

CITY OF BALTIMORE
ORDINANCE _____
Council Bill 13-0234

Introduced by: The Council President
At the request of: The Administration (Baltimore Development Corporation)
Introduced and read first time: June 3, 2013
Assigned to: Taxation, Finance and Economic Development Committee
Committee Report: Favorable, with an amendment
Council action: Adopted
Read second time: August 12, 2013

AN ORDINANCE CONCERNING

Harbor Point Development – Bond Ordinance

1
2 FOR the purpose of authorizing the issuance of special obligation bonds; authorizing the pledge
3 by the City, subject to appropriation, of Tax Increment Revenues and Special Tax Revenues
4 (as such terms are defined herein) to the payment of debt service on such special obligation
5 bonds, the replenishment of any reserves, and the payment of certain expenses and
6 administrative costs; providing that such bonds may be issued from time to time and in one or
7 more issues or series in an aggregate principal amount not exceeding \$125,000,000 for the
8 purpose of financing infrastructure improvements and related costs, including, without
9 limitation, the Project (defined herein), and other necessary improvements to, from, or within
10 the development district, and certain other infrastructure improvements permitted by the Acts
11 (defined herein); providing for the method and sources of payment for such special obligation
12 bonds; providing that the City, in each fiscal year in which any such bonds are outstanding,
13 use its best efforts to obtain the appropriation of the Tax Increment Revenues and the Special
14 Tax Revenues in the amounts and at the times specified in a trust agreement or agreements
15 between the City and a bank or trust company appointed as trustee thereunder; authorizing
16 the Board of Finance to specify, prescribe, determine, provide for and approve the details,
17 forms, documents or procedures in connection with such special obligation bonds and any
18 other matters necessary or desirable in connection with the authorization, issuance, sale, and
19 payment of such special obligation bonds; providing for a special effective date; and
20 generally relating to the issuance and payment of such special obligation bonds.

21 BY authority of
22 Article II - General Powers
23 Sections (62) and (62A)
24 Baltimore City Charter
25 (1996 Edition)

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

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Recitals

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

Pursuant to Ordinance 10-401 (defined herein), the City has:

- (i) designated the Harbor Point Development District (the “Original Development District”);
- (ii) created the Harbor Point Development District Tax Increment Fund;
- (iii) provided that until any special obligation bonds issued with respect to the Original Development District have been fully paid, the property taxes on real property in the Original Development District shall be divided as provided in the Tax Increment Act; and
- (iv) made other findings and determinations with respect to the Original Development District.

Pursuant to an Ordinance enacted prior to or simultaneously with this Ordinance, the City has amended Ordinance 10-401 (Ordinance 10-401, as so amended, is collectively herein referred to as the “Tax Increment Ordinance”) by adding additional parcels to the Original Development District (the Original Development District, as so amended, is collectively herein referred to as the “Development District”).

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

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

- (i) designated the Harbor Point Special Taxing District (the “Special Taxing District”);
- (ii) created the Harbor Point Special Taxing District Special Fund;

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1 (iii) authorized the levy of a special tax on all real and personal property
2 within the Special Taxing District pursuant to the Rate and Method (defined
3 herein); and

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

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

9 The Special Taxing District Act authorizes the City, subject to certain
10 requirements, to issue bonds for the purpose of providing funds for the financing,
11 refinancing, or reimbursement for the cost of infrastructure improvements.

12 The City wishes to authorize the issuance of special obligation bonds to provide
13 funds for the Project (defined herein) to, from, or within the Development
14 District.

15 The City also wishes to determine various matters in connection with the
16 foregoing, including authorizing the Board of Finance to undertake additional
17 actions in connection with the issuance of Bonds (defined herein) to finance the
18 costs of the Project.

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

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

22 (b) “Bonds” means any bonds, notes, or other similar instruments issued by the Mayor
23 and City Council of Baltimore under the Acts.

24 (c) “City Expenses” means the expenses of the City in carrying out its duties under this
25 Ordinance, the Tax Increment Ordinance, and the Special Taxing District Ordinance,
26 including but not limited to:

27 (1) the fees and expenses of any fiscal agent or trustee employed by the City incurred
28 in connection with any Bonds;

29 (2) the expenses of the City in carrying out its duties under any Indenture, including
30 but not limited to:

31 (i) the expenses incurred in levying and collecting the Special Tax,

32 (ii) any expenses incurred in complying with arbitrage rebate requirements, and

33 (iii) any costs and expenses incurred in complying with obligated person
34 disclosure requirements associated with applicable federal and state securities
35 law, including the costs of any employees of the City and fees of any
36 professionals retained by the City to provide these services; and

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- 1 (3) all other costs and expenses of the City incurred in connection with the discharge
2 of its duties under any Indenture, including the costs of any employees of the City
3 and legal expenses associated with those duties, and in any way related to the
4 administration of the Special Taxing District or the Development District.
- 5 (d) “Development District” means the Harbor Point Development District established by
6 the Tax Increment Ordinance.
- 7 (e) “Districts” means the Development District and the Special Taxing District.
- 8 (f) “Includes” or “including” means by way of illustration and not by way of limitation.
- 9 (g) “Indenture” or “Indentures” means the indenture or indentures, as applicable, under
10 which any Bonds are issued.
- 11 (h) “Ordinance 10-401” means Ordinance 10-401, passed by the City Council on
12 December 9, 2010, and signed by the Mayor on December 13, 2010.
- 13 (i) “Original Development District” has the meaning set forth in the Recitals.
- 14 (j) “Project” means the following improvements and activities that are to be completed in
15 accordance with all required City approvals:
- 16 (1) the design and construction of street and road improvements to, from, or within
17 the Development District, including, without limitation, the installation of curbs
18 and gutters, streets, bridges, sidewalks, lighting and landscaping, and the
19 improvements which are designed to improve traffic flow to and from the
20 Development District;
- 21 (2) the installation of utilities, including, without limitation, water, sewer, lighting,
22 publicly-owned ductbanks, and stormwater management facilities, the
23 construction of parks, including public recreational facilities and public restrooms,
24 plazas, promenades, and transit piers, and the construction of other necessary
25 improvements to, from, or within the Development District and other facilities;
- 26 (3) the acquisition by purchase, lease, or condemnation of land or other property, or
27 an interest in them, in the Development District or as necessary for a right-of-way
28 or other easement to or from the Development District;
- 29 (4) the acquisition, design, construction, reconstruction, renovation, and development
30 of buildings that are to be devoted to a governmental use or purpose, such as a
31 school, and condemning or otherwise acquiring structures, real or personal
32 property, rights, rights-of-way, franchises, easements, and interests in furtherance
33 of this purpose;
- 34 (5) structured and surface parking facilities that are (i) publicly owned or (ii) privately
35 owned but serve a public purpose;
- 36 (6) site removal, including demolition, site preparation, earthwork, clearing, grading,
37 and filling;

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- 1 (7) surveys and studies; and
- 2 (8) the acquisition, construction, renovation, and development of other related
3 infrastructure improvements and the financing or refinancing of any related costs
4 as permitted by the Acts that are necessary for the completion of the foregoing for
5 their intended public purposes.
- 6 (k) “Rate and Method” means the Rate and Method of Apportionment of the Special
7 Taxes attached to the Special Taxing District Ordinance as Exhibit 2.
- 8 (l) “Special Tax” means the special tax authorized to be levied and collected in the
9 Special Taxing District by the Special Taxing District Ordinance.
- 10 (m) “Special Tax Fund” means the Harbor Point Special Tax Fund.
- 11 (n) “Special Tax Revenues” means the revenues and receipts from the Special Tax,
12 including amounts deposited in the Special Tax Fund and any other fund into which
13 all or any of these revenues and receipts are deposited after they are appropriated by
14 the City.
- 15 (o) “Special Taxing District” means the Harbor Point Special Taxing District.
- 16 (p) “Special Taxing District Act” means Article II, Chapter (62A) of the Baltimore City
17 Charter.
- 18 (q) “Special Taxing District Ordinance” means the Ordinance of the City designating the
19 Special Taxing District.
- 20 (r) “Tax Increment” means for any tax year, the amount by which the assessable base (as
21 defined in the Tax Increment Ordinance) as of January 1 preceding that tax year
22 exceeds the original taxable value (as defined in the Tax Increment Ordinance),
23 divided by the assessment ratio (as defined in the Tax Increment Ordinance) used to
24 determine the original taxable value.
- 25 (s) “Tax Increment Act” means Article II, Chapter (62) of the Baltimore City Charter.
- 26 (t) “Tax Increment Fund” means the Harbor Point Development District Tax Increment
27 Fund.
- 28 (u) “Tax Increment Ordinance” has the meaning set forth in the Recitals.
- 29 (v) “Tax Increment Revenues” means the revenues and receipts from the taxes
30 representing the levy on the Tax Increment that would normally be paid to the City,
31 including amounts deposited in the Tax Increment Fund or any other fund into which
32 all or any part of these revenues and receipts are deposited after they are appropriated
33 by the City.
- 34 (w) “Tax year” means the period from July 1 of a calendar year through June 30 of the
35 next calendar year.

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1 **SECTION 2. AND BE IT FURTHER ORDAINED**, That the City finds and determines that the
2 issuance of Bonds, from time to time, for the purpose of providing funds to finance a portion of
3 the costs of the Project:

- 4 (a) accomplishes the purposes of the Acts;
- 5 (b) serves public purposes, including the direct and indirect enhancement of the taxable
6 base of the City, the facilitation of planned improvements to the Development District
7 and the Special Taxing District, the creation of new employment opportunities, the
8 encouragement of additional economic activities, the development or redevelopment
9 of slum, blighted or deteriorated areas, the redevelopment of environmentally
10 damaged areas, the undertaking of urban renewal projects and the furtherance of
11 economic development conducted pursuant to comprehensive plans; and
- 12 (c) generally promotes the health, welfare, and safety of the residents of the State of
13 Maryland and of the City of Baltimore.

14 **SECTION 3. AND BE IT FURTHER ORDAINED**, That:

- 15 (a) The City authorizes the issuance from time to time of one or more issues or series of
16 Bonds by the City. Bonds may be approved from time to time by the Board of
17 Finance and may be issued pursuant to the provisions of an Indenture or Indentures, at
18 any time and from time to time, and in one or more issues or series and as one or
19 more instruments in an aggregate principal amount not to exceed \$125,000,000, for
20 the purposes set forth in subparagraph ~~(c)~~ (b) of this Section. Each issue or series of
21 Bonds shall be identified by the year of issue or by other designation. Prior to
22 issuance of the Bonds, the City shall have complied with the requirements of
23 subsection (d) of the Tax Increment Act and subsection (e) of the Special Taxing
24 District Act.
- 25 (b) The proceeds of Bonds may be utilized solely for the following purposes, as the
26 Board of Finance determines pursuant to Section 9 of this Ordinance:
- 27 (1) to finance all or part of the costs of the Project;
- 28 (2) to establish one or more debt service reserve funds for the Bonds;
- 29 (3) to fund capitalized interest on the Bonds; and
- 30 (4) to pay costs and expenses of issuing the Bonds, including any City Expenses.

31 **SECTION 4. AND BE IT FURTHER ORDAINED**, That:

- 32 (a) The Tax Increment Revenues are authorized to be pledged to the payment of the
33 principal of and interest on the Bonds. However, the Tax Increment Revenues shall
34 not be irrevocably pledged, and any obligation of the City to pay the principal of and
35 interest on the Bonds is subject to annual appropriation by the City.
- 36 (b) The Special Tax Revenues are authorized to be pledged to the payment of the
37 principal of and interest on Bonds. However, the Special Tax Revenues are not

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1 irrevocably pledged, and any obligation of the City to pay the principal of and interest
2 on the Bonds is subject to annual appropriation by the City.

3 (c) If any Bonds are outstanding, the Tax Increment Revenues may not be used for the
4 purposes set forth in Section 6 of the Tax Increment Ordinance unless the amount in
5 the Tax Increment Fund exceeds:

6 (1) the debt service payable on the outstanding Bonds in that fiscal year and any debt
7 service payable on the outstanding Bonds in any prior fiscal year that remains
8 unpaid;

9 (2) the amount required to replenish any debt service reserve fund or funds
10 established for the Bonds; and

11 (3) the amount of any City Expenses due and payable and to become due and payable
12 in that fiscal year.

13 **SECTION 5. AND BE IT FURTHER ORDAINED,** That any Bonds issued pursuant to this
14 Ordinance are special obligations of the City and do not constitute a general obligation debt of
15 the City or a pledge of the City's full faith and credit or taxing power.

16 **SECTION 6. AND BE IT FURTHER ORDAINED,** That the Bonds shall be payable from:

17 (a) capitalized interest and any other available amount in the funds and accounts created
18 by the Indenture or Indentures pursuant to which such Bonds were issued,

19 (b) the Tax Increment Revenues, subject to annual appropriation by the City, and

20 (c) to the extent the Tax Increment Revenues are not sufficient to pay any debt service on
21 the Bonds, to replenish any debt service fund or funds for the Bonds, and to pay any
22 City Expenses, from the Special Tax Revenues, subject to annual appropriation by the
23 City;

24 provided, however, that, in each instance, the obligations of the City to pay debt service on the
25 Bonds are payable from the revenues set forth above only to the extent such revenues are
26 specifically pledged pursuant to Section 9.

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

28 (a) No Special Tax shall be collected unless the Tax Increment Revenues are not
29 sufficient to pay debt service on the Bonds, to replenish any debt service reserve fund
30 for the Bonds, and to pay any City Expenses.

31 (b) The amount of the Special Tax required to be levied in any tax year to provide for the
32 payment of City Expenses may be reduced to the extent that amounts held under any
33 Indenture, or amounts otherwise made available to the City, are available for the
34 payment of City Expenses.

35 (c) The City covenants to levy and collect the Special Tax in accordance with the Rate
36 and Method, up to the maximum special tax provided in the Rate and Method, at a

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1 rate and amount at least sufficient to pay principal of and interest on the Bonds, to
2 replenish any debt service reserve fund for the Bonds, and to pay any City Expenses
3 (to the extent these expenses are not otherwise provided for), to the extent capitalized
4 interest and other amounts available under any Indenture, the Tax Increment
5 Revenues, and any amounts in the Tax Increment Fund are insufficient.

6 (d) The Special Tax also may be levied and collected with respect to bonds issued to
7 refund Bonds that were issued under the Special Taxing District Act without notice to
8 or the consent of the property owners in the Special Taxing District as provided in the
9 Indenture pursuant to which such Bonds were issued.

10 **SECTION 8. AND BE IT FURTHER ORDAINED, That:**

11 (a) The Bonds shall be executed in the name of the City and on its behalf by the Mayor,
12 by manual or facsimile signature. The corporate seal of the City or a facsimile of it
13 shall be impressed or otherwise reproduced on the Bonds and attested by the
14 Custodian or Alternate Custodian of the City Seal by manual or facsimile signature.

15 (b) Upon issuance of any Bonds, each of the following documents shall be executed in
16 the name of the City and on its behalf by the Mayor or Director of Finance, by manual
17 signature and, if necessary, the corporate seal of the City or a facsimile of it shall be
18 impressed or otherwise reproduced on the documents and attested by the Custodian or
19 Alternate Custodian of the City Seal, by manual signature: (i) the Indenture or
20 Indentures to be entered into between the City and a trustee to be selected; (ii) the
21 development agreement(s) to be entered into among the City, any other governmental
22 entity, if necessary, and the developer(s) of the Development District to provide for
23 the construction by the developer(s) of the Project; and (iii) any other documents the
24 Board of Finance considers necessary for the issuance, sale and delivery of the Bonds.

25 (c) If any officer whose signature or countersignature appears on the Bonds or any other
26 document ceases to be an officer before the delivery of the Bonds or such other
27 document, the signature or countersignature shall nevertheless be valid and sufficient
28 for all purposes, as if the officer had remained in office until delivery.

29 (d) The Mayor, the Director of Finance, the Custodian of the City Seal and the Alternate
30 Custodian of the City Seal, and other officials of the City are authorized and
31 empowered to do all acts and things and execute all documents and certificates as the
32 Board of Finance determines to be necessary to carry out the provisions of this
33 Ordinance, subject to the limitations set forth in the Acts, the Tax Increment
34 Ordinance, the Special Taxing District Ordinance, and this Ordinance.

35 **SECTION 9. AND BE IT FURTHER ORDAINED, That the Board of Finance shall prescribe or**
36 **approve by resolution any of the following as it deems appropriate to finance the Project:**

37 (a) the principal amount of the Bonds to be issued not to exceed the maximum amount
38 set forth in this Ordinance;

39 (b) the rate or rates of interest the Bonds are to bear or the method for determining the
40 same, provided that the rate or rates of interest shall not exceed a maximum of 7%;

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- 1 (c) the manner in which and the terms upon which the Bonds are privately placed or
2 publicly sold;
- 3 (d) the manner in which and the times and places that the interest on the Bonds is to be
4 paid and the manner in which any unpaid interest or principal may accrue or be
5 forgiven;
- 6 (e) the time or times that the Bonds, or any series of Bonds, may be executed, issued,
7 delivered, or transferred;
- 8 (f) the form and tenor of the Bonds and the denominations in which the Bonds may be
9 issued or placed into escrow;
- 10 (g) the manner in which and the times and places that the principal of the Bonds is to be
11 paid, within the limitations set forth in the Acts;
- 12 (h) provisions pursuant to which any or all of the Bonds may be called for redemption
13 prior to their stated maturity dates;
- 14 (i) the terms and provisions of any Indenture, development agreement(s), or other
15 documents to be executed by or on behalf of the City and any person in connection
16 with the issuance of the Bonds, including, provisions providing for additional security
17 for the Bonds;
- 18 (j) provisions establishing sinking funds or debt service reserve funds for the Bonds;
- 19 (k) provisions regarding the amounts of the Tax Increment Revenues and the Special Tax
20 Revenues pledged to pay the debt service on the Bonds, to replenish any debt service
21 fund or funds for the Bonds, and to pay City Expenses and the priority or order in
22 which such amounts shall be used to pay such debt service on the Bonds, to replenish
23 any debt service fund or funds for the Bonds, and to pay City Expenses;
- 24 (l) provision for municipal bond insurance or any other type of financial guaranty of the
25 Bonds;
- 26 (m) whether the interest on the Bonds may be or may not be excludable from gross
27 income for federal income tax purposes; and
- 28 (n) any other provisions not inconsistent with the Charter (including the Acts), the Tax
29 Increment Ordinance, the Special Taxing District Ordinance, this Ordinance and other
30 applicable law as the Board of Finance determines to be necessary or desirable to
31 finance the Project.

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

- 33 (a) Before any Bonds are issued, the Director of Finance shall record among the Land
34 Records of the City, at the cost of the Special Taxing District, a declaration that:

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1 (1) encumbers all real property located in the Special Taxing District, except for
2 property exempt by law or the Special Taxing District Ordinance; and

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

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

6 **SECTION 11. AND BE IT FURTHER ORDAINED, That:**

7 (a) This Section 11 applies to any Bonds issued and sold on the basis that the interest on
8 such Bonds will be excludable from gross income for federal income tax purposes.
9 Notwithstanding anything in this Ordinance to the contrary, Bonds may be issued and
10 sold on the basis that the interest on them will not be excludable from gross income
11 for federal income tax purposes.

12 (b) The City covenants that it will take, or refrain from taking, any and all actions
13 necessary to comply with the provisions of § 103 and §§ 141 through 150, inclusive,
14 of the Internal Revenue Code of 1986, as amended, applicable to any such Bonds in
15 order to preserve the status of the interest on such Bonds as excluded from gross
16 income for federal income tax purposes.

17 (c) Without limiting the generality of subsection (b), the City:

18 (1) will not use or permit the use of any of the proceeds of any such Bonds in any
19 manner that would cause the interest on such Bonds to be included in gross
20 income for federal income tax purposes;

21 (2) periodically will determine the rebate amount and timely pay any rebate amount or
22 installment of any rebate amount due on such Bonds, to the United States of
23 America; and

24 (3) will prepare and timely file Internal Revenue Service Form 8038-G, Information
25 Return for Tax-Exempt Governmental Obligations, or any successor or additional
26 form required by the Internal Revenue Service for such Bonds.

27 (d) The Director of Finance may prepare, execute and deliver for such Bonds:

28 (1) a tax regulatory agreement and no arbitrage certificate with respect to such Bonds
29 in the form the Director of Finance approves; and

30 (2) any other documents the Director of Finance considers necessary to assure the
31 owners of such Bonds that interest on such Bonds will be and remain excludable
32 from gross income for federal income tax purposes.

33 **SECTION 12. AND BE IT FURTHER ORDAINED, That any approvals, authorizations, or**
34 **activities provided in this Ordinance do not constitute and may not be deemed to constitute or**
35 **imply that the City Council, the Mayor, or any department, office or agency within or related to**
36 **the City has given or will give any approval, authorization or consent to any action or activity**
37 **within or required for the development of the Districts, including any land use approval,**

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1 requirements for the provision of public utilities or services, approvals relating to the
2 construction or other development of the improvements that constitute the Project, or any other
3 administrative, judicial, quasi-judicial, or legislative approval, authorization, or consent.

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

14 **SECTION 14. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect on the date it
15 is enacted.

Certified as duly passed this _____ day of _____, 20__

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,

this _____ day of _____, 20__

Chief Clerk

Approved this _____ day of _____, 20__

Mayor, Baltimore City