

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

*Codification
District of
Columbia
Official Code*

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To authorize the Mayor to enter into an agreement to provide for the operation and maintenance of a public park on the Anacostia River waterfront; to establish a Waterfront Park Maintenance Fund into which certain designated revenues, including certain sales tax revenue, shall be deposited; and to amend Chapter 8 of Title 47 of the District of Columbia Official Code to impose a special assessment on properties specially benefited by the park.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Waterfront Park at the Yards Act of 2009”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Chief Financial Officer” means the Chief Financial Officer established pursuant to section 424a of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-204.24a).

(2) “Contribution period” means the period of time beginning on July 1, 2012, and ending on June 30, 2017.

(3) “CPI” means the “Consumer Price Index-all items CPIU (1996=100) Washington-Baltimore, DC-MD-VA-WV,” or any successor index, as published by the United States Department of Labor, Bureau of Labor Statistics, or any successor agency.

(4) “Maintenance Agreement” means a Waterfront Park Maintenance and Programming Agreement by and among the District of Columbia, Forest City SEFC, LLC, and the Capitol Riverfront Business Improvement District.

(5) “Project Developer” means Forest city SEFC, LLC, a District of Columbia limited liability company, its successors, or assigns.

(6) “Sales tax revenue” means the revenue resulting from the imposition of the tax under Chapters 20 and 22 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).

(7) “Waterfront Park” means the approximately 5 acres located south of Water

Street, S.E., between 2nd Street, S.E., and 4th Street, S.E., that are to be constructed for use as a public park.

(8) “Waterfront Park Benefit District” means the special assessment district established by D.C. Official Code § 47-895.22.

(9) “Waterfront Park Retail Area” means the real property known for tax and assessment purposes as Lots 803, 804, 805, and 806, Square 771.

(10) “Waterfront Park Special Assessment” means the special assessment imposed by D.C. Official Code § 47-895.23.

Sec. 3. Authorization of Maintenance Agreement.

(a) Notwithstanding any other provision of law, the Mayor may enter into the Maintenance Agreement, and any amendments or supplements to the Maintenance Agreement, if the Maintenance Agreement provides that the Project Developer shall:

(1) Pay and file its monthly District of Columbia sales and use tax returns for taxes attributable to the Waterfront Park Retail Area by electronic means, separate from any parent, subsidiary, affiliate, umbrella business organization, or other taxable entity or space of the Project Developer, and in a manner consistent with the instructions of the Office of Tax and Revenue;

(2) Through lease arrangements or other means, obtain the written agreement of all tenants and vendors within the Waterfront Park Retail Area to pay and file their monthly District of Columbia sales and use taxes attributable to the Waterfront Park Retail Area by electronic means, separate and apart from any parent, subsidiary, affiliate, umbrella business organization, or other taxable entity or space of the tenant or vendor; and

(3) File with the Recorder of Deeds a consent to the levy of the special assessment imposed by subchapter VII of Chapter 8 of Title 47 of the District of Columbia Official Code.

(b) 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.*), shall not apply to the Maintenance Agreement.

Sec. 4. Creation of the Waterfront Park Maintenance Fund.

(a) There is established as a nonlapsing fund the Waterfront Park Maintenance Fund (“Fund”), which shall be used solely to pay the expenses of maintaining, operating, and improving the Waterfront Park and the expenses of events held in the Waterfront Park. The Chief Financial Officer shall deposit into the Waterfront Park Maintenance Fund the sales tax revenues attributable to the Waterfront Park Retail Area, revenue from the Waterfront Park Special Assessment, proceeds from the sale of the Anacostia Waterfront Corporation PILOT Revenue Bonds (Anacostia DOT Waterfront Projects) Series 2007 (“PILOT Bond Proceeds”) that are designated by the Mayor from the portion of the PILOT Bond Proceeds set aside for the Waterfront Park, and any income generated by the naming rights to the Waterfront Park into the Waterfront Park Maintenance Fund.

(b) All funds deposited into the Fund, and any interest earned on those funds, shall not revert to the unrestricted fund balance of the General Fund of the District of Columbia at the end of a fiscal year, or at any other time, but shall be continually available for the uses and purposes set forth in subsection (b) of this section without regard to fiscal year limitation, subject to authorization by Congress.

Sec. 5. Allocation of sales tax revenue attributable to the Waterfront Park Retail Area.

(a) During the contribution period, the sales and use tax revenue attributable to the Waterfront Park Retail Area shall be allocated and deposited into the Waterfront Park Maintenance Fund in the following amounts:

- (1) In the 12-month period beginning July 1, 2012, \$380,000;
- (2) In each 12-month period beginning on each July 1 thereafter that is within the contribution period, an amount equal to \$380,000, increased by the increase in the CPI during the period from July 1, 2012, to the beginning of that 12-month period.

Sec. 6. Naming rights for the Waterfront Park.

(a) The provisions of Title IV of the Street and Alley Closing and Acquisition Procedures Act of 1982, effective March 10, 1983 (D.C. Law 4-201; D.C. Official Code § 9-204.01 *et seq.*), shall not apply to the Waterfront Park.

(b) The authority to sell the naming rights for the Waterfront Park, including the right to sell the naming rights for portions of the Waterfront Park, is assigned to Forest City SEFC, LLC; provided, that:

- (1) The name of the park shall be subject to the approval of the Mayor;
- (2) Forest City SEFC, LLC, shall transfer all income generated from the naming of the Waterfront Park to the District; and
- (3) All income transferred to the District pursuant to paragraph (2) of this subsection shall be deposited into the Waterfront Park Maintenance Fund.

Sec. 7. 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 VIII to read as follows:

“Subchapter VIII. Waterfront Park Special Assessment District.

“47-895.21. Definitions.

“47-895.22. Establishment of special assessment district.

“47-895.23. Levy of special assessment; protest; termination of levy.

“47-895.24. Application of assessment.”.

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

“Subchapter VIII. Waterfront Park Special Assessment District.

“§ 47-895.21. Definitions.

“For the purposes of this subchapter, the term:

New Section
§ 47-895.21

“(1) “Certificate of occupancy” means:

“(A) A permanent certificate of occupancy; or

“(B) A temporary certificate of occupancy which allows for the full operation of the intended residential or hotel purposes of the building for which the certificate of occupancy is issued.

“(2) “Contribution period” means the period commencing on July 1, 2012, and ending on June 30, 2017.

“(3) “Hotel” means a building which consists primarily of hotel rooms and related facilities and amenities.

“(4)(A) “Income-producing property” means a building or portions of a building or other improvement that is open for business and is operated as a store, shop, restaurant, office space, or rental apartment.

“(B) The term “income-producing property” shall not include:

“(i) Common areas or public space, including building lobbies and plazas, in or appurtenant to a building or improvement which contains a use set forth in subparagraph (A) of this paragraph;

“(ii) A residential condominium;

“(iii) Cultural improvements or facilities; or

“(iv) A hotel.

“(5) “Owner” means an owner of real property or a lessee or user of real property subject to taxation under § 47-1005.01.

“(6) “Project Developer” means Forest City SEFC, LLC, a District of Columbia limited liability company, its successors, or assigns.

“(7) “Required occupancy” means at least 60% occupancy, calculated on a gross square foot basis.

“(8) “Residential condominium” means a for-sale residential condominium; provided, that the term “residential condominium” shall not include any common or public space in or appurtenant to the for-sale residential condominium project of which the residential condominium is a part.

“(9) “Substantial completion” means, with respect to a residential condominium, that:

“(A) The inspecting architect for the residential condominium has certified in writing to the owner of, or lender for, the residential condominium that the residential condominium is substantially complete except for punch list items; and

“(B) The Department of Consumer and Regulatory Affairs (or a successor agency) has issued a certificate of occupancy for the residential condominium.

“(10) “Waterfront Park Benefit District” means the special assessment district established by § 47-895.22.

“§ 47-895.22. Establishment of special assessment district.

“(a) There is established as a special assessment district the Waterfront Park Benefit District, which shall be comprised of the geographic area bounded by Isaac Hull Avenue, S.E.,

New Section
§ 47-895.22

on the east, 1st Street, S.E., on the west, M Street, S.E., on the north, and the Anacostia River on the south, excluding the following:

“(1) The DOT PILOT Area, as such area is defined in section 2(7) of the Southeast Federal Center Payment in Lieu of Taxes Revision Emergency Approval Resolution of 2007, effective July 10, 2007 (Res. 17-302; 54 DCR 7639).

“(2) The pumping station of the District of Columbia Water and Sewer Authority that is located east of 1st Street, S.E., at the eastern terminus of N Place, S.E.;

“(3) The real property on which the building west of Isaac Hull Avenue, S.E., and south of Tingey Street, S.E., that is under the control and jurisdiction of the Department of the Navy is located; and

“(4) The Waterfront Park.

“(b) The Council finds that owners of lots within the Waterfront Park Benefit District will derive a special benefit from the operation of the Waterfront Park.

“§ 47-895.23. Levy of special assessment; protest; termination of levy.

New Section
§ 47-895.23

“(a) There is levied during the contribution period a special assessment on each owner of real property in the Waterfront Park Benefit District in an annual amount equal to \$.125 per gross square foot of:

“(1) Each income-producing property in the Waterfront Park Benefit District that has achieved required occupancy;

“(2) Each residential condominium in the Waterfront Park Benefit District that has achieved substantial completion; and

“(3) Each hotel in the Waterfront Park Benefit District that has received a certificate of occupancy.

“(b) If an income-producing property has not reached required occupancy on or before the 1st day of the contribution period, the amount of the special assessment imposed on that income-producing property for the contribution period shall be prorated on a daily basis, so that the special assessment shall be paid only for the portion of the contribution period which elapses after the income-producing property initially reached required occupancy.

“(c) If a residential condominium has not reached substantial completion on or before the 1st day of the contribution period, the amount of the special assessment imposed on the residential condominium shall be prorated on a daily basis, so that the special assessment shall be paid only for that portion of the contribution period which elapses after the residential condominium initially reached substantial completion.

“(d) If a hotel has not received its certificate of occupancy on or before the 1st day of the contribution period, the amount of the special assessment imposed on the hotel shall be prorated on a daily basis, so that the assessment shall be paid only for the portion of the contribution period which elapses after the hotel initially received its certificate of occupancy.

“(e) A consent to the levy of the special assessment filed by an owner, including the Project Developer, with the Recorder of Deeds shall bar all future actions by the owner and all future owners of the real property for which the consent was filed to challenge the levy of the special assessment, except as provided in subsection (g) of this section.

“(f) The Project Developer and any subsequent owner of real property within the Waterfront Park Special Assessment shall provide notice to any buyer of real property in the Waterfront Park Benefit District of the levy of the special assessment, the filing of any consent to the levy, and the effect of the filing of the consent as described in subsection (e) of this section.

“(g) The owner of real property subject to a special assessment under this subchapter may contest the amount of the special assessment (but not the authority to levy the special assessment) imposed on the real property by filing a written notice of appeal with the Chief Financial Officer not later than 60 days after the due date of the payment of the special assessment. The Chief Financial Officer shall promptly review the appeal and, if necessary, meet with the owner of the real property, 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 adjusted in favor of the owner of the real property, a cash refund shall not be made (except in the last year of the contribution period), but an adjustment shall be made to the next special assessment to be collected from that real property. No interest on the adjustment shall be due to the owner of the real property. This procedure shall be exclusive and its exhaustion by an owner shall be a condition precedent to any other appeal or legal action by the owner.

“(h) If the Chief Financial Officer learns that real property subject to the special assessment has been omitted from the special assessment for any previous year of the contribution period, the Chief Financial Officer shall provide notice to the owner and shall collect the special assessment amount in arrears, including interest from the date the special assessment should have been paid; provided, that no real property that has escaped the special assessment shall be liable under this section for a period of more than 3 prior years of the contribution period.

“(i) Special assessments under this subchapter shall be levied annually and shall be due on June 1. The Chief Financial Officer shall provide each owner of real property within the Waterfront Park Benefit District with an annual notice of the amount of the special assessment that is due. The owner shall have 30 days to pay the special assessment bill before the bill is due.

“(j)(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 this chapter. 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. The unpaid special assessment shall be collected in the same manner, under the same conditions, and subject to the same penalty as unpaid real property taxes.

“(2) If an interest or use on real property is subject to the special assessment because it is subject to taxation under § 47-1005.01, an unpaid special assessment on such an interest or use shall be subject to the same penalty and interest provisions as a delinquent tax imposed under § 47-1005.01 and the unpaid special assessment shall be collected in the same

manner, under the same conditions, and subject to the same penalty as an unpaid tax imposed under § 47-1005.01.

“(k) A special assessment imposed under this subchapter shall not be required to be certified for the purposes of Chapter 13A of this title.

“(l) Each special assessment shall be made part of the public record.

“§ 47-895.24. Application of assessment.

**New Section
§ 47-895.21**

“The Chief Financial Officer shall deposit the special assessment revenues collected under this subchapter in the Waterfront Park Maintenance Fund established by section 4 of the Waterfront Park at the Yards Act of 2009, passed on 2nd reading on December 1, 2009 (Enrolled version of Bill 18-299).”.

Sec. 8. 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. 9. 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