



## Legislation Text

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**File #:** 16-0712, **Version:** 0

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Introduced by: Councilmember Stokes

### A Bill Entitled

#### An Ordinance concerning **Port Covington Housing**

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

By authority of  
Article II - General Powers  
Sections (19), (40), (47), (58), and (62)  
Baltimore City Charter  
(1996 Edition)

### Recitals

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

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

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

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

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

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

**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) “Area Median Income” means the area median income as defined by the federal Department of Housing and Urban Development for Baltimore City.
- (b) “Affordable residential housing units” means residential housing available to and occupied by individuals and families with annual gross household incomes not higher than 30% of Area Median Income, the rental or ownership cost of which does not exceed 30% of gross household income. These affordable residential units need not be identical to “market rate residential housing” and shall remain affordable as defined herein for 99 years from the date of development.
- (c) “Contribution agreement” means one or more agreements executed by the City and a State Issuer, pursuant to which the City will evidence a pledge, subject to appropriation, of the Port Covington Development District Tax Increment Revenues and Special Tax Revenues to provide for the payment by the State Issuer of the principal and interest on the applicable State Obligation, the replenishment of any reserve fund for the state obligation, and the payment of other costs with respect to the State Obligations.
- (d) “Developer” means a person, corporation, or association that initially undertakes development in the Port Covington Development District in connection with the issuance of special obligation bonds relative thereto.
- (e) “Development agreement” means an agreement executed by the Mayor and City Council of Baltimore and the Developer of the Port Covington Development District.
- (f) “Development District” means the area of the Port Covington Development District established through the Tax Increment Financing Act of the City, as codified in Article II, § (62) of the Baltimore City Charter.
- (g) “Market rate residential housing” means housing that is sold or rented at prices determined by the economic dynamics of supply and demand, buyer-seller negotiations, or a symbolic or actual “invisible hand”.
- (h) “State Issuer” means MEDCO, the State of Maryland, or any agency, department or political subdivision thereof.
- (i) “Tax Increment Fund” means the Port Covington Development District Tax Increment Fund.

**Section 2. And be it further ordained** , That the Mayor and City Council of Baltimore finds and determines that (1) the health and welfare of Baltimore City requires the development of quality, safe, and affordable housing, (2) City homelessness and the risk thereof shall be reduced, (3) the establishment of affordable housing within the Port Covington Development District and Special Taxing District promotes the City’s health and welfare and is within the City’s powers to undertake, promote, and regulate, and otherwise control residential, commercial, industrial, and economic development and redevelopment, and (4) enforcement of affordable housing requirements shall not encumber the proceeds of the tax increment fund or the debt and related payment obligations of the City related to any special obligation bonds issued by the City or by a State Issuer, or through under any contribution agreement established relative to the Port Covington Development District.

**Section 3. And be it further ordained** , That:

- (a) There shall be a development agreement between the Mayor and City Council and the Developer of the Port Covington Development District prior to the issuance of any special obligation bonds relative to the District.
- (b) The agreement shall require the Developer, if it develops residential housing within the District, to:
  - (1) create a minimum of 1,500 affordable residential housing units in the Development District;
  - (2) ensure that 20% of all residential housing that is developed within the Development District be affordable residential housing units;
  - (3) construct and complete affordable residential housing units in the same time frame as the market rate units in the project;
  - (4) disperse the affordable hysiotherepyresidential housing units throughout the residential housing in an inclusive and integrated manner that avoids the isolation, segregation, or unreasonable separation of such affordable units from other residential units, common thoroughfares, public transportation, and access to essential services and retail entities;
  - (5) permit the Developer to provide off-site affordable housing residential units, outside the metes and bounds of the Development District, provided, however, that the off-site option is subsequently approved by Mayor and City Council;
  - (6) permit the Developer to contribute to a non-lapsing trust fund, created by the City or by the Developer, exclusively dedicated to the development of affordable residential housing units, in lieu of creating affordable residential housing units on site, in an amount not less than \$200,000 per affordable residential housing unit that would have been created on site under provisions (1) and (2) of this subsection; and
  - (7) require the City Department of Finance or Department of Housing and Community Development to report annually to the Mayor and City Council on the Developer's compliance with this section.
- (c) If the Mayor and City Council fails to enforce such development agreement provisions relative to affordable residential housing units, any individual who paid property taxes to the City in the calendar year prior to the year in dispute, or any organization representing such taxpayers, shall be entitled to bring a civil action in the Circuit Court for Baltimore City to compel enforcement of the development agreement.
- (d) The Court shall award attorneys' fees to any taxpayer or taxpayer organization prevailing in litigation.
- (e) Any business reorganization, dissolution, or bankruptcy petition filed by the Developer or its successors with the intention of avoiding residential housing unit requirements under a development agreement or the enforcement thereof, shall constitute fraudulent action and be subject to a fine of \$200,000 per affordable residential unit required by the development agreement, but not completed, to be imposed upon the gross receipts of any person, corporation, or association found to have committed such fraud, and which shall be deposited in a non-lapsing fund dedicated to the development of affordable residential housing units.

**Section 4. And be it further ordained** , That the Mayor and City Council, City agencies, State Issuer, or any Housing Authority established under 42 U.S.C. §400 et. seq. shall not provide public funds, tax credits, tax abatements, or other forms of direct or indirect public subsidy or assistance to assist the Development District and its Developer in the construction, rehabilitation, or development of affordable residential housing units; provided,

however, that  
housing operating subsidies such as, but not limited to, housing vouchers and other  
rental or homeowner assistance shall be permitted.

**Section 5. 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 6. And be it further ordained** , That this Ordinance takes effect when it is enacted.