

**CITY OF BALTIMORE
COUNCIL BILL 06-0525
(First Reader)**

Introduced by: The Council President
At the request of: The Administration (Baltimore Development Corporation)
Introduced and read first time: October 16, 2006
Assigned to: Taxation and Finance Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Board of Municipal and Zoning Appeals, Planning Commission, Baltimore Development Corporation, Department of Housing and Community Development, Department of Public Works, Department of Transportation, Baltimore City Parking Authority Board, Department of Finance, Board of Estimates

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Mondawmin Mall Special Obligation Bonds**

3 FOR the purpose of providing for the issuance of special obligation bonds in an amount not
4 exceeding \$15,000,000 for the purpose of financing infrastructure improvements; providing
5 for the method and sources of payment for these special obligation bonds; authorizing the
6 Board of Finance to specify, prescribe, determine, provide for and approve the details, forms,
7 documents or procedures in connection with the special obligation bonds and any other
8 matters necessary or desirable in connection with the authorization, issuance, sale and
9 payment of these special obligation bonds; and generally relating to the issuance and
10 payment of special obligation bonds.

11 BY authority of
12 Article II - General Powers
13 Sections (62) and (62A)
14 Baltimore City Charter
15 (1996 Edition)

16 **Recitals**

17 Article II, Section (62) of the Baltimore City Charter (the "Tax Increment Act") authorizes
18 the Mayor and City Council of Baltimore to establish a "development district" (as defined in the
19 Tax Increment Act) and a special, tax increment fund into which the revenues and receipts from
20 the real property taxes representing the levy on the "tax increment" (as defined in the Tax
21 Increment Act) for the development district are deposited, for the purpose of providing funds for
22 the development of the development district.

23 Pursuant to an Ordinance enacted prior to or simultaneously with this Ordinance (the
24 "Development District Ordinance"), the City has:

- 25 (1) designated the Mondawmin Mall Development District (the "Development District");
- 26 (2) created the Mondawmin Mall Development District Tax Increment Fund;

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.

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1 (3) provided that until special obligation bonds issued with respect to the Development
2 District have been fully paid, the property taxes on real property in the Development
3 District shall be divided as provided in the Tax Increment Act; and

4 (4) made other findings and determinations with respect to the Development District.

5 Article II, Section (62A) of the Baltimore City Charter (the “Special Taxing District Act”)
6 authorizes the City to establish a “special taxing district” (as defined in the Special Taxing
7 District Act) and a special fund into which the special taxes levied in the special taxing district
8 are deposited, for the purpose of providing financing, refinancing, or reimbursement for the cost
9 of infrastructure improvements.

10 Pursuant to an Ordinance enacted prior to or simultaneously with this Ordinance (the
11 “Special Taxing District Ordinance”), the City has:

12 (1) designated the Mondawmin Mall Special Taxing District (the “Special Taxing
13 District”);

14 (2) created the Mondawmin Mall Special Taxing District Special Fund;

15 (3) authorized the levy of a special tax on all real property within the Special Taxing
16 District; and

17 (4) made certain other findings and determinations with respect to the Special Taxing
18 District.

19 The Tax Increment Act authorizes the City, subject to certain requirements, to issue and
20 deliver bonds for the purpose of financing and refinancing the development of an industrial,
21 commercial or residential area in Baltimore City.

22 The Special Taxing District Act authorizes the City, subject to certain requirements, to issue
23 and deliver bonds for the purpose of providing financing, refinancing, or reimbursement for the
24 cost of infrastructure improvements.

25 Mondawmin Business Trust, a Maryland business trust (the “Developer”) has indicated its
26 intention to redevelop the Mondawmin Mall (the “Mall”) retail space located in Baltimore City.
27 The Developer will initially use its own funds to redevelop the Mall. The bonds issued to finance
28 or refinance the Infrastructure Improvements will be held in escrow until the satisfaction of
29 certain conditions, including completion of the Mall redevelopment and the Infrastructure
30 Improvements.

31 The City wishes to authorize the issuance of special obligation bonds to provide funds for the
32 development of infrastructure improvements relating to the redevelopment of the Mall in the
33 Development District and the Special Taxing District.

34 **SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE,** That for
35 the purposes of this Ordinance, the following terms have the meanings indicated:

36 (a) “Acts” means the Tax Increment Act and the Special Taxing District Act.

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- 1 (b) “Bond” means any bond, note, or other similar instrument issued by the Mayor and
2 City Council of Baltimore under the Acts, including without limitation, the bonds
3 authorized by this Ordinance.
- 4 (c) “City expenses” means:
- 5 (1) the fees and expenses of any fiscal agent or trustee employed by the City in
6 connection with the bonds;
- 7 (2) the expenses of the City in carrying out its duties under the bonds or indenture,
8 including:
- 9 (i) the expenses incurred in levying and collecting the special tax; and
- 10 (ii) all other costs and expenses of the City and the bond trustee, if any, incurred
11 in connection with the discharge of their duties under the bonds and the
12 indenture, including legal expenses associated with those duties, and in any
13 way related to the administration of the Special Taxing District.
- 14 (d) “Development District” means the Mondawmin Mall Development District.
- 15 (e) “Developer” means General Growth Properties, Inc.
- 16 (f) “Includes” or “including” means by way of illustration and not by way of limitation.
- 17 (g) “Indenture” means the indenture or other document under which the bonds are issued.
- 18 (h) “Infrastructure Improvements” means the following infrastructure improvements
19 constructed in accordance with all required City approvals:
- 20 (1) the design and construction of roads, including removal of existing paving, new
21 paving and installation of curbs, gutters, sidewalks, lighting, landscaping, and
22 utilities (including sanitary sewer, storm water, gas, water, fire suppression,
23 electric and traffic signal work);
- 24 (2) site removal, including regrading and preparation, the removal of excess soil; and
25 demolition of buildings;
- 26 (3) the design, construction and renovation of parking lots and/or structured parking,
27 including paving and the installation of curbs, gutters, sidewalks, utilities, lighting
28 and landscaping; and
- 29 (4) the design, acquisition, construction, renovation and development of other
30 infrastructure improvements that are necessary for the completion of the
31 foregoing infrastructure improvements for their intended public purposes.
- 32 (i) “Rate and Method” means the Rate and Method of Apportionment of the Special
33 Taxes attached to the Special Taxing District Ordinance as Exhibit 2.
- 34 (j) “Special tax” means the special tax authorized, levied and collected in the Special
35 Taxing District by the Special Taxing District Ordinance.

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- 1 (k) “Special Tax Fund” means the Mondawmin Mall Special Tax Fund.
- 2 (l) “Special tax revenues” means the revenues and receipts from the special tax,
3 including amounts deposited in the Special Tax Fund and any other fund into which
4 all or any of these revenues and receipts are deposited after they are appropriated by
5 the Mayor and City Council of Baltimore.
- 6 (m) “Special Taxing District” means the Mondawmin Mall Special Taxing District.
- 7 (n) “Special Taxing District Act” means Article II, Chapter (62A) of the Baltimore City
8 Charter.
- 9 (o) “Special Taxing District Ordinance” means the Ordinance of the Mayor and City
10 Council designating the Special Taxing District.
- 11 (p) “Tax increment” means for any tax year, the amount by which the assessable base (as
12 defined in the Tax Increment Ordinance) as of January 1 preceding that tax year
13 exceeds the original taxable value (as defined in the Tax Increment Ordinance),
14 divided by the assessment ratio (as defined in the Tax Increment Ordinance) used to
15 determine the original taxable value.
- 16 (q) “Tax Increment Act” means Article II, Chapter (62) of the Baltimore City Charter.
- 17 (r) “Tax Increment Fund” means the Mondawmin Mall Development District Tax
18 Increment Fund.
- 19 (s) “Tax Increment Ordinance” means the Ordinance of the Mayor and City Council
20 designating the Development District.
- 21 (t) “Tax increment revenues” means the revenues and receipts from the taxes
22 representing the levy on the tax increment that would normally be paid to the City,
23 including amounts deposited in the Tax Increment Fund or any other fund into which
24 all or any part of these revenues and receipts are deposited after they are appropriated
25 by the Mayor and City Council of Baltimore.
- 26 (u) “Tax year” means the period from July 1 of a calendar year through June 30 of the
27 next calendar year.

28 **SECTION 2. AND BE IT FURTHER ORDAINED,** That the Mayor and City Council of Baltimore
29 finds and determines that the issuance of bonds from time to time for the purpose of providing
30 funds to finance the infrastructure improvements:

- 31 (a) accomplishes the purposes of the Acts;
- 32 (b) serves public purposes, including the direct and indirect enhancement of the taxable
33 base of the City and the facilitation of planned improvements to the Mondawmin
34 Mall development; and
- 35 (c) generally promotes the health, welfare, and safety of the residents of the State of
36 Maryland and of the City of Baltimore.

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SECTION 3. AND BE IT FURTHER ORDAINED, That:

- (a) Bonds may be issued from time to time in one or more series in an aggregate principal amount not to exceed \$15,000,000.
- (b) The proceeds of the bonds may be utilized solely for the following purposes, as the Board of Finance determines pursuant to Section 9 of this Ordinance:
 - (1) to finance all or part of the costs of the infrastructure improvements;
 - (2) to establish a debt service reserve fund for the bonds;
 - (3) to fund capitalized interest on the bonds; and
 - (4) to pay costs and expenses of issuing the bonds.
- (c) The bonds may be issued pursuant to the provisions of an indenture at any time or from time to time in one or more issues or series. Each issue or series of the bonds shall be identified by the year of issue or by other designation.

SECTION 4. AND BE IT FURTHER ORDAINED, That:

- (a) The tax increment revenues are pledged to the payment of the principal of and interest on the bonds. However, the tax increment revenues are not irrevocably pledged to the payment of the principal of and interest on the bonds, and the obligation to pay the principal of and interest on the bonds from the tax increment revenues is subject to annual appropriation by the City.
- (b) The tax increment revenues may also be pledged by the City to the payment of additional bonds issued by the City under the Tax Increment Act relating to the Development District, subject to the provisions of the indenture.
- (c) If any bonds are outstanding, the tax increment revenues may not be used for the purposes set forth in Section 6 of the Tax Increment Ordinance unless the amount in the Tax Increment Fund exceeds:
 - (1) the debt service payable on the bonds in that fiscal year and any debt service payable on the bonds in any prior fiscal year that remains unpaid;
 - (2) the amount required to replenish any debt service reserve fund established for the bonds; and
 - (3) the amount of City expenses due and payable and to become due and payable in that fiscal year.

SECTION 5. AND BE IT FURTHER ORDAINED, That:

- (a) Provision may be made for municipal bond insurance or any other type of financial guaranty of the bonds.

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1 (b) The bonds may be secured, as the Board of Finance determines under Section 9 of
2 this Ordinance, through:

3 (1) the establishment of debt service reserve funds;

4 (2) the establishment of additional sinking funds; or

5 (3) the pledge of other assets and revenues toward the payment of the principal and
6 interest on the bonds.

7 (c) The bonds are special obligations of the City. They do not constitute a general
8 obligation debt of the City or a pledge of the City's full faith and credit or taxing
9 power.

10 **SECTION 6. AND BE IT FURTHER ORDAINED,** That the bonds will be payable:

11 (a) first, from capitalized interest, if any, and any other available amount in the funds and
12 accounts created by the indenture;

13 (b) second, from the tax increment revenues, subject to annual appropriation by the City;
14 and

15 (c) third, to the extent the tax increment revenues are not sufficient to pay debt service on
16 the bonds, to replenish any debt service fund for the bonds, and to pay City expenses,
17 from the special tax revenues, subject to annual appropriation by the City.

18 **SECTION 7. AND BE IT FURTHER ORDAINED,** That:

19 (a) No special tax shall be levied unless the tax increment revenues are not enough to pay
20 debt service on the bonds, to replenish any debt service reserve fund for the bonds,
21 and to pay the City expenses. The amount of the special tax required to be levied in
22 any tax year to provide for the payment of City expenses may be reduced to the
23 extent that amounts are held under the indenture, or amounts are otherwise made
24 available to the City, are available for the payment of City expenses in that tax year.

25 (b) The City covenants to levy the special tax, in accordance with the Rate and Method,
26 up to the maximum special tax provided in the Rate and Method, at a rate and amount
27 at least sufficient to pay the principal of and interest on the bonds, to replenish any
28 debt service reserve fund for the bonds and to pay City expenses (to the extent these
29 expenses are not otherwise provided for), to the extent any capitalized interest and
30 any other amounts available under the indenture, the tax increment revenues, and any
31 amounts in the Special Tax Fund are insufficient. The special tax also may be levied
32 with respect to refunding bonds issued under the Special Taxing District Act without
33 notice to or the consent of the property owners in the Special Taxing District as
34 provided in the indenture.

35 (c) The special tax revenues are pledged to the payment of the principal of and interest
36 on the bonds. However, the special tax revenues are not irrevocably pledged to the
37 payment of the principal of and interest on the bonds, and the obligation to pay the
38 principal of and interest on the bonds from the special tax revenues is subject to
39 annual appropriation by the City.

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SECTION 8. AND BE IT FURTHER ORDAINED, That:

- 1
- 2 (a) The bonds shall be executed in the name of the City and on its behalf by the Mayor,
3 by manual or facsimile signature. The corporate seal of the City or a facsimile of it
4 shall be impressed or otherwise reproduced on the bonds and attested by the
5 Custodian or Alternate Custodian of the City Seal by manual, or facsimile signature.
- 6 (b) The bonds shall be initially issued in escrow. The bonds shall be released from
7 escrow upon satisfaction of certain requirements, including the obligation of the
8 Developer to complete the redevelopment of the Mall and the construction of the
9 Infrastructure Improvements. If the bonds are released from escrow, it is anticipated
10 that they will be remarketed and a portion of the remarketing proceeds will be used to
11 reimburse the Developer for certain costs of the Infrastructure Improvements.
- 12 (c) Each of the following documents, if considered necessary by the Board of Finance for
13 the delivery of the bonds shall be executed in the name of the City and on its behalf
14 by the Mayor or Director of Finance, by manual signature and, if necessary, the
15 corporate seal of the City or a facsimile of it shall be impressed or otherwise
16 reproduced on the documents and attested by the Custodian or Alternate Custodian of
17 the City Seal, by manual signature:
- 18 (1) the indenture to be entered into between the City and a trustee and/or such other
19 parties deemed appropriate by the Board of Finance to be selected;
- 20 (2) the development agreement(s) to be entered into among the City, any other
21 governmental entity, if necessary, and the developer(s) of the Development
22 District to provide for the construction by the developer(s) of the infrastructure
23 improvements;
- 24 (3) an escrow agreement to be entered into among the City, the Developer and an
25 escrow agent, to provide the conditions under which the bonds will be released
26 from escrow and remarketed; and
- 27 (4) any other documents the Board of Finance considers necessary by for the
28 issuance, sale and delivery of the bonds.
- 29 (d) If any officer whose signature or countersignature or a facsimile of whose signature
30 or countersignature appears on the bonds or any other document ceases to be an
31 officer before the delivery of the bonds or any other document, the signature or
32 countersignature or the facsimile shall nevertheless be valid and sufficient for all
33 purposes, as if the officer had remained in office until delivery.
- 34 (e) The Mayor, the Director of Finance, the Custodian of the City Seal and the Alternate
35 Custodian of the City Seal, and other officials of the City are authorized and
36 empowered to do all acts and things and execute all documents and certificates as the
37 Board of Finance determines to be necessary to carry out the provisions of this
38 Ordinance, subject to the limitations set forth in the Acts, the Tax Increment
39 Ordinance, the Special Taxing District Ordinance, and this Ordinance.

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1 **SECTION 9. AND BE IT FURTHER ORDAINED,** That the Board of Finance shall specify and
2 prescribe by resolution any of the following as it deems appropriate to finance the infrastructure
3 improvements:

- 4 (a) the principal amount of the bonds to be issued;
- 5 (b) the rate or rates of interest the bonds are to bear or the method for determining the
6 same;
- 7 (c) the manner in which and the terms upon which the bonds are to be sold;
- 8 (d) the manner in which and the times and places that the interest on the bonds is to be
9 paid;
- 10 (e) the time or times that the bonds may be executed, issued, and delivered, including the
11 conditions for releasing the bonds from escrow;
- 12 (f) the form and tenor of the bonds and the denominations in which the bonds may be
13 issued;
- 14 (g) the manner in which and the times and places that the principal of the bonds is to be
15 paid, within the limitations set forth in the Acts;
- 16 (h) provisions pursuant to which any or all of the bonds may be called for redemption
17 prior to their stated maturity dates;
- 18 (i) the terms and provisions of any indenture, development agreement(s), escrow
19 agreement or other documents to be executed by or on behalf of the City and any
20 person in connection with the issuance of the bonds, including, provisions providing
21 for additional security for the bonds;
- 22 (j) provisions establishing sinking funds or debt service reserve funds for the bonds;
- 23 (k) provisions pledging other assets and revenues towards the payment of the principal of
24 and interest on the bonds;
- 25 (l) provision for municipal bond insurance or any other type of financial guaranty of the
26 bonds; and
- 27 (m) any other provisions not inconsistent with the Charter (including the Acts), the Tax
28 Increment Ordinance, the Special Taxing District Ordinance, this Ordinance and
29 other applicable law as the Board of Finance determines to be necessary or desirable
30 to finance the infrastructure improvements.

31 **SECTION 10. AND BE IT FURTHER ORDAINED,** That:

- 32 (a) Before the bonds are issued, the Director of Finance shall record among the Land
33 Records of the City, at the cost of the Special Taxing District, a declaration that:
 - 34 (1) encumbers all real property located in the Special Taxing District, except for
35 property exempt by law or the Special Taxing District Ordinance; and

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1 (2) designates that property as subject to the Special Taxing District.

2 (b) The declaration shall terminate when the Director of Finance records a release stating
3 that all bonds are fully repaid or have been defeased.

4 **SECTION 11. AND BE IT FURTHER ORDAINED,** That any approvals, authorizations, or
5 activities provided in this Ordinance do not constitute and may not be deemed to constitute or
6 imply that the City Council, the Mayor, or any department, office or agency of the City has given
7 or will give, any approval, authorization or consent to any action or activity within or required
8 for the development of the Development/Special Taxing District, including any land use
9 approval, requirements for the provision of public utilities or services, or any other
10 administrative, judicial, quasi-judicial, or legislative approval, authorization or consent.

11 **SECTION 12. AND BE IT FURTHER ORDAINED,** That the provisions of this Ordinance are
12 severable. If any provision, sentence, clause, section or other part of this Ordinance is held or
13 determined to be illegal, invalid, unconstitutional, or inapplicable to any person or
14 circumstances, that illegality, invalidity, unconstitutionality, or inapplicability does not affect or
15 impair any of the remaining provisions, sentences, clauses, sections, or parts of this Ordinance or
16 their application to other persons or circumstances. It is the intent of the Mayor and City
17 Council that this Ordinance would have been passed even if the illegal, invalid, unconstitutional,
18 or inapplicable provision, sentence, clause, section, or other part had not been included in this
19 Ordinance, and as if the person or circumstances to which this Ordinance or part are inapplicable
20 had been specifically exempted.

21 **SECTION 13. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the 30th
22 day after the date it is enacted.