All bonds shall be signed by the chairman of the Authority or shall bear his facsimile signature, and the corporate seal of the Authority or a facsimile thereof shall be impressed or imprinted thereon and attested by the signature of the secretary (or the secretary-treasurer) of the Authority, and any coupons attached thereto shall bear the facsimile signature of said chairman. In case any officer whose signature or a facsimile of whose signature shall appear on any bonds or coupons shall cease to be an officer before 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.

(c) If the proceeds derived from a particular bond issue, due to error of estimates or otherwise, shall be less than the cost of the Authority facilities for which such bonds were issued, additional bonds may in like manner be issued to provide the amount of such deficiency, and unless otherwise provided in the proceedings authorizing the issuance of the bonds of such issue or in the trust indenture securing the same, 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 of the first issue. If the proceeds of the bonds of any issue shall exceed such cost, the surplus may be deposited to the credit of the sinking fund for such bonds or may be applied to the payment of the cost of any additions, improvements or enlargements of the Authority facilities for which such bonds shall have been issued.

(d) Prior to the preparation of definitive bonds, the Authority may, under like restrictions, issue interim receipts or temporary bonds, with or without coupons 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 shall be destroyed or lost.

(e) All bonds issued under the provisions of this Ordinance and the Act shall have all the qualities and incidents of and shall be negotiable instruments under the Uniform Commercial Code of Virginia, subject only to provisions respecting registration of the bonds.

(f) In addition to all other powers granted to the Authority by this Ordinance and the Act, the Authority is authorized to provide for the issuance, from time to time, of notes or other obligations of the Authority for any of its authorized purposes. All of the provisions of this Ordinance and the Act which relate to bonds or revenue bonds shall apply to such notes or other obligations insofar as such provisions may be appropriate.

Section 7. Limitations on liability. (a) Bonds issued pursuant to the provisions of the Act shall not be deemed to constitute a debt or a pledge of the faith and credit of the Commonwealth, or any political subdivision thereof, including the City of Alexandria, but such bonds shall be payable solely from the funds provided therefor as herein authorized. All such bonds shall contain on the face thereof a statement to the effect that neither the Commonwealth, nor any political subdivision thereof, nor the Authority shall be obligated to pay the same or the interest thereon or other costs incident thereto except from the revenues and moneys pledged therefor and that neither the faith and credit nor the taxing power of the Commonwealth, or any political subdivision thereof, is pledged to the payment of the principal of such bonds or the interest thereon or other costs incident thereto.

(b) Neither the directors of the Authority nor any person executing the bonds shall be liable personally on the bonds by reason of the issuance thereof.

(c) All expenses incurred in carrying out the provisions of the Act shall be payable solely from the funds of the Authority and no liability or obligation shall be incurred by the Authority beyond the extent to which moneys shall be available to the Authority.

(d) Bonds issued pursuant to the provisions of the Act shall not constitute an indebtedness within the meaning of any debt limitation or restriction.

Section 8. Security for bonds; default. The principal of and interest on any bonds issued by the Authority shall be secured by a pledge of the revenues and receipts out of which the same shall be made payable, and may be secured by a trust indenture covering all or any part of the Authority facilities from which revenues or receipts so pledged may be derived, including any enlargements of and additions to any such projects thereafter made. The resolution under which the bonds are authorized to be issued and any such trust indenture may contain any agreements and provisions respecting the maintenance of the projects covered thereby, the fixing and collection of rents for any portions thereof leased by the Authority to others, the creation and maintenance of special funds from such revenues and the rights and remedies available in the event of default, all as the board of directors shall deem advisable not in conflict with the provisions thereof. Each pledge, agreement and trust indenture made for the benefit or security of any of the bonds of the Authority shall continue effective until the principal of and interest on the bonds for the benefit of which the same were made shall have been fully paid. In the event of default in such payment or in any agreements of the Authority made as a part of the contract under which the bonds were issued, whether contained in the proceedings authorizing the bonds or in any trust indenture executed as security therefor, may be enforced by

mandamus, suit, action or proceedings at law or in equity to compel the Authority and the directors, officers, agents or employees thereof to perform each and every term, provision and covenant contained in any trust indenture of the Authority, the appointment of a receiver in equity or by foreclosure of any such trust indenture or any one or more of said remedies.

Section 9. Rent, fees and other charges. The Authority shall fix and revise from time to time the rents, fees and other charges to be paid for the use of various Authority facilities and for any other services furnished or provided by the Authority. Such rents, fees and charges shall be fixed so as to provide at least sufficient funds to pay the cost of maintaining, repairing and operating such projects and the principal and interest of any bonds issued by the Authority or other debts contracted as the same shall become due and payable. The Authority and the political subdivision in which all or any part of a particular Authority facility is located may agree on payment by the Authority on account of governmental services to be rendered by the political subdivisions in such amounts as the Authority may find to be consistent with the purposes of the Act. A reserve may be accumulated and maintained out of the revenues and receipts of the Authority for extraordinary repairs and expenses and for such other purposes as may be provided in any resolution authorizing a bond issue or in any trust indenture securing the Authority's bonds. Subject to such provisions and restrictions as may be set forth in the resolution or in the trust indenture authorizing or securing any of the bonds or other obligations hereunder, the Authority shall have exclusive control of the revenues and receipts derived from any Authority facility rented and controlled by it and the right to use the revenues and receipts in the exercise of its powers and duties set forth in this Ordinance and the Act.

Section 10. Authority nonprofit. The Authority shall be nonprofit and no part of its net earnings remaining after payment of its expenses shall inure to the benefit of any individual, firm or corporation, except that in the event the board of directors of the Authority shall determine that sufficient provision has been made for the full payment of the expenses, bonds and other obligations of the Authority then any net earnings of the Authority thereafter accruing shall be paid to the City; provided, however, that nothing herein contained shall prevent the board of directors from transferring all or any part of its properties in accordance with the terms of any lease entered into by the Authority, or any contract related to said lease.

Section 11. Dissolution of Authority. Whenever the board of directors of the Authority shall by resolution determine that the purposes for which the Authority was formed have been substantially complied with and all bonds theretofore issued and all obligations theretofore incurred by the Authority have been fully paid, the then members of the board of directors of the Authority shall thereupon execute and file for record with the City Council of Alexandria, a resolution declaring such facts. If the City Council of Alexandria is of the opinion that the facts stated in the Authority's resolution are true and that the Authority should be dissolved, it shall so resolve and the Authority shall stand dissolved. Upon such dissolution, the title to all funds and properties owned by the Authority at the time of such dissolution shall vest in the City and possession of such funds and properties shall forthwith be delivered to the City.

Section 12. Construction of Ordinance. Nothing herein shall be construed to deprive the City of its police powers over properties of the Authority or to impair any power thereover of any official or agency of the City which may be otherwise provided by law. Nothing herein shall be deemed to authorize the Authority to occupy or use any land, streets, buildings, structures or other property of any kind, owned or used by any political subdivision within its

jurisdiction, or any public improvement or facility maintained by such political subdivision for the use of its inhabitants without first obtaining the consent of the governing body thereof.

The provisions of this Ordinance are derivative from the Act, such that it is the intention of the City Council of Alexandria that (i) the provisions of this Ordinance be construed as a grant of, and not a limitation upon, the powers that may be conferred upon the Authority by the Act, from time to time, (ii) the Authority have such other powers as may be conferred upon it by law, (iii) this Ordinance be consistent with the provisions of the Act and decisions of the Virginia Supreme Court of Appeals, and (iv) this Ordinance should be amended, from time to time, when the City Council of Alexandria deems such necessary to conform the provisions of this Ordinance to, or reflect in this Ordinance, the Act as such may, from time to time, be amended and decisions of the courts of the Commonwealth.

Section 13. Effective date. This Ordinance shall be published in a newspaper of general circulation in the City not later than five days following its introduction together with a notice containing the time and place for a public hearing. The Clerk of the Council shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

Charles E. Beatley, Jr.
Mayor

FINAL PASSAGE: SEPTEMBER 8, 1970