



Legislation Text

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INTRODUCTORY*

CITY OF BALTIMORE COUNCIL BILL

Introduced by: The Council President

At the request of: The Administration (Department of Housing and Community Development)

A BILL ENTITLED

AN ORDINANCE concerning **East Baltimore Research Park - Special Obligation Bonds**

FOR the purpose of providing for the issuance of special obligation bonds in an amount not exceeding \$85,000,000 for the purpose of financing and of refinancing the acquisition of property, the relocation of businesses and/or residents, site removal, and certain public improvements; providing for the method and sources of payment for these special obligation bonds; authorizing the Board of Finance to specify, prescribe, determine, provide for, and approve the details, forms, documents, or procedures in connection with the special obligation bonds and any other matters necessary or desirable in connection with the authorization, issuance, sale, and payment of these special obligation bonds; providing that the City, in each fiscal year in which any bonds are outstanding, use its best efforts to obtain the appropriation of the Tax Increment Revenues, the Special Tax Revenues, and the Enterprise Zone Tax Credit Revenues (as such terms are defined herein) 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; providing for a special effective date; and generally relating to the issuance and payment of special obligation bonds.

BY authority of

Article II - General Powers
Sections (50), (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 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 and 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.

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 and collected in the special taxing district are deposited, for the purpose of providing financing, refinancing, or reimbursement for the cost of infrastructure improvements.

Article II, Section (50) of the Baltimore City Charter authorizes the City to borrow money through the issuance and sale of its bonds, notes or other obligations (including refunding bonds, notes or other obligations) for the accomplishment of any of the purposes, objects and powers of the City and further provides that a trust agreement related to any bonds, notes or other obligations may pledge the revenues from or arising in connection with property, facilities, developments and improvements whose financing is undertaken by the bonds, notes or other obligations.

Pursuant to Ordinance 04-693 (as hereinafter defined), the City has:

- (i) designated the East Baltimore Research Park Development District (the "Phase I Development District") and created the East Baltimore Research Park Development District Tax Increment Fund (the "Phase I Tax Increment Fund");
- (ii) provided that until bonds or notes issued with respect to the Phase I Development District have been fully paid, the property taxes on real property in the Phase I Development District shall be divided as provided in the Tax Increment Act;
- (iii) provided that the use of money within the Phase I Tax Increment Fund must be approved by appropriate action of or determination by the Mayor and City Council, which action may generally specify the purpose for the monies and the maximum amount for that purpose without specifying actual amounts to be applied; and
- (iv) set forth certain uses and restrictions on the funds within the Phase I Tax Increment Fund.

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

- (i) designated the East Baltimore Research Park Phase II Development District (the "Phase II Development District"), and within the Phase II Development District, the Area A Subdistrict (the "Area A Subdistrict") and the Area B Subdistrict (the "Area B Subdistrict");
- (ii) created the East Baltimore Research Park Phase II Development District Tax Increment Fund (the "Phase II Tax Increment Fund"), and within the Phase II Tax Increment Fund, the Area A Subaccount (the "Area A Subaccount") and the Area B Subaccount (the "Area B Subaccount");
- (iii) provided that until any bonds issued with respect to the Phase II Development District have been fully paid, the property taxes on real property in the Area A Subdistrict and the Area B Subdistrict, as applicable, shall be divided as provided in the Tax Increment Act; and
- (iv) made other findings and determinations with respect to the Phase II Development District.

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

- (i) designated the East Baltimore Research Park Special Taxing District (the "Special Taxing District");

(ii) created the East Baltimore Research Park Special Taxing District Special Fund;

(iii) authorized the levy and collection of a special tax on all real property within the Special Taxing District; 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 financing, refinancing, and reimbursement for the costs of infrastructure improvements.

The City wishes to authorize the issuance of special obligation bonds to provide funds for the Project (as hereinafter defined) in the Phase I Development District and the Phase II Development District.

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) "Area A Subdistrict" means the Area A Subdistrict established by the Phase II Ordinance.

(c) "Area B Subdistrict" means the Area B Subdistrict established by the Phase II Ordinance.

(d) "Area A Subaccount" means the Area A Subaccount within the Phase II Tax Increment Fund established by the Phase II Ordinance.

(e) "Area B Subaccount" means the Area B Subaccount within the Phase II Tax Increment Fund established by the Phase II Ordinance.

(f) "Bond" or "Bonds" means one or more series or issues of bonds, notes, or other similar instruments issued by the Mayor and City Council of Baltimore under the Acts payable from the Tax Increment Revenues and the Special Tax Revenues, including without limitation, the bonds authorized by this Ordinance.

(g) "City expenses" means:

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

(2) the expenses of the City in carrying out its duties under any indenture, including:

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

(ii) the expenses incurred in complying with arbitrage rebate requirements and 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

- (iii) all other costs and expenses of the City and the trustee incurred in connection with the discharge of their duties under any indenture, including legal expenses associated with those duties, and in any way related to the administration of the Special Taxing District.
- (h) "Enterprise Zone Tax Credit Revenues" means the amounts collected by the City from the State of Maryland under Maryland Annotated Code, Tax-Property Article, § 9-103, as the monies relate to properties within the Phase I Development District and the Phase II Development District.
- (i) "Includes" or "including" means by way of illustration and not by way of limitation.
- (j) "Indenture" or "indentures" means the indenture or indentures, as applicable, under which any bonds are issued.
- (k) "Ordinance 04-693" means Ordinance 04-693, passed by the City Council on June 14, 2004, and signed by the Mayor on June 23, 2004.
- (l) "Phase I Development District" means the East Baltimore Research Park Development District established by Ordinance 04-693.
- (m) "Phase I Tax Increment Fund" means the East Baltimore Research Park Development District Tax Increment Fund established by Ordinance 04-693, including any accounts created therein.
- (n) "Phase I Tax Increment Revenues" means the revenues and receipts from the taxes representing the levy on the Tax Increment for the Phase I Development District that would normally be paid to the City, including amounts deposited in the Phase I 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 Mayor and City Council of Baltimore.
- (o) "Phase II Development District" means the East Baltimore Research Park Phase II Development District established by the Phase II Ordinance.
- (p) "Phase II Ordinance" means the Ordinance of the Mayor and City Council enacted prior to or simultaneously with this Ordinance establishing the East Baltimore Research Park Phase II Development District.
- (q) "Phase II Tax Increment Fund" means the East Baltimore Research Park Phase II Development District Tax Increment Fund established by the Phase II Ordinance.
- (r) "Phase II Tax Increment Revenues" means the revenues and receipts from the taxes representing the levy on the Tax Increment for the Phase II Development District that would normally be paid to the City, including amounts deposited in the Phase II 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 Mayor and City Council of Baltimore.
- (s) "Project" means the following improvements and activities that are completed in accordance with all City approvals:
- (1) the relocation of businesses or residents;
 - (2) site removal, including demolition and site preparation;
 - (3) the acquisition of land and other property by purchase, lease, or condemnation;

- (4) the design, construction, reconstruction, renovation, and development of buildings that provide units of affordable housing and condemning or otherwise acquiring structures, real or personal property, rights, rights-of-way, franchises, easements, and interests in furtherance of this purpose;
- (5) the design, construction, reconstruction, renovation, and development of building, structure, or improvements that constitute a school, library, park or recreational facility, or buildings devoted to a governmental use or purpose and condemning or otherwise acquiring any real or personal property, rights, rights-of-way, franchises, easements, and interests in furtherance of this purpose; and
- (6) the acquisition, construction, renovation, and development of other related public improvements and the financing or refinancing of any related costs that are necessary for the completion of the foregoing for its intended public purposes.
- (t) "Rate and Method" means the Rate and Method of Apportionment of the Special Taxes attached to the Special Taxing District Ordinance as Exhibit 2.
- (u) "Special Tax" means the special tax authorized to be levied and collected in the Special Taxing District by the Special Taxing District Ordinance.
- (v) "Special Tax Fund" means the East Baltimore Research Park Phase I Special Tax Fund.
- (w) "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 Mayor and City Council of Baltimore.
- (x) "Special Taxing District" means the East Baltimore Research Park Special Taxing District.
- (y) "Special Taxing District Act" means Article II, Chapter (62A) of the Baltimore City Charter.
- (z) "Special Taxing District Ordinance" means the Ordinance of the Mayor and City Council designating the Special Taxing District.
- (aa) "Tax Increment" means for any tax year, the amount by which the assessable base (as defined in the applicable Tax Increment Ordinances) as of January 1 preceding that tax year exceeds the original taxable value (as defined in the applicable Tax Increment Ordinances), divided by the assessment ratio (as defined in the applicable Tax Increment Ordinances) used to determine the original taxable value.
- (bb) "Tax Increment Act" means Article II, Chapter (62) of the Baltimore City Charter.
- (cc) "Tax Increment Ordinances" means, collectively, the Ordinance 04-693 and the Phase II Ordinance.
- (dd) "Tax Increment Revenues" means, collectively, the Phase I Tax Increment Revenues and the Phase II Tax Increment Revenues.
- (ee) "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 Mayor and City Council of Baltimore finds and determines that the issuance of bonds from time to time for the purpose of providing funds to finance and refinance

the costs of the Project:

- (1) accomplishes the purposes of the Acts;
- (2) serves public purposes, including but not limited to the direct and indirect enhancement of the taxable base of the City, the creation of new employment opportunities, the encouragement of additional economic activities, the development or redevelopment of slum, blighted or deteriorated areas, the undertaking of urban renewal projects, the facilitation of planned improvements to the East Baltimore area, and the furtherance of economic development conducted pursuant to comprehensive plans; and
- (3) 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) Bonds 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 \$85,000,000, which may include one or more bonds or notes to be delivered to East Baltimore Development, Inc., to finance or refinance costs associated with the Project. Each issue or series of the bonds shall be identified by the year of issue or by other designation.
- (b) The proceeds of the bonds may be utilized solely for the following purposes, as the Board of Finance determines under Section 9 of this Ordinance:
 - (1) to finance and refinance 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.

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 Enterprise Zone Tax Credit Revenues are pledged to the payment of the principal of and interest on the bonds. However, the Enterprise Zone Tax Credit 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 Enterprise Zone Tax Credit Revenues is subject to annual appropriation by the City.
- (c) The Tax Increment Revenues and Enterprise Zone Tax Credit Revenues may also be pledged by the City to the payment of additional bonds issued by the City under the Acts relating to the Phase I Development District and the Phase II Development District, subject to the provisions of any indenture or indentures.
- (d) If any bonds remain outstanding, the Phase I Tax Increment Revenues may not be used for the purposes set

forth in Section 8 of Ordinance 04-693 and the Phase II Tax Increment Revenues may not be used for the purposes set forth in Section 6 of the Phase II Tax Increment Ordinance unless the aggregate amount in the Phase I Tax Increment Fund and the Phase II Tax Increment Fund exceeds:

- (1) the debt service payable in that fiscal year on the outstanding bonds 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 or funds 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.
- (b) The bonds may be secured, as the Board of Finance determines under Section 9 of this Ordinance, through:
 - (1) the establishment of one or more debt service reserve funds;
 - (2) the establishment of additional sinking funds; or
 - (3) the pledge of other assets and revenues toward the payment of the principal and interest on the bonds.
- (c) The bonds are special obligations of the City. They 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, (b) the Tax Increment Revenues, subject to annual appropriation by the City; (c) the Enterprise Zone Tax Credit Revenues made available by the City for such purposes, subject to annual appropriation by the City; and (d) to the extent that the Tax Increment Revenues from the Area A Subdistrict and the Enterprise Zone Tax Credit Revenues are not sufficient to pay debt service on the bonds, to replenish any debt service fund or funds for the bonds, and to pay City expenses, from the Special Tax Revenues levied and collected in accordance with the Rate and Method and subject to annual appropriation by the City.

SECTION 7. AND BE IT FURTHER ORDAINED, That:

- (a) The City covenants to levy and collect the Special Tax in accordance with the Rate and Method and up to the maximum Special Tax provided in the Rate and Method. The Special Tax also may be levied and collected with respect to any refunding bonds 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 any indenture.
- (b) The amount of the Special Tax required to be levied and collected 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 in that tax year.
- (c) The Special Tax Revenues are pledged to the payment of the principal of and interest on the bonds. However, the Special Tax 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 Special Tax Revenues is

subject to annual appropriation by the City.

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) 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:
 - (1) an indenture or indentures to be entered into between the City and a trustee to be selected;
 - (2) the development agreement(s) to be entered into among the City, any other governmental entity, if necessary, and the developer(s) or any other party overseeing the development of the Project; and
 - (3) 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 or a facsimile of whose signature or countersignature appears on the bonds or any other document ceases to be an officer before the delivery of the bonds or any other document, the signature or countersignature or the facsimile 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, 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 Ordinances, the Special Taxing District Ordinance, and this Ordinance.

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

- (1) the principal amount of the bonds to be issued;
- (2) the rate or rates of interest the bonds are to bear or the method for determining the same;
- (3) the manner in which and the terms upon which the bonds are to be sold;
- (4) the manner in which and the times and places that the interest on the bonds is to be paid;
- (5) the time or times that the bonds may be executed, issued, and delivered;
- (6) the form and tenor of the bonds and the denominations in which the bonds may be issued;
- (7) 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;

- (8) provisions pursuant to which any or all of the bonds may be called for redemption prior to their stated maturity dates;
- (9) 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;
- (10) provisions establishing sinking funds or debt service reserve funds for the bonds;
- (11) provisions regarding the amounts of the Tax Increment Revenues, the Enterprise Zone Tax Credit 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, replenish any debt service fund or funds for the bonds, and pay City expenses;
- (12) provisions pledging other assets and revenues towards the payment of the principal of and interest on the bonds;
- (13) provision for municipal bond insurance or any other type of financial guaranty of the bonds;
- (14) whether the interest on the bonds may be or may not be excludable from gross income for federal income tax purposes; and
- (15) any other provisions not inconsistent with the Charter (including the Acts), the Tax Increment Ordinances, the Special Taxing District Ordinance, this Ordinance, and other applicable law as the Board of Finance determines to be necessary or desirable to finance and refinance costs of the Project.

SECTION 10. AND BE IT FURTHER ORDAINED, That:

- (a) Before the 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 bonds issued and sold on the basis that the interest on the 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 the bonds in order to preserve the status of the interest on the 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 the bonds in any manner that would cause the interest on the 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, 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.
- (d) The Director of Finance may prepare, execute and deliver:
- (1) a tax regulatory agreement and no arbitrage certificate with respect to the 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 the bonds that interest on the 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 of 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 Special Taxing District, the Phase I Development District, and the Phase II Development District, including any land use approval, requirements for the provision of public utilities or services, 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 concerning the application of the Tax Increment Revenues in the Phase I Tax Increment Fund shall constitute an action by or determination of the Mayor and City Council in satisfaction of any requirement of Ordinance 04-693.

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

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