

AN ACT

*Codification
District of
Columbia
Official Code*

2001 Edition

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To authorize and provide for the issuance, sale, and delivery of District of Columbia revenue bonds in one or more series, secured by tax increment revenues, payments in lieu of taxes, and special assessments generated by or related to the Southwest Waterfront project and issued pursuant to section 490 of the District of Columbia Home Rule Act; and to amend Title 47 of the District of Columbia Official Code to establish payments in lieu of taxes and a special assessment district to secure and repay the revenue bonds related to Southwest Waterfront project.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Southwest Waterfront Bond Financing Act of 2008".

TITLE I. BOND FINANCING.

Sec. 101. Definitions.

For the purposes of this title, the term:

(1) "Authorized Delegate" means the City Administrator, the Chief Financial Officer, the District of Columbia Treasurer, the Deputy Mayor for Planning and Economic Development, or any officer, employee, or agency of the executive office of the Mayor to whom the Mayor has delegated any of the Mayor's functions under this act pursuant to section 422(6) of the Home Rule Act and has been designated as an authorized delegate for purposes of this act.

(2) "Available Increment" shall have the same meaning as provided in the Reserve Agreement.

(3) "Available Sales Tax Revenues" means the revenues generated in the Southwest Waterfront PILOT/TIF Area in any fiscal year of the District commencing on the Commencement Date resulting from the imposition of the sales tax under Chapter 20 of Title 47 of the District of Columbia Official Code, including penalty and interest charges, exclusive of the portion thereof required to be deposited in the Washington Convention Center Fund established pursuant to section 208 of the Washington Convention Center Authority Act of 1994, effective September 28, 1994 (D.C. Law 10-188; D.C. Official Code § 10-1202.08);

provided, that with respect to the Fish Market, the Available Sales Tax Revenues shall be the sales tax revenues in excess of an amount equal to the sales tax revenues for fiscal year 2008. The term "Available Sales Tax Revenues" shall include sales tax revenues from any business existing in the Southwest Waterfront PILOT/TIF Area on the effective date of this act only after the business has re-opened as a result of the development of any portion of the project.

(4) "Bond Counsel" means a firm or firms of attorneys designated as bond counsel from time to time by the Mayor.

(5) "Bonds" means the District of Columbia revenue bonds, notes, or other obligations (including refunding bonds, notes, and other obligations), in one or more series, authorized to be issued pursuant to this title.

(6) "Chief Financial Officer" means the Chief Financial Officer of the District of Columbia established by section 424a(a) of the Home Rule Act.

(7) "Closing Documents" means all documents and agreements, other than Financing Documents, that may be necessary and appropriate to issue, sell, and deliver the bonds, and includes agreements, certificates, letters, opinions, forms, receipts, and other similar instruments.

(8) "Commencement Date" means the date upon which the 1st parcel of real estate within the Southwest Waterfront PILOT/TIF Area is transferred to the Master Developer.

(9) "Consumer Price Index" means the index number of retail commodities prices designated "Consumer Price Index-all items CPIU (1996=100) Washington-Baltimore DC-MD-VA-WA" as published by the United States Department of Labor, Bureau of Labor Statistics (or any successor agency thereto), appropriately adjusted.

(10) "Debt Service" means payment of principal, premium, if any, and interest on the bonds.

(11) "Development Costs" means all costs and expenses incurred in connection with the development, redevelopment, purchase, acquisition, protection, financing, construction, expansion, reconstruction, rehabilitation, renovation and repair, and the furnishing and equipping of the project, including:

(A) The costs of demolishing or removing roads, utilities, sidewalks, underground facilities, buildings or structures, and other improvements located on, and site preparation of, including environmental remediation, the land acquired or used for, or in connection with, the project, including costs incurred to resolve existing leaseholder interests in portions of the project site that will be re-conveyed to the District as public infrastructure;

(B) Costs of relocation, construction, and redevelopment of the project, including entitlement, development, and construction management fees;

(C) Costs incurred for publicly-owned utility lines, structures, public roads, public parks, or equipment located within or necessary to serve the project;

(D) Interest on the bonds prior to, and during, the construction of the project;

(E) Provisions for reserves for extraordinary repairs and replacements;

(F) Expenses incurred for architectural, engineering, energy efficiency technology, design and consulting, financial, and legal services;

(G) Fees for letters of credit, bond insurance, debt service reserve insurance, surety bonds, or similar credit or liquidity enhancement instruments;

(H) Costs and expenses associated with the conduct and preparation of specification and feasibility studies, plans, surveys, historic structure reports, and estimates of expenses and revenues;

(I) Expenses necessary or incident to issuing the bonds and determining the feasibility and the fiscal impact of financing the acquisition, construction, or redevelopment of the project; and

(J) The provision of an allowance for contingencies and initial working capital.

(12) “Financing Documents” means the documents, other than Closing Documents, that relate to the financing or refinancing of transactions to be effected through the issuance, sale, and delivery of the bonds, including any offering document, and any required supplements to any such documents.

(13) “Fish Market” means the property known for assessment and taxation purposes as Lots 850, 846, and 847, Square 473, and the adjacent riparian area.

(14) “Home Rule Act” means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-201.01 *et seq.*).

(15) “Master Developer” means the development entity to which the District transfers the leasehold interest in the Southwest Waterfront PILOT/TIF Area and which is responsible for the planned development of the entire Southwest Waterfront PILOT/TIF Area, including the project.

(16) “Project” means the publicly owned infrastructure located within the Southwest Waterfront PILOT/TIF Area, including streets, parking facilities, sidewalks, walkways, streetscapes, parks, bulkheads, piers, curbs, gutters, and gas, electric, and water utility lines, and the acquisition, equipping, relocation, construction, and redevelopment of certain public facilities, including parks.

(17) “Reserve Agreement” means that certain Reserve Agreement, dated as of April 1, 2002, by and among the District, Wells Fargo Bank Minnesota, N.A. and Financial Security Assurance, Inc.

(18) “Southwest Waterfront Fund” means the fund created by section 103.

(19) “Southwest Waterfront Improvement Benefit District” means the special assessment district established by D.C. Official Code § 47-895.02.

(20) “Southwest Waterfront PILOT” or “PILOT” means the payment in lieu of taxes from the Southwest Waterfront PILOT/TIF Area required by D.C. Official Code § 47-4615.

(21) “Southwest Waterfront PILOT Base Amount” means \$945,000.

(22) “Southwest Waterfront PILOT Increment” means the amount of the

Southwest Waterfront PILOT that exceeds the Southwest Waterfront PILOT Base Amount.

(23) “Southwest Waterfront PILOT/TIF Area” means the following geographic area:

(A) Approximately 23 acres of land area between the southern curb line of Maine Avenue, S.W., and the bulkhead paralleling the Washington Channel from the western edge of the Fish Market to the western curb of 6th Street, S.W., to the eastern edge of Lot 843, Square 473, the eastern edge of Lots 883, 884, and 885, Square 503, to the eastern edge of parcel 255/15, to the western edge of the P Street, S.W., right-of-way; and

(B) The riparian area and piers associated with the land described in subparagraph (A) of this paragraph, which include:

- (i) The Fish Market;
- (ii) The Capital Yacht Club;
- (iii) The Gangplank Marina; and
- (iv) Piers 4 and 5.

(24) “Southwest Waterfront Special Assessment” means the special assessment relating to the Southwest Waterfront Improvement Benefit District established by D.C. Official Code § 47-895.02.

Sec. 102. Findings.

The Council finds that:

(1) The Southwest Waterfront is a section of the District that requires financial assistance for its redevelopment because the scale of the project includes rebuilding the majority of the neighborhood and replacing existing infrastructure. The project will aid in the redevelopment by providing financial assistance to support the portions of the Southwest Waterfront that will revert to the District as publicly owned infrastructure and parks.

(2) Section 490 of the Home Rule Act provides that the Council may, by act, authorize the issuance of District bonds to borrow money to finance, refinance, or reimburse, and to assist in the financing, refinancing, or reimbursing of, undertakings in certain areas designated in section 490 where the ultimate obligation to repay the bonds is that of one or more governmental persons or entities.

(3) Section 490 of the Home Rule Act provides that bonds may be issued to assist in undertakings for the economic development of the District.

(4) The authorization, issuance, sale, and delivery of bonds for the payment of costs of the project are desirable, are in the public interest, and will accomplish the purposes and intent of section 490 of the Home Rule Act.

Sec. 103. Creation of the Southwest Waterfront Fund.

(a) There is established as a nonlapsing fund the Southwest Waterfront Fund. The Available Sales Tax Revenues, the Southwest Waterfront Special Assessment (if any), and the Southwest Waterfront PILOT Increment shall be deposited into the Southwest Waterfront Fund.

The Chief Financial Officer shall pay from the Southwest Waterfront Fund the Southwest Waterfront PILOT Base Amount into the General Fund of the District of Columbia. The Mayor may pledge and create a security interest in the funds in the Southwest Waterfront Fund to finance, refinance, or reimburse Development Costs of the project, to pay the Debt Service, or to secure bonds without further action by the Council as permitted by section 490(f) of the Home Rule Act. The Chief Financial Officer shall pay from the Southwest Waterfront Fund the annual costs of administering the Southwest Waterfront Improvement Benefit District established by D.C. Official Code § 47-895.02. If bonds are issued, the payment shall be made in accordance with the provisions of the Financing Documents entered into by the District in connection with the issuance of the bonds.

(b) If, at the end of any fiscal year of the District following the issuance of the bonds, the value of cash and investments in the Southwest Waterfront Fund exceeds the amount of all payments authorized by this title and the Financing Documents during the upcoming fiscal year, the excess shall be transferred to the General Fund of the District of Columbia unless the District elects to use the excess to redeem the bonds prior to maturity.

Sec. 104. Creation of the Southwest Waterfront PILOT/TIF Area.

(a) There is created the Southwest Waterfront PILOT/TIF Area, the Available Sales Tax Revenues from which shall be allocated as provided in this title.

(b) Beginning on the Commencement Date, the Available Sales Tax Revenues from the Southwest Waterfront PILOT/TIF Area shall be allocated and paid into the Southwest Waterfront Fund and used for any of the purposes described in section 103. The termination date for the allocation of Available Sales Tax Revenues shall be the earlier of:

- (1) September 30, 2044; or
- (2) The day after all of the bonds are paid or provided for and are no longer outstanding pursuant to their terms.

Sec. 105. Bond authorization.

(a) The Council approves and authorizes the issuance of one or more series of bonds in an aggregate principal amount not to exceed \$198 million. The bonds, which may be issued from time to time, in one or more series, shall be tax-exempt or taxable as the Mayor shall determine and shall be payable and secured as provided in section 106; provided, that within 60 days prior to the issuance of any bonds, the Chief Financial Officer shall submit to the Mayor and the Council a report to determine the subsidy level needed from the District for the project.

(b) The proceeds of the bonds shall be used as follows:

- (1) An amount not to exceed \$148 million in 2008 dollars (adjusted for inflation by the Consumer Price Index) may be used for payment of Development Costs; and
- (2) The balance of the proceeds may be used to pay the financing costs incurred by the District and to fund capitalized interest and required reserves.

(c) The Mayor may pay from the proceeds of the bonds the financing costs and expenses of

issuing and delivering the bonds, including, but not limited to, underwriting, legal, accounting, financial advisory, bond insurance or other credit enhancement, marketing and selling the bonds, and printing costs and expenses.

Sec. 106. Payment and security.

(a) Except as may be otherwise provided in this title, Debt Service shall be payable from proceeds received from the sale of the bonds, income realized from the temporary investment of those proceeds, receipts and revenues deposited into the Southwest Waterfront Fund, including income realized from the investment of those receipts and revenues, and other funds that, as provided in the Financing Documents, may be made available to the District for payment of the bonds from sources other than the District, all as provided for in the Financing Documents.

(b) There is further allocated to payment of Debt Service the Available Increment, subordinate to the allocation of the Available Increment to the Budgeted Reserve, as defined in the Reserve Agreement, all as more fully described in the Reserve Agreement and to the extent that the Reserve Agreement continues to apply to the Available Increment, to be used for the payment of Debt Service to the extent that the revenues allocated in subsection (a) of this section are inadequate to pay Debt Service. The allocation of Available Increment authorized by this subsection shall be made in compliance with all existing contractual obligations of the District with respect to the Available Increment and shall terminate on the date on which all of the bonds are paid or provided for and are no longer outstanding pursuant to their terms.

(c) Payment of the bonds shall be secured as provided in the Financing Documents and by an assignment by the District for the benefit of the bond holders of certain of its rights under the Financing Documents and Closing Documents to the trustee for the bonds pursuant to the Financing Documents.

(d) The trustee is authorized to deposit, invest, and disburse the proceeds received from the sale of the bonds pursuant to the Financing Documents.

Sec. 107. Bond details.

(a) The Mayor is authorized to take any action reasonably necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, security for, and payment of the bonds of each series, including, but not limited to, determinations of:

- (1) The final form, content, designation, and terms of the bonds, including a determination the bonds may be issued in certificated or book-entry form;
- (2) The principal amount of the bonds to be issued and denominations of the bonds;
- (3) The rate or rates of interest or the method for determining the rate or rates of interest on the bonds;
- (4) The date or dates of issuance, sale, and delivery of, and the payment of interest on the bonds, and the maturity date or dates of the bonds;
- (5) The terms under which the bonds may be paid, optionally or mandatorily

redeemed, accelerated, tendered, called, or put for redemption, repurchase, or remarketing before their respective stated maturities;

(6) Provisions for the registration, transfer, and exchange of the bonds and the replacement of mutilated, lost, stolen, or destroyed bonds;

(7) The creation of any reserve fund, sinking fund, or other fund with respect to the bonds;

(8) The time and place of payment of the bonds;

(9) Procedures for monitoring the use of the proceeds received from the sale of the bonds to ensure that the proceeds are properly applied and used to accomplish the purposes of the Home Rule Act and this act;

(10) Actions necessary to qualify the bonds under blue sky laws of any jurisdiction where the bonds are marketed; and

(11) The terms and types of credit enhancement under which the bonds may be secured.

(b) The bonds shall contain a legend which shall provide that the bonds are special obligations of the District, are without recourse to the District, are not a pledge of, and do not involve, the faith and credit or the taxing power of the District (other than the taxes and revenues allocated to the Southwest Waterfront Fund or the Available Increment), do not constitute a debt of the District, and do not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(c) The bonds shall be executed in the name of the District and on its behalf by the manual or facsimile signature of the Mayor, and attested by the Secretary of the District of Columbia by the Secretary's manual or facsimile signature.

(d) The official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds.

(e) The bonds of any series may be issued in accordance with the terms of a trust instrument to be entered into by the District and a trustee to be selected by the Mayor, and may be subject to the terms of one or more agreements entered into by the Mayor pursuant to section 490(a)(4) of the Home Rule Act.

(f) The bonds may be issued at any time or from time to time in one or more issues and in one or more series.

(g) The bonds are declared to be issued for essential public and governmental purposes. The bonds and the interest thereon and the income therefrom, and all monies pledged or available to pay or secure the payment of the bonds, shall at all times be exempt from taxation by the District, except for estate, inheritance, and gift taxes.

(h) The District pledges, covenants, and agrees with the holders of the bonds that, subject to the provisions of the Financing Documents, the District will not limit or alter the bonds or the basis on which the revenues pledged to secure the bonds are collected or allocated, will not impair the contractual obligations of the District to fulfill the terms of any agreement made with the holders of the bonds, will not in any way impair the rights or remedies of the holders of the bonds,

and will not modify in any way the exemptions from taxation provided for in this act, until the bonds, together with interest thereon, and all costs and expenses in connection with any suit, action, or proceeding by or on behalf of the holders of the bonds, are fully met and discharged. This pledge and agreement for the District may be included as part of the contract with the holders of the bonds. This subsection constitutes a contract between the District and the holders of the bonds. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

(i) Consistent with section 490(a)(4)(B) of the Home Rule Act and notwithstanding Article 9 of Title 28 of the District of Columbia Official Code:

(1) A pledge made and security interest created in respect of the bonds or pursuant to any related Financing Document shall be valid, binding, and perfected from the time the security interest is created, with or without physical delivery of any funds or any property and with or without any further action;

(2) The lien of the pledge shall be valid, binding, and perfected as against all parties having any claim of any kind in tort, contract, or otherwise against the District, whether or not such party has notice; and

(3) The security interest shall be valid, binding, and perfected whether or not any statement, document, or instrument relating to the security interest is recorded or filed.

Sec. 108. Sale of the bonds.

(a) The bonds of any series may be sold at negotiated or competitive sale at, above, or below par, to one or more persons or entities, and upon terms that the Mayor considers to be in the best interests of the District.

(b) The Mayor or an Authorized Delegate may execute, in connection with each sale of the bonds, offering documents on behalf of the District, may deem final any such offering document on behalf of the District for purposes of compliance with federal laws and regulations governing such matters, and may authorize the distribution of the documents in connection with the bonds.

(c) The Mayor is authorized to deliver the executed and sealed bonds, on behalf of the District, for authentication, and, after the bonds have been authenticated, to deliver the bonds to the original purchasers of the bonds upon payment of the purchase price.

(d) The bonds shall not be issued until the Mayor receives an approving opinion from Bond Counsel as to the validity of the bonds of such series and, if the interest on the bonds is expected to be exempt from federal income taxation, the treatment of the interest on the bonds for purposes of federal income taxation.

(e) The District of Columbia Procurement Practices Act of 1985, effective February 21, 1986 (D.C. Law 6-85; D.C. Official Code § 2-301.01 *et seq.*), and subchapter III-A of Chapter 3 of Title 47 of the District of Columbia Official Code shall not apply to any contract the Mayor may from time to time enter into, or the Mayor may determine to be necessary or appropriate, for purposes of this act.

Sec. 109. Financing and Closing Documents.

(a) The Mayor is authorized to prescribe the final form and content of all Financing Documents and all Closing Documents to which the District is a party that may be necessary or appropriate to issue, sell, and deliver the bonds.

(b) The Mayor is authorized to execute, in the name of the District and on its behalf, the Financing Documents and any Closing Documents to which the District is a party by the Mayor's manual or facsimile signature.

(c) If required, the official seal of the District, or a facsimile of it, shall be impressed, printed, or otherwise reproduced on the bonds, the other Financing Documents, and the Closing Documents to which the District is a party.

(d) The Mayor's execution and delivery of the Financing Documents and the Closing Documents to which the District is a party shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the executed Financing Documents and the executed Closing Documents.

(e) The Mayor is authorized to deliver the executed and sealed Financing Documents and Closing Documents, on behalf of the District, prior to or simultaneously with the issuance, sale, and delivery of the bonds, and to ensure the due performance of the obligations of the District contained in the executed, sealed, and delivered Financing Documents and Closing Documents.

Sec. 110. Limited liability.

(a) The bonds shall be special obligations of the District. The bonds shall be without recourse to the District. The bonds shall not be general obligations of the District, shall not be a pledge of, or involve, the faith and credit or the taxing power of the District (other than the taxes and revenues allocated to the Southwest Waterfront Fund and the Available Increment), shall not constitute a debt of the District, and shall not constitute lending of the public credit for private undertakings as prohibited in section 602(a)(2) of the Home Rule Act.

(b) The bonds shall not give rise to any pecuniary liability of the District and the District shall have no obligation with respect to the purchase of the bonds.

(c) No person, including, but not limited to, any bond holder, shall have any claims against the District or any of its elected or appointed officials, officers, employees, or agents for monetary damages suffered as a result of the failure of the District to perform any covenant, undertaking, or obligation under this title, the bonds, the Financing Documents, or the Closing Documents, or as a result of the incorrectness of any representation in or omission from the Financing Documents or the Closing Documents, unless the District or its elected or appointed officials, officers, employees, or agents have acted in a willful and fraudulent manner.

Sec. 111. District officials.

(a) Except as otherwise provided in section 110(c), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the bonds, be subject to any personal liability by reason of the issuance of the bonds, or be personally

liable for any representations, warranties, covenants, obligations, or agreements of the District contained in this title, the bonds, the Financing Documents, or the Closing Documents.

(b) The signature, countersignature, facsimile signature, or facsimile countersignature of any official appearing on the bonds, the Financing Documents, or the Closing Documents shall be valid and sufficient for all purposes notwithstanding the fact that the individual signatory ceases to hold that office before delivery of the bonds, the Financing Documents, or the Closing Documents.

Sec. 112. Information reporting.

Within 3 days after the Mayor's receipt of the transcript of proceedings relating to the issuance of the bonds, the Mayor shall transmit a copy of the transcript to the Secretary to the Council.

Sec. 113. Payment In Lieu of Taxes Act not to apply.

This act shall apply notwithstanding the provisions of the Payments In Lieu of Taxes Act of 2004, effective April 5, 2005 (D.C. Law 15-293; D.C. Official Code § 1-308.01 *et seq.*).

TITLE II. PAYMENTS IN LIEU OF TAXES.

Sec. 201. Chapter 46 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new section designation to read as follows:

“§ 47-4615. Payments in lieu of taxes, Southwest Waterfront PILOT/TIF Area.”

(b) A new section § 47-4615 is added to read as follows:

“§ 47-4615. Payments in lieu of taxes, Southwest Waterfront PILOT/TIF Area.

“(a) For the purposes of this section, the term:

“(1) “Bonds” means any bonds, notes, or other obligations issued by the District pursuant to the Southwest Waterfront Bond Financing Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-591).

“(2) “Lot” means real property as defined in § 47-802(1).

“(3) “Master Developer” means the development entity to which the District transfers the leasehold interest in the Southwest Waterfront PILOT/TIF Area and which is responsible for the planned development of the entire Southwest Waterfront PILOT/TIF Area, including the project.

“(4) “Southwest Waterfront PILOT/TIF Area” shall consist of the following geographic area:

“(A) Approximately 23 acres of land area between the southern curb line of Maine Avenue, S.W., and the bulkhead paralleling the Washington Channel from the western edge of the Fish Market to the western curb of 6th Street, S.W., to the eastern edge of Lot 843, Square 473, the eastern edge of Lots 883, 884, and 885, Square 503, to the eastern edge of

New
§ 47-4615

parcel 255/15, to the western edge of the P Street, S.W., right-of-way; and

“(B) The riparian area and piers associated with the land described in subparagraph (A) of this paragraph, which include:

- “(i) The Fish Market;
- “(ii) The Capital Yacht Club;
- “(iii) The Gangplank Marina; and
- “(iv) Piers 4 and 5.

“(5) “Owner” shall have the same meaning as provided in § 47-802(5) and shall include the holder of a possessory interest as described in § 47-1005.01.

“(6) “Payment in lieu of taxes” or “PILOT” means payments made in lieu of real property taxes pursuant to this section.

“(7) “PILOT period” means, with respect to any lot within the Southwest Waterfront PILOT/TIF Area, the period commencing on the date the lot is transferred by the District to the Master Developer and ending on the earlier of:

“(A) September 30, 2044; or

“(B) The day after all of the bonds are paid or provided for and are no longer outstanding pursuant to their terms.

“(8) “Project” means the publicly owned infrastructure located within the Southwest Waterfront PILOT/TIF Area, including streets, parking facilities, sidewalks, walkways, streetscapes, parks, bulkheads, piers, curbs, gutters, and gas, electric, and water utility lines, and the acquisition, equipping, relocation, construction, and redevelopment of certain public facilities, including parks.

“(b) During the PILOT period:

“(1) The lots in the Southwest Waterfront PILOT/TIF Area that are subject to the PILOT shall be exempt from real property taxation, including the special tax provided for in § 1-204.81; and

“(2)(A) Possessory interests in such lots shall be exempt from the possessory interest tax imposed by § 47-1005.01.

“(B) Each owner of a lot, other than the United States or the District, or an otherwise taxable possessory interest in a lot in the Southwest Waterfront PILOT/TIF Area shall enter into a PILOT agreement with the District obligating the owner to make an annual PILOT in an amount equal to the real property taxes, including the special tax provided for in § 1-204.81, or possessory interest taxes that the owner would be obligated to pay on the lot or possessory interest in the Southwest Waterfront PILOT/TIF Area in the absence of this section, which agreement shall run with the land and be binding on the successors and assigns of the original owner.

“(c) The Chief Financial Officer shall determine the amount of PILOT due for each lot and shall generally administer the PILOT program established herein, in the same manner as provided for real property taxation under Chapter 8 of this title or in the case of PILOT due with respect to possessory interests under § 47-1005.01.

“(d) The PILOT shall be subject to the same penalty and interest provisions as unpaid real property taxes under Chapter 8 of this title or unpaid possessory interest taxes under § 47-1005.01(f)(3).

“(e) All PILOT shall be made to the District and shall be allocated as provided in the Southwest Waterfront Bond Financing Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-591).

“(f) The PILOT shall be paid at the same time and in the same manner as real property taxes under Chapter 8 of this title.

“(g) A lien for unpaid PILOT, including penalty and interest, shall attach to the applicable lot within the Southwest Waterfront PILOT/TIF Area in the same manner and with the same priority as a lien for delinquent real property tax under Chapter 13A of this title. Unpaid PILOT shall be collected in accordance with Chapter 13A of this title. Notwithstanding the foregoing, if a possessory interest tax would be imposed with respect to a lease or right to use a lot pursuant to § 47-1005.01 but for this section, the failure to make payments in lieu of taxes with respect to the possessory interest shall be enforced against the owner of the possessory interest in the manner specified in § 47-1005.01(f)(3). The PILOT shall be deemed a tax within the meaning of 11 U.S.C. §§ 502(b), 505, and 507(a)(8)(B).

“(h) The owner of a lot or possessory interest within the Southwest Waterfront PILOT/TIF Area may challenge any assessment or reassessment of the lot or possessory interest in accordance with the provisions of Chapter 8 of this title and the applicable PILOT shall reflect the result of the challenge.

“(i) The PILOT shall be an assessment for the purposes of §§ 47-832 through 47-835 relating to subdivisions of lots, parcels, or tracts.”.

TITLE III. SPECIAL ASSESSMENT.

Sec. 301. Chapter 8 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding a new Subchapter VII to read as follows:

“Subchapter VII. Southwest Waterfront Special Assessment District.

“47-895.01. Definitions.

“47-895.02. Establishment of special assessment district.

“47-895.03. Levy of special assessment.

“47-895.04. Notices and protests.

“47-895.05. Termination of special assessment.

“47-895.06. Application of assessment.”.

(b) A new subchapter VII is added to read as follows:

“Subchapter VII. Southwest Waterfront Special Assessment District.

“§ 47-895.01 Definitions.

“For the purposes of this subchapter, the term:

New
§§ 47-895.01 -
47-895.06

“(1) “Adjusted Maximum Special Assessment” means the Special Assessment determined in accordance with § 47-895.03.

“(2) “Administrator” means the designee of the Chief Financial Officer for purposes of estimating the annual Special Assessment Requirement and the Special Assessment to be levied each fiscal year and for providing other services as required with respect to the administration of the Special Assessment.

“(3) “Bonds” means the bonds, notes, or other obligations issued by the District pursuant to the Southwest Waterfront Bond Financing Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-591).

“(4) “Chief Financial Officer” means the Chief Financial Officer of the District of Columbia established by § 1-204.24a(a).

“(5) “Debt Service” means the principal, interest and premium, if any, on the bonds.

“(6) “Equivalent Unit” means the product resulting from the equivalent unit factor for each type of property and its application method to be used by the Chief Financial Officer in calculating the Maximum Special Assessment for each lot as follows:

"Property Type	Equivalent Unit Factor	Application Method
"Commercial Retail	1.00	Per 1,000 sq. ft.
"Commercial Restaurants	1.00	Per 1,000 sq. ft.
"Hotel	0.29	Per room
"Commercial Office	0.25	Per 1,000 sq. ft.
"Rental Apartments	0.06	Per 1,000 sq. ft.
"For sale condos "(Market rate designation)	0.09	Per unit
"For sale condos "(Affordable designation)	0.02	Per unit

“(7) “Gross building area” or “GBA” means, with respect to a lot, the product of the land area of the lot multiplied by the maximum floor area ratio (“FAR”) allowable under its zoning category, including additional FAR allowable as a matter of right if the additional FAR is dedicated to a particular use, such as an additional residential floor, as of the date of the 1st issuance of bonds, without including transfer development rights or bonus development rights .

“(8) “Indenture of Trust” means the indenture relating to the bonds, as modified, amended, or supplemented from time to time.

“(9) “Land area” means, with respect to a lot, the ground square footage of the lot.

“(10) “Lot” means a tax lot, record lot, or other division of real property designated for assessment and taxation purposes in the Southwest Waterfront Improvement Benefit District. The term "lot" shall include a possessory interest as described in § 47-

1005.01.

“(11) “Master Developer” means the development entity to which the District transfers the leasehold interest in the Southwest Waterfront Improvement Benefit District and which is responsible for the planned development of the entire Southwest Waterfront Improvement Benefit District, including the project.

“(12) “Maximum Special Assessment” means the maximum special assessment determined in accordance with § 47-895.03.

“(13) “Owner” shall have the same meaning as provided in § 47-802(5) and shall include the holder of a possessory interest as described in § 47-1005.01.

“(14) “PILOT Revenues” means the amount of the Southwest Waterfront PILOT Increment, as defined in section 101(22) of the Southwest Waterfront Bond Financing Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-591), paid or to be paid into the Southwest Waterfront Fund each fiscal year.

“(15) “Project” means the publicly owned infrastructure located within the Southwest Waterfront PILOT/TIF Area, including streets, parking facilities, sidewalks, walkways, streetscapes, parks, bulkheads, piers, curbs, gutters, and gas, electric, and water utility lines, and the acquisition, equipping, relocation, construction, and redevelopment of certain public facilities, including parks.

“(16) “Proportionately” means that the ratio of the Special Assessment to be collected as a percentage of the Adjusted Maximum Special Assessment is equal for each lot (excluding those lots for which the Adjusted Maximum Special Assessment is zero).

“(17) “Special Assessment” means the Special Assessment levied by the District each fiscal year to fund the Special Assessment Requirement.

“(18) “Special Assessment Credit” shall be the amount provided in § 47-895.03; provided, that the term “Special Assessment Credit” means, with respect to a lot, the TIF Revenues and the PILOT Revenues related to the lot and included in calculating the Special Assessment Requirement.

“(19) “Special Assessment Requirement” shall have the same meaning as provided in § 47-895.03.

“(20) “Southwest Waterfront Improvement Benefit District” means the special assessment district established by § 47-895.02.

“(21) “Southwest Waterfront Fund” means the fund established by section 103 of the Southwest Waterfront Bond Financing Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-591).

“(22) “SWW Development” means an area of 50,400 square feet located on a portion of Lots 839, 831, and 84 in Square 473, and such other area of land that is contiguous to Lots 839, 831, and 84, Square 473, and within the boundaries of the Southwest Waterfront Improvement Benefit District, which shall be designated as the SWW Development in an instrument from the District conveying a ground lease of, or other possessory interest in, such area to the Master Developer or to the assignee or transferee of the Master Developer with the

consent of the District.

“(23) “TIF Revenues” means the amount of the Available Sales Tax Revenues, as defined in section 101(3) of the Southwest Waterfront Bond Financing Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-591), paid or to be paid into the Southwest Waterfront Fund each fiscal year by the District pursuant to the requirements of the Southwest Waterfront Bond Financing Act of 2008, passed on 2nd reading on July 15, 2008 (Enrolled version of Bill 17-591).

“§ 47-895.02. Establishment of special assessment district.

“(a) There is established as a special assessment district the Southwest Waterfront Improvement Benefit District, which shall be comprised of the following geographic area:

“(1) Approximately 23 acres of land area between the southern curb line of Maine Avenue, S.W., and the bulkhead paralleling the Washington Channel from the western edge of the Fish Market to the western curb of 6th Street, S.W., to the eastern edge of Lot 843, Square 473, the eastern edge of Lots 883, 884, and 885, Square 503, to the eastern edge of parcel 255/15, to the western edge of the P Street, S.W., right-of-way; and

“(2) The riparian area and piers associated with the land described in paragraph (1) of this subsection, which includes: (A) The Fish Market; (B) The Capital Yacht Club; (C) The Gangplank Marina; and (D) Piers 4 and 5; provided, that the Southwest Waterfront Improvement Benefit District shall not include the SWW Development; provided further, that Lots 820, 842, and 844, Square 473 shall not be included in the Southwest Waterfront Improvement Benefit District unless the Master Developer acquires the ground lessee’s interest in those lots.

“(b) The owners of lots within the Southwest Waterfront Improvement Benefit District shall derive a special benefit from the improvements financed by the bonds and the amount of this benefit is equal to or greater than the Maximum Special Assessment levied on the lots subject to the Special Assessment.

“(c) Beginning with the 1st year Special Assessments, Special Assessments on all lots on which Special Assessments have been levied shall be collected pursuant to § 47-895.02 or may be collected only from the lots within a specific phase of the project to be improved or that has been improved, as determined by the Chief Financial Officer at the time of the issuance of any bonds.

“§ 47-895.03. Levy of special assessment.

“(a) The Special Assessment levied under this section shall be collected in the Southwest Waterfront Improvement Benefit District each fiscal year beginning with the 1st fiscal year after the issuance of the bonds and continuing until the year specified in § 47-895.06 in an amount determined as provided for in this section. A memorandum of the Special Assessment shall be recorded in the land records of the District.

“(b) There is levied for each fiscal year a Special Assessment upon all real property in the Southwest Waterfront Improvement Benefit District in an amount equal to the Maximum Special Assessment. The Special Assessment shall be an amount equal to the Special

Assessment Requirement. The Special Assessment Requirement for any fiscal year shall be estimated by the administrator and determined by the Chief Financial Officer and shall be an amount equal to:

“(1) The amount required in such fiscal year to pay:

“(A) Debt Service and other periodic costs, including deposits to sinking funds, on the bonds;

“(B) Any amount required to replenish any reserve fund established in association with the bonds;

“(C) Any amount equal to the estimated delinquencies expected in payment of the Special Assessment not otherwise taken into account; and

“(D) The costs of remarketing, credit enhancement, bond insurance, and liquidity facility fees, including fees for instruments that serve as the basis of a reserve fund related to any indebtedness in lieu of cash; less

“(2) The Special Assessment Credit equal to the sum of:

“(A) TIF Revenues and PILOT Revenues available to apply to the Special Assessment Requirement for that fiscal year;

“(B) Any credits available pursuant to the Indenture of Trust, such as capitalized interest, reserves, and investment earnings on any account balances; and

“(C) Any other revenues available to apply to the Special Assessment Requirement.

“(c) Commencing with the fiscal year in which bonds are first issued and for each following fiscal year, the District shall determine the Special Assessment Requirement, if any, as provided in subsection (b) of this section for the fiscal year and shall collect the Special Assessment proportionately from each lot in arrears in an amount up to the Adjusted Maximum Special Assessment from each lot such that the total of the Special Assessment to be collected shall equal the Special Assessment Requirement. The administrator shall provide an estimate to the Chief Financial Officer each fiscal year of the Special Assessment to be collected from each lot in conformance with the provisions of this section.

“(d) The Maximum Special Assessment shall be established by the Chief Financial Officer at the time the bonds are issued to reflect the rate of interest on the bonds, and the amount of the bonds issued, in an amount that provides for adequate Special Assessment revenue to pay Debt Service and any other expected amounts of the Special Assessment Requirement as provided in the Indenture of Trust. The Maximum Special Assessment for each lot shall be the Maximum Special Assessment divided by the Equivalent Units of all lots subject to Special Assessment multiplied by the Equivalent Unit of each lot, which may be calculated separately for each phase and the bonds issued with respect to each phase. The Adjusted Maximum Special Assessment for the lot shall be equal to the Maximum Special Assessment for the lot less the Special Assessment Credit for the lot. The Special Assessment Credit applied to all lots shall not exceed the TIF Revenues and the PILOT Revenues taken into account in determining the Special Assessment Requirement.

“(e) The Special Assessment to be collected from any lot may be increased as a result of a default in the payment of the Special Assessment levied on any other lot only in accordance with the provisions of this section. The Special Assessment to be collected from any lot shall not be increased above the Adjusted Maximum Special Assessment as a result of a default in the payment of the Special Assessment levied on any other lot. If the Special Assessment to be collected from any lot is less than the Adjusted Maximum Special Assessment for such lot, the Special Assessment may be increased up to the Adjusted Maximum Special Assessment as a result of the default in the payment of the Special Assessment levied on any other lot.

“(f) The Special Assessment shall be an assessment for purposes of §§ 47-832 through 47-835 relating to subdivision of lots, parcels, or tracts.

“§ 47-895.04. Notices and protests.

“(a) The Master Developer shall consent to the levy of the Special Assessment on the lots, following which consent all actions by any owner of a lot to challenge the levy of the Special Assessment, except as provided in subsection (b) of this section, shall be forever barred. The Master Developer and any subsequent owner of a lot shall provide notice to the buyer of the lot of the levy of the Special Assessment and any contract for the sale of the lot may be voided without penalty by the buyer prior to purchase of the lot if the buyer does not receive notice of the Special Assessment from the Master Developer or the subsequent owner.

“(b) The owner of a lot subject to Special Assessment under this subchapter may contest the amount of the Special Assessment, but not the authority to levy the Special Assessment, by filing a written notice of appeal of the amount with the Chief Financial Officer not later than 180 days after the due date of the payment of the Special Assessment. The Chief Financial Officer, or the administrator if designated by the Chief Financial Officer to hear the appeal, shall promptly review the appeal and, if necessary, meet with the owner of the lot, consider written and oral evidence regarding the amount of the Special Assessment, and decide the appeal. If the result of the appeal requires the Special Assessment to be modified or changed in favor of the owner of the lot, a cash refund shall not be made (except in the last year of the levy), but an adjustment shall be made to the next Special Assessment to be collected from that lot. No interest on the adjustment shall be due to the owner of the lot. A decision of the administrator may be appealed to the Chief Financial Officer. This procedure shall be exclusive and its exhaustion by any owner of a lot shall be a condition precedent to any other appeal or legal action by the owner.

“(c) If the Chief Financial Officer learns that a lot subject to the Special Assessment has been omitted from the Special Assessment for any previous tax year or tax years, the Chief Financial Officer shall provide notice to the owner and shall collect the Special Assessment amount in arrears, including penalty and interest, from the date the Special Assessment should have been paid; provided, that no lot that has not been billed for the Special Assessment shall be liable under this section for a period of more than 3 prior tax years.

“(d) Special Assessments shall be collected each year for the preceding fiscal year in

the same manner and at the same time as real property taxes are collected.

“(e)(1) Except as provided in paragraph (2) of this subsection, an unpaid Special Assessment shall be subject to the same penalty and interest provisions as a delinquent real property tax under Chapter 8 of this title. A lien for an unpaid Special Assessment, including penalty and interest, shall attach to the real property in the same manner as, and with a priority immediately junior to, a lien for delinquent real property tax under Chapter 13A of this title and senior to all other liens. Property sold at a tax sale for the failure to pay real property taxes shall remain subject to the obligation to pay Special Assessments in subsequent years as provided in this subchapter. The unpaid Special Assessment shall be collected in the same manner and under the same conditions and subject to the same penalty as for unpaid real property taxes. A Special Assessment shall not be required to be certified for the purposes of Chapter 13A of this title.

“(2) If an interest or use on a lot is subject to the Special Assessment because it would be subject to taxation under § 47-1005.01 but for the exemption provided by § 47-4615(b), an unpaid Special Assessment on such an interest or use shall be subject to the same penalty and interest provisions as a delinquent possessory interest tax imposed under § 47-1005.01, and the unpaid Special Assessment shall be collected in the same manner and under the same conditions and subject to the same penalty as for an unpaid tax imposed under § 47-1005.01.

“(3) The Special Assessment shall be deemed a tax within the meaning of 11 U.S.C. §§ 502(b), 505, and 507(a)(8)(B).

§ 47-895.05. Termination of Special Assessment.

“The Special Assessment shall terminate on the earlier of:

“(1) September 30, 2044; or

“(2) At the end of the fiscal year when all the bonds are paid for and are no longer outstanding pursuant to their terms; provided, that any delinquent Special Assessments and related penalties and interest shall remain due until fully paid.

“§ 47-895.06. Application of Special Assessment.

“The Chief Financial Officer shall deposit the special assessment revenues collected under this subchapter in the Southwest Waterfront Fund.”.

TITLE IV. FISCAL IMPACT STATEMENT; EFFECTIVE DATE.

Sec. 401. Applicability.

This act shall apply upon the inclusion of the fiscal effect of the loss of tax revenue caused by the development of the project, as described in the fiscal impact statement, in an approved budget and financial plan. Debt service on the bonds authorized under Title I is not subject to appropriations and, therefore, has no affect on the budget and financial plan.

ENROLLED ORIGINAL

Sec. 402. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(3)).

Sec. 403. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206.02(c)(1)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia