



Legislation Text

File #: 13-0234, **Version:** 0

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INTRODUCTORY*

CITY OF BALTIMORE
COUNCIL BILL

Introduced by: The Council President
At the request of: The Administration (Baltimore Development Corporation)

A BILL ENTITLED

AN ORDINANCE concerning
Harbor Point Development - Bond Ordinance

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

BY authority of
Article II - General Powers
Sections (62) and (62A)
Baltimore City Charter
(1996 Edition)

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;
- (iii) authorized the levy of a special tax on all real and personal property within the Special Taxing District pursuant to the Rate and Method (defined herein); and
- (iv) made certain other findings and determinations with respect to the Special Taxing District.

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

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

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

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

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

- (a) “Acts” means the Tax Increment Act and the Special Taxing District Act.
- (b) “Bonds” means any bonds, notes, or other similar instruments issued by the Mayor and City Council of Baltimore under the Acts.
- (c) “City Expenses” means the expenses of the City in carrying out its duties under this Ordinance, the Tax Increment Ordinance, and the Special Taxing District Ordinance, including but not limited to:
 - (1) the fees and expenses of any fiscal agent or trustee employed by the City incurred in connection with any Bonds;
 - (2) the expenses of the City in carrying out its duties under any Indenture, including but not limited to:
 - (i) the expenses incurred in levying and collecting the Special Tax,
 - (ii) any expenses incurred in complying with arbitrage rebate requirements, and
 - (iii) any costs and expenses incurred in complying with obligated person disclosure requirements associated with applicable federal and state securities law, including the costs of any employees of the City and fees of any professionals retained by the City to provide these services; and
 - (3) all other costs and expenses of the City incurred in connection with the discharge of its duties under any Indenture, including the costs of any employees of the City and legal expenses associated with those duties, and in any way related to the administration of the Special Taxing District or the Development District.
- (d) “Development District” means the Harbor Point Development District established by the Tax Increment Ordinance.
- (e) “Districts” means the Development District and the Special Taxing District.
- (f) “Includes” or “including” means by way of illustration and not by way of limitation.
- (g) “Indenture” or “Indentures” means the indenture or indentures, as applicable, under which any Bonds are issued.
- (h) “Ordinance 10-401” means Ordinance 10-401, passed by the City Council on December 9, 2010, and signed by the Mayor on December 13, 2010.
- (i) “Original Development District” has the meaning set forth in the Recitals.
- (j) “Project” means the following improvements and activities that are to be completed in accordance with all required City approvals:

- (1) the design and construction of street and road improvements to, from, or within the Development District, including, without limitation, the installation of curbs and gutters, streets, bridges, sidewalks, lighting and landscaping, and the improvements which are designed to improve traffic flow to and from the Development District;
 - (2) the installation of utilities, including, without limitation, water, sewer, lighting, publicly-owned ductbanks, and stormwater management facilities, the construction of parks, including public recreational facilities and public restrooms, plazas, promenades, and transit piers, and the construction of other necessary improvements to, from, or within the Development District and other facilities;
 - (3) the acquisition by purchase, lease, or condemnation of land or other property, or an interest in them, in the Development District or as necessary for a right-of-way or other easement to or from the Development District;
 - (4) the acquisition, design, construction, reconstruction, renovation, and development of buildings that are to be devoted to a governmental use or purpose, such as a school, and condemning or otherwise acquiring structures, real or personal property, rights, rights-of-way, franchises, easements, and interests in furtherance of this purpose;
 - (5) structured and surface parking facilities that are (i) publicly owned or (ii) privately owned but serve a public purpose;
 - (6) site removal, including demolition, site preparation, earthwork, clearing, grading, and filling;
 - (7) surveys and studies; and
 - (8) the acquisition, construction, renovation, and development of other related infrastructure improvements and the financing or refinancing of any related costs as permitted by the Acts that are necessary for the completion of the foregoing for their intended public purposes.
- (k) “Rate and Method” means the Rate and Method of Apportionment of the Special Taxes attached to the Special Taxing District Ordinance as Exhibit 2.
- (l) “Special Tax” means the special tax authorized to be levied and collected in the Special Taxing District by the Special Taxing District Ordinance.
- (m) “Special Tax Fund” means the Harbor Point Special Tax Fund.
- (n) “Special Tax Revenues” means the revenues and receipts from the Special Tax, including amounts deposited in the Special Tax Fund and any other fund into which all or any of these revenues and receipts are deposited after they are appropriated by the City.
- (o) “Special Taxing District” means the Harbor Point Special Taxing District.
- (p) “Special Taxing District Act” means Article II, Chapter (62A) of the Baltimore City Charter.
- (q) “Special Taxing District Ordinance” means the Ordinance of the City designating the Special Taxing District.
- (r) “Tax Increment” means for any tax year, the amount by which the assessable base (as defined in the Tax

Increment Ordinance) as of January 1 preceding that tax year exceeds the original taxable value (as defined in the Tax Increment Ordinance), divided by the assessment ratio (as defined in the Tax Increment Ordinance) used to determine the original taxable value.

- (s) “Tax Increment Act” means Article II, Chapter (62) of the Baltimore City Charter.
- (t) “Tax Increment Fund” means the Harbor Point Development District Tax Increment Fund.
- (u) “Tax Increment Ordinance” has the meaning set forth in the Recitals.
- (v) “Tax Increment Revenues” means the revenues and receipts from the taxes representing the levy on the Tax Increment that would normally be paid to the City, including amounts deposited in the Tax Increment Fund or any other fund into which all or any part of these revenues and receipts are deposited after they are appropriated by the City.
- (w) “Tax year” means the period from July 1 of a calendar year through June 30 of the next calendar year.

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

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

SECTION 3. AND BE IT FURTHER ORDAINED, That:

- (a) The City authorizes the issuance from time to time of one or more issues or series of Bonds by the City. Bonds may be approved from time to time by the Board of Finance and may be issued pursuant to the provisions of an Indenture or Indentures, at any time and from time to time, and in one or more issues or series and as one or more instruments in an aggregate principal amount not to exceed \$125,000,000, for the purposes set forth in subparagraph (c) of this Section. Each issue or series of Bonds shall be identified by the year of issue or by other designation. Prior to issuance of the Bonds, the City shall have complied with the requirements of subsection (d) of the Tax Increment Act and subsection (e) of the Special Taxing District Act.
- (b) The proceeds of 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 Project;
 - (2) to establish one or more debt service reserve funds for the Bonds;

- (3) to fund capitalized interest on the Bonds; and
- (4) to pay costs and expenses of issuing the Bonds, including any City Expenses.

SECTION 4. AND BE IT FURTHER ORDAINED, That:

- (a) The Tax Increment Revenues are authorized to be pledged to the payment of the principal of and interest on the Bonds. However, the Tax Increment Revenues shall not be irrevocably pledged, and any obligation of the City to pay the principal of and interest on the Bonds is subject to annual appropriation by the City.
- (b) The Special Tax Revenues are authorized to be pledged to the payment of the principal of and interest on Bonds. However, the Special Tax Revenues are not irrevocably pledged, and any obligation of the City to pay the principal of and interest on the Bonds is subject to annual appropriation by the City.
- (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 outstanding Bonds in that fiscal year and any debt service payable on the outstanding Bonds in any prior fiscal year that remains unpaid;
 - (2) the amount required to replenish any debt service reserve fund or funds established for the Bonds; and
 - (3) the amount of any City Expenses due and payable and to become due and payable in that fiscal year.

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

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

- (a) capitalized interest and any other available amount in the funds and accounts created by the Indenture or Indentures pursuant to which such Bonds were issued,
- (b) the Tax Increment Revenues, subject to annual appropriation by the City, and
- (c) to the extent the Tax Increment Revenues are not sufficient to pay any debt service on the Bonds, to replenish any debt service fund or funds for the Bonds, and to pay any City Expenses, from the Special Tax Revenues, subject to annual appropriation by the City;

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

SECTION 7. AND BE IT FURTHER ORDAINED, That:

- (a) No Special Tax shall be collected unless the Tax Increment Revenues are not sufficient to pay debt service on the Bonds, to replenish any debt service reserve fund for the Bonds, and to pay any City Expenses.
- (b) The amount of the Special Tax required to be levied in any tax year to provide for the payment of City

Expenses may be reduced to the extent that amounts held under any Indenture, or amounts otherwise made available to the City, are available for the payment of City Expenses.

(c) The City covenants to levy and collect the Special Tax in accordance with the Rate and Method, up to the maximum special tax provided in the Rate and Method, at a rate and amount at least sufficient to pay principal of and interest on the Bonds, to replenish any debt service reserve fund for the Bonds, and to pay any City Expenses (to the extent these expenses are not otherwise provided for), to the extent capitalized interest and other amounts available under any Indenture, the Tax Increment Revenues, and any amounts in the Tax Increment Fund are insufficient.

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

SECTION 8. AND BE IT FURTHER ORDAINED, That:

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

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

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

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

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

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

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

(c) the manner in which and the terms upon which the Bonds are privately placed or publicly sold;

- (d) the manner in which and the times and places that the interest on the Bonds is to be paid and the manner in which any unpaid interest or principal may accrue or be forgiven;
- (e) the time or times that the Bonds, or any series of Bonds, may be executed, issued, delivered, or transferred;
- (f) the form and tenor of the Bonds and the denominations in which the Bonds may be issued or placed into escrow;
- (g) the manner in which and the times and places that the principal of the Bonds is to be paid, within the limitations set forth in the Acts;
- (h) provisions pursuant to which any or all of the Bonds may be called for redemption prior to their stated maturity dates;
- (i) the terms and provisions of any Indenture, development agreement(s), or other documents to be executed by or on behalf of the City and any person in connection with the issuance of the Bonds, including, provisions providing for additional security for the Bonds;
- (j) provisions establishing sinking funds or debt service reserve funds for the Bonds;
- (k) provisions regarding the amounts of the Tax Increment Revenues and the Special Tax Revenues pledged to pay the debt service on the Bonds, to replenish any debt service fund or funds for the Bonds, and to pay City Expenses and the priority or order in which such amounts shall be used to pay such debt service on the Bonds, to replenish any debt service fund or funds for the Bonds, and to pay City Expenses;
- (l) provision for municipal bond insurance or any other type of financial guaranty of the Bonds;
- (m) whether the interest on the Bonds may be or may not be excludable from gross income for federal income tax purposes; and
- (n) any other provisions not inconsistent with the Charter (including the Acts), the Tax Increment Ordinance, the Special Taxing District Ordinance, this Ordinance and other applicable law as the Board of Finance determines to be necessary or desirable to finance the Project.

SECTION 10. AND BE IT FURTHER ORDAINED, That:

- (a) Before any Bonds are issued, the Director of Finance shall record among the Land Records of the City, at the cost of the Special Taxing District, a declaration that:
 - (1) encumbers all real property located in the Special Taxing District, except for property exempt by law or the Special Taxing District Ordinance; and
 - (2) designates that property as subject to the Special Taxing District.
- (b) The declaration shall terminate when the Director of Finance records a release stating that all Bonds are fully repaid or have been defeased.

SECTION 11. AND BE IT FURTHER ORDAINED, That:

- (a) This Section 11 applies to any Bonds issued and sold on the basis that the interest on such Bonds will be excludable from gross income for federal income tax purposes. Notwithstanding anything in this Ordinance to the contrary, Bonds may be issued and sold on the basis that the interest on them will not be excludable from gross income for federal income tax purposes.
- (b) The City covenants that it will take, or refrain from taking, any and all actions necessary to comply with the provisions of § 103 and §§ 141 through 150, inclusive, of the Internal Revenue Code of 1986, as amended, applicable to any such Bonds in order to preserve the status of the interest on such Bonds as excluded from gross income for federal income tax purposes.
- (c) Without limiting the generality of subsection (b), the City:
- (1) will not use or permit the use of any of the proceeds of any such Bonds in any manner that would cause the interest on such Bonds to be included in gross income for federal income tax purposes;
 - (2) periodically will determine the rebate amount and timely pay any rebate amount or installment of any rebate amount due on such Bonds, to the United States of America; and
 - (3) will prepare and timely file Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Obligations, or any successor or additional form required by the Internal Revenue Service for such Bonds.
- (d) The Director of Finance may prepare, execute and deliver for such Bonds:
- (1) a tax regulatory agreement and no arbitrage certificate with respect to such Bonds in the form the Director of Finance approves; and
 - (2) any other documents the Director of Finance considers necessary to assure the owners of such Bonds that interest on such Bonds will be and remain excludable from gross income for federal income tax purposes.

SECTION 12. AND BE IT FURTHER ORDAINED, That any approvals, authorizations, or activities provided in this Ordinance do not constitute and may not be deemed to constitute or imply that the City Council, the Mayor, or any department, office or agency within or related to the City has given or will give any approval, authorization or consent to any action or activity within or required for the development of the Districts, including any land use approval, requirements for the provision of public utilities or services, approvals relating to the construction or other development of the improvements that constitute the Project, or any other administrative, judicial, quasi-judicial, or legislative approval, authorization, or consent.

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

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

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