

**CITY OF BALTIMORE
COUNCIL BILL 16-0712
(First Reader)**

Introduced by: Councilmembers Stokes, Clarke

Introduced and read first time: July 18, 2016

Assigned to: Housing and Community Development Committee

REFERRED TO THE FOLLOWING AGENCIES: City Solicitor, Baltimore Development Corporation,
Department of Housing and Community Development, Department of Finance

A BILL ENTITLED

1 AN ORDINANCE concerning

2 **Port Covington Housing**

3 FOR the purpose of ensuring that the Development District known as the “Port Covington
4 Development District” develops residential housing within its confines in a manner that
5 furthers fair and inclusionary housing.

6 BY authority of
7 Article II - General Powers
8 Sections (19), (40), (47), (58), and (62)
9 Baltimore City Charter
10 (1996 Edition)

11 **Recitals**

12 Pursuant to Ordinances enacted prior to or simultaneously with this Ordinance, the City has,
13 through the authority of Article II, § (62) of the Baltimore City Charter (the “Tax Increment
14 Act”):

- 15 (i) designated the Port Covington Development District (the “Development District”);
- 16 (ii) designated the Port Covington Special Tax District (the “Special Taxing District”);
17 and
- 18 (iii) authorized the issuance of special obligation bonds and the pledge, subject to
19 appropriation, relative to the Port Covington Development and Special Taxing
20 District.

21 The Tax Increment Financing authority under Article II, § (62)(f)(4) also authorizes the City
22 to specify or prescribe, by ordinance, the terms and provisions of any development agreement
23 to be executed by the Mayor and City Council of Baltimore and any person in connection
24 with the issuance of tax increment financing bonds.

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

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1 Article II, § (47) of the Baltimore City Charter authorizes the Mayor and City Council of
2 Baltimore (the “City”) to pass any ordinance, not inconsistent with the provisions of the
3 Charter or the laws of the State, which it may deem proper in maintaining the peace, good
4 government, health and welfare of Baltimore City.

5 Article II, § (58) of the Baltimore City Charter authorizes the City to displace or limit
6 competition by limiting or controlling the types and number of uses or projects it will
7 authorize, promote, assist, or permit in exercising its powers to undertake, promote, and
8 regulate, and otherwise control residential, commercial, industrial, and economic
9 development and redevelopment.

10 The City wishes to ensure that any residential housing developed in the Port Covington
11 Development District during the existence of the Special Taxing District and the issuance and
12 payment of special obligation bonds relative thereto, meets certain goals of fair and
13 inclusionary housing, and that, in the event it does not, a mechanism of accountability and
14 redress is available for the City and its citizens.

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

17 (a) “Area Median Income” means the area median income as defined by the federal
18 Department of Housing and Urban Development for Baltimore City.

19 (b) “Affordable residential housing units” means residential housing available to and
20 occupied by individuals and families with annual gross household incomes not higher
21 than 30% of Area Median Income, the rental or ownership cost of which does not exceed
22 30% of gross household income. These affordable residential units need not be identical
23 to “market rate residential housing” and shall remain affordable as defined herein for 99
24 years from the date of development.

25 (c) “Contribution agreement” means one or more agreements executed by the City and a
26 State Issuer, pursuant to which the City will evidence a pledge, subject to appropriation,
27 of the Port Covington Development District Tax Increment Revenues and Special Tax
28 Revenues to provide for the payment by the State Issuer of the principal and interest on
29 the applicable State Obligation, the replenishment of any reserve fund for the state
30 obligation, and the payment of other costs with respect to the State Obligations.

31 (d) “Developer” means a person, corporation, or association that initially undertakes
32 development in the Port Covington Development District in connection with the issuance
33 of special obligation bonds relative thereto.

34 (e) “Development agreement” means an agreement executed by the Mayor and City Council
35 of Baltimore and the Developer of the Port Covington Development District.

36 (f) “Development District” means the area of the Port Covington Development District
37 established through the Tax Increment Financing Act of the City, as codified in Article II,
38 § (62) of the Baltimore City Charter.

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- 1 (g) “Market rate residential housing” means housing that is sold or rented at prices
2 determined by the economic dynamics of supply and demand, buyer-seller negotiations,
3 or a symbolic or actual “invisible hand”.
- 4 (h) “State Issuer” means MEDCO, the State of Maryland, or any agency, department or
5 political subdivision thereof.
- 6 (i) “Tax Increment Fund” means the Port Covington Development District Tax Increment
7 Fund.

8 **SECTION 2. AND BE IT FURTHER ORDAINED**, That the Mayor and City Council of Baltimore
9 finds and determines that (1) the health and welfare of Baltimore City requires the development
10 of quality, safe, and affordable housing, (2) City homelessness and the risk thereof shall be
11 reduced, (3) the establishment of affordable housing within the Port Covington Development
12 District and Special Taxing District promotes the City’s health and welfare and is within the
13 City’s powers to undertake, promote, and regulate, and otherwise control residential, commercial,
14 industrial, and economic development and redevelopment, and (4) enforcement of affordable
15 housing requirements shall not encumber the proceeds of the tax increment fund or the debt and
16 related payment obligations of the City related to any special obligation bonds issued by the City
17 or by a State Issuer, or through under any contribution agreement established relative to the Port
18 Covington Development District.

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

- 20 (a) There shall be a development agreement between the Mayor and City Council and the
21 Developer of the Port Covington Development District prior to the issuance of any
22 special obligation bonds relative to the District.
- 23 (b) The agreement shall require the Developer, if it develops residential housing within the
24 District, to:
- 25 (1) create a minimum of 1,500 affordable residential housing units in the
26 Development District;
- 27 (2) ensure that 20% of all residential housing that is developed within the
28 Development District be affordable residential housing units;
- 29 (3) construct and complete affordable residential housing units in the same time
30 frame as the market rate units in the project;
- 31 (4) disperse the affordable hysiotherepyresidential housing units throughout the
32 residential housing in an inclusive and integrated manner that avoids the isolation,
33 segregation, or unreasonable separation of such affordable units from other
34 residential units, common thoroughfares, public transportation, and access to
35 essential services and retail entities;
- 36 (5) permit the Developer to provide off-site affordable housing residential units,
37 outside the metes and bounds of the Development District, provided, however,
38 that the off-site option is subsequently approved by Mayor and City Council;

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1 (6) permit the Developer to contribute to a non-lapsing trust fund, created by the City
2 or by the Developer, exclusively dedicated to the development of affordable
3 residential housing units, in lieu of creating affordable residential housing units on
4 site, in an amount not less than \$200,000 per affordable residential housing unit
5 that would have been created on site under provisions (1) and (2) of this
6 subsection; and

7 (7) require the City Department of Finance or Department of Housing and
8 Community Development to report annually to the Mayor and City Council on the
9 Developer’s compliance with this section.

10 (c) If the Mayor and City Council fails to enforce such development agreement provisions
11 relative to affordable residential housing units, any individual who paid property taxes to
12 the City in the calendar year prior to the year in dispute, or any organization representing
13 such taxpayers, shall be entitled to bring a civil action in the Circuit Court for Baltimore
14 City to compel enforcement of the development agreement.

15 (d) The Court shall award attorneys’ fees to any taxpayer or taxpayer organization prevailing
16 in litigation.

17 (e) Any business reorganization, dissolution, or bankruptcy petition filed by the Developer
18 or its successors with the intention of avoiding residential housing unit requirements
19 under a development agreement or the enforcement thereof, shall constitute fraudulent
20 action and be subject to a fine of \$200,000 per affordable residential unit required by the
21 development agreement, but not completed, to be imposed upon the gross receipts of any
22 person, corporation, or association found to have committed such fraud, and which shall
23 be deposited in a non-lapsing fund dedicated to the development of affordable residential
24 housing units.

25 **SECTION 4. AND BE IT FURTHER ORDAINED,** That the Mayor and City Council, City
26 agencies, State Issuer, or any Housing Authority established under 42 U.S.C. §400 et. seq. shall
27 not provide public funds, tax credits, tax abatements, or other forms of direct or indirect public
28 subsidy or assistance to assist the Development District and its Developer in the construction,
29 rehabilitation, or development of affordable residential housing units; provided, however, that
30 housing operating subsidies such as, but not limited to, housing vouchers and other
31 rental or homeowner assistance shall be permitted.

32 **SECTION 5. AND BE IT FURTHER ORDAINED,** That the provisions of this Ordinance are
33 severable. If any provision, sentence, clause, section, or other part of this Ordinance is held or
34 determined to be illegal, invalid, unconstitutional, or inapplicable to any person or circumstances,
35 that illegality, invalidity, unconstitutionality, or inapplicability does not affect or impair any of
36 the remaining provisions, sentences, clauses, sections, or parts of this Ordinance or their
37 application to other persons or circumstances. It is the intent of the City that this Ordinance
38 would have been passed even if the illegal, invalid, unconstitutional, or inapplicable provision,
39 sentence, clause, section, or other part had not been included in this Ordinance, and as if the
40 person or circumstances to which this Ordinance or part are inapplicable had been specifically
41 exempted.

42 **SECTION 6. AND BE IT FURTHER ORDAINED,** That this Ordinance takes effect when it is
43 enacted.