CHAPTER 29

Off‑Street Parking Facilities

**SECTION 5‑29‑10.** Short title.

 This chapter, and all statutes incorporated herein by reference, may collectively be cited as the “Off‑Street Parking Facilities Act.”

HISTORY: 1962 Code Section 59‑566; 1954 (48) 1771.

CROSS REFERENCES

Parking facilities projecting over sidewalks, see Sections 5‑27‑510 et seq.

NOTES OF DECISIONS

In general 1

1. In general

Cited in Boykin v. City of Camden (S.C. 1957) 231 S.C. 325, 98 S.E.2d 755.

The purpose of this article is to facilitate financing of off‑street parking facilities by authorizing issuance of revenue bonds secured by a pledge not only of revenue derived from the project undertaken, but also that derived from on‑street parking facilities. Sammons v. City of Beaufort (S.C. 1954) 225 S.C. 490, 83 S.E.2d 153. Municipal Corporations 950(15)

When off‑street parking facilities may be established. This article contemplates that a municipality may establish off‑street parking facilities whenever traffic conditions create a need therefor, and where there is no showing of any such need, it will be presumed that local conditions are such as to justify the project. Sammons v. City of Beaufort (S.C. 1954) 225 S.C. 490, 83 S.E.2d 153.

**SECTION 5‑29‑20.** Definitions.

 As used in this chapter:

 (1) The term “municipality” shall mean any incorporated city or town in this State.

 (2) The term “Revenue Bond Act” shall mean Sections 6‑21‑10 through 6‑21‑570, as the same are now constituted, or as the same shall hereafter be amended.

 (3) The term “Refunding Revenue Bond Act” shall mean Sections 6‑17‑10 through 6‑17‑320, as the same are now constituted, or as the same shall hereafter be amended.

 (4) The term “off‑street parking facilities” shall mean motor vehicular parking facilities of all sorts, including parking lots, buildings or ramps.

 (5) The term “on‑street parking facilities” shall mean any system of parking meters, curb line or other, regulating the parking of motor vehicles on any street within the corporate limits of any municipality, requiring the payment of a charge for the right to make use of any portion of any street set apart for motor vehicular parking.

HISTORY: 1962 Code Section 59‑566.1; 1954 (48) 1771.

**SECTION 5‑29‑30.** Right of municipalities to establish on‑street parking facilities reaffirmed.

 The right of any municipality to establish on‑street parking facilities is reaffirmed, and such facilities may be established and operated wherever traffic conditions in such municipality require.

HISTORY: 1962 Code Section 59‑566.2; 1954 (48) 1771.

LIBRARY REFERENCES

Automobiles 7.

Westlaw Key Number Search: 48Ak7.

C.J.S. Motor Vehicles Sections 17 to 20.

Attorney General’s Opinions

The proposed ordinance by the City of Folly Beach is not a reasonable exercise of its authority to regulate parking and is, therefore, invalid. 1976‑77 Op Atty Gen, No 77‑151, p 127.

**SECTION 5‑29‑40.** Right of municipalities to establish, construct, maintain, and improve off‑street parking facilities.

 Any municipality shall be permitted to make provision for the construction, establishment, maintenance and improvement of off‑street parking facilities, and to finance or refinance the cost of such construction, establishment, maintenance and improvement through the issuance of bonds pursuant to the Revenue Bond Act or the Refunding Revenue Bond Act.

HISTORY: 1962 Code Section 59‑566.3; 1954 (48) 1771.

LIBRARY REFERENCES

Automobiles 7.

Municipal Corporations 950(15).

Westlaw Key Number Searches: 48Ak7; 268k950(15).

C.J.S. Motor Vehicles Sections 17 to 20.

NOTES OF DECISIONS

In general 1

Eminent domain 2

1. In general

The acquisition of property for an off‑street parking facility to be used by all members of the public constitutes a public purpose. Cameron v. City of Chester (S.C. 1970) 253 S.C. 574, 172 S.E.2d 306. Eminent Domain 19

Aid to solution of traffic problem. The increase in motor vehicular traffic in recent years has created an acute problem in many of the municipalities of this State. The establishment of off‑street parking facilities, as an aid to its solution, was approved by the legislature in the adoption of the Off‑Street Parking Facilities Act. Cameron v. City of Chester (S.C. 1970) 253 S.C. 574, 172 S.E.2d 306.

A municipal off‑street parking facility may be properly classified as an undertaking for a public or municipal purpose. Sammons v. City of Beaufort (S.C. 1954) 225 S.C. 490, 83 S.E.2d 153. Municipal Corporations 276

2. Eminent domain

The Off‑Street Parking Facilities Act delegates to a city the power of determining the necessity of exercising the right of eminent domain. Cameron v. City of Chester (S.C. 1970) 253 S.C. 574, 172 S.E.2d 306.

The determination by a municipality of the question of necessity for the condemnation of property for off‑street parking will not be upset by the courts in the absence of a showing of fraud, bad faith, or clear abuse of discretion. Cameron v. City of Chester (S.C. 1970) 253 S.C. 574, 172 S.E.2d 306. Eminent Domain 68; Eminent Domain 293(4)

**SECTION 5‑29‑50.** Authority of municipalities under Revenue Bond Act and Refunding Revenue Bond Act.

 Any municipality shall be fully empowered to avail itself of all powers granted by either or both of the Revenue Bond Act or the Refunding Revenue Bond Act. In exercising the powers conferred by such acts, the municipality may make all pledges and covenants authorized by any provision thereof, and may confer upon the holders of bonds issued pursuant to either of such acts all rights and liens authorized thereby. But in making any pledge pursuant to the Revenue Bond Act or the Refunding Revenue Bond Act, the municipality shall reserve the right to make appropriate changes in the location of any parking meters or other part of any on‑street parking facilities, made necessary by street widening or street closing, and shall also reserve the right to substitute and make changes in the location of parking meters or other part of any on‑street parking facilities, to provide essential and necessary traffic regulation and control. It shall also reserve the right to discontinue the use of on‑street parking facilities wherever traffic requirements make such action necessary.

HISTORY: 1962 Code Section 59‑566.4; 1954 (48) 1771; 1969 (56) 788.

CROSS REFERENCES

Municipal Bond Act, see Sections 5‑21‑210 et seq.

Revenue Bond Act for Utilities, see Sections 6‑21‑10 et seq.

Revenue Bond Refinancing Act, see Sections 6‑17‑10 et seq.

LIBRARY REFERENCES

Automobiles 7.

Municipal Corporations 950(15).

Westlaw Key Number Searches: 48Ak7; 268k950(15).

C.J.S. Motor Vehicles Sections 17 to 20.

NOTES OF DECISIONS

In general 1

1. In general

Police power may not be surrendered by contract. Covenant to maintain during the life of bonds parking meters on the streets of Beaufort and to charge fees for use of parking spaces thereon sufficient to service such bonds, constitutes an ineffective attempt to barter away the police power, and the legislature could not authorize the city council of Beaufort to adopt a system of on‑street parking and make it irrevocable during the life of bonds, so as to preclude a future council from adopting some other, and better, method of regulating traffic, or from prohibiting parking entirely on any or all of the streets. Sammons v. City of Beaufort (S.C. 1954) 225 S.C. 490, 83 S.E.2d 153. Municipal Corporations 591

**SECTION 5‑29‑60.** Additional powers of municipalities as to bonds.

 Any municipality may:

 (1) Provide that any revenue bonds issued under this chapter shall be payable, both as to principal and interest, from such portions of the revenues of either or both of its off‑street parking facilities and its on‑street parking facilities as the municipality shall prescribe in the proceedings adopted in the issuance of bonds pursuant to this chapter but any pledge with respect to revenues derived from on‑street parking facilities shall reserve the right in the municipality to discontinue the use of on‑street parking facilities whenever traffic conditions so require;

 (1A) Additionally secure the payment of the principal and interest of bonds issued pursuant to this chapter by a pledge of so much of the moneys as the municipality shall derive from business license taxes as may be necessary to pay the principal of and interest on any bonds issued under this chapter, and covenant and agree that all powers granted to such municipality to impose business license taxes shall be exercised to such degree as will enable the municipality to discharge the covenant herein first authorized;

 (2) Covenant and agree that upon its being adjudged in default as to the payment of any installment of principal or interest upon any bond issued by it, or in default as to the performance of any covenant or undertaking made by it, that in such event, the principal of all bonds of such issue may be declared forthwith due and payable, notwithstanding that any of them may not have then matured;

 (3) Confer upon a corporate trustee the power to make disposition of the proceeds from all borrowings and also of all revenues derived from the operation of either or both of its off‑street parking facilities and its on‑street parking facilities, in accordance with and in the order of priority prescribed by the proceedings adopted by the municipality as an incident to the issuance of any bonds;

 (4) Dispose of its bonds at public or private sale, and upon such terms and conditions as it shall approve;

 (5) Make such provision for the redemption of bonds issued by it prior to their stated maturity, with or without premium, and on such terms and conditions as the municipality shall approve;

 (6) Covenant and agree that any cushion fund established to further secure the payment of the principal and interest of any bonds shall be in a fixed amount;

 (7) Covenant and agree that no free service will be furnished to any person, firm, corporation, municipal corporation, or any subdivision or division of the State, or limit the conditions under which free service may be made available;

 (8) Prescribe the procedure, if any, by which the terms of the contract with the holders of its bonds may be amended, the number of bonds whose holders must consent thereto, and the manner in which such consent shall be given; and

 (9) Prescribe the events of default and the terms and conditions upon which all or any bonds shall become or may be declared due before maturity and the terms and conditions upon which such declaration and its consequences may be waived.

HISTORY: 1962 Code Section 59‑566.5; 1954 (48) 1771; 1969 (56) 788.

CROSS REFERENCES

Financial matters generally, see Sections 5‑21‑10 et seq.

LIBRARY REFERENCES

Municipal Corporations 950(15).

Westlaw Key Number Search: 268k950(15).

NOTES OF DECISIONS

In general 2

Criminal ordinances 3

Validity 1

1. Validity

South Carolina Const, former Art 8, Section 7, is a limitation on the authority of city government officials. Robinson v. White (S.C. 1971) 256 S.C. 410, 182 S.E.2d 744.

Item (1A) is unconstitutional as an attempt to authorize the creation of bonded indebtedness by a city without compliance with the provisions of SC Const, Art 8, Section 7. Robinson v. White (S.C. 1971) 256 S.C. 410, 182 S.E.2d 744.

2. In general

To the extent unrelated funds (business license tax) are used to service the bonds, the general funds of the city will be depleted and the city authorities will then look to the taxpayers to replenish the general fund. Thus, the end result is that the taxpayer is burdened with payment of the bonds just as fully as if they had been issued as general obligation bonds in an amount equal to the unrelated funds pledged. Robinson v. White (S.C. 1971) 256 S.C. 410, 182 S.E.2d 744.

A municipality may use the revenue from on‑street parking facilities to defray in part the cost of establishing and maintaining a parking lot where both facilities are interrelated and constitute a uniform parking system, so long as the total revenue received from both on‑street and off‑street meters does not substantially exceed that necessary to defray the expenses incident to the regulation of parking, since the police power cannot be used to raise revenue. Sammons v. City of Beaufort (S.C. 1954) 225 S.C. 490, 83 S.E.2d 153.

Covenant of city giving bondholders lien on all parking facilities and providing that, upon default, a receiver might be appointed to take over and operate both on‑street and off‑street parking, was invalid as to on‑street parking facilities, an essential governmental function, as a city may not mortgage its streets or delegate to a court the power to regulate traffic. Sammons v. City of Beaufort (S.C. 1954) 225 S.C. 490, 83 S.E.2d 153. Municipal Corporations 950(15)

3. Criminal ordinances

Covenant of city, in connection with proposed bond issue, to keep in effect an ordinance making it a criminal offense to violate parking regulations is invalid, as no city council may be empowered to enact any kind of criminal ordinance and make same irrevocable. Sammons v. City of Beaufort (S.C. 1954) 225 S.C. 490, 83 S.E.2d 153. Municipal Corporations 950(15)