

AN ACT

*Codification
District of
Columbia
Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To establish a tax increment financing program for retail development in the District of Columbia.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Retail Incentive Act of 2004”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Available Real Property Tax Revenues” means the revenues resulting from the imposition of the tax under Chapter 8 of Title 47 of the District of Columbia Official Code, including any penalties and interest charges, exclusive of the special tax provided for in section 481 of the Home Rule Act, pledged to the payment of general obligation indebtedness of the District.

(2) “Available Sales Tax Revenues” means the revenues resulting from the imposition of the tax under Chapter 20 of Title 47 of the District of Columbia Official Code, including any penalties and interest charges, exclusive of the portion thereof required to be deposited in the Washington Convention Center Authority 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).

(3) “Bonds” means any bonds, notes, or other instruments issued by the District pursuant to section 490 of the Home Rule Act and secured by Tax Increment Revenues or other security authorized by this act.

(4) “CFO” means the Chief Financial Officer of the District of Columbia.

(5) “Downtown Retail Priority Area” means the record lots that front one of the following street locations: 7th Street, N.W., between Indiana and Massachusetts Avenues, N.W.; 11th Street, N.W., between Pennsylvania Avenue, N.W., and New York Avenue, N.W.; F Street, N.W., between 6th and 14th Streets, N.W.; and G Street, N.W., between 10th and 13th Streets, N.W., and includes portions of the following squares: 223, 224, 225, 252, 253, 254, 288, 289, 290, 319, 320, 321, 322, 346, 347, 348, 376, 377, 403, 406, 408.1, 428, 429, 430, 431,

452, 453, 454, 455, 456, 457, and 458.

(6) “Home Rule Act” means the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 777; D.C. Official Code § 1-201.01 *et seq.*).

(7) “LSDBE” means a local, small, or disadvantaged business enterprise certified by the District of Columbia Local Business Opportunity Commission under the provisions of the Equal Opportunity for Local, Small and Disadvantaged Business Enterprises Act of 1998, effective April 27, 1999 (D.C. Law 12-268; D.C. Official Code § 2-217.01 *et seq.*).

(8) “Retail Development Project” means the establishment of a business engaged in direct onsite retail sales to consumers, including the following activities in connection with such business: acquisition, purchase, construction, reconstruction, improvement, renovation, rehabilitation, restoration, remodeling, repair, remediation, expansion, extension, and the furnishing, equipping, and opening for business. In the case of the Downtown Retail Priority Area, Retail Development Projects shall be limited to businesses engaged in sales of home furnishings, apparel, and general merchandise goods to specialized customers, and shall specifically exclude:

(A) Liquor stores, nightclubs, hotels, restaurants, banks, pharmacies, phone stores, and service retail outlets; and

(B) The relocation of a business to the Downtown Retail Priority Area from another location within the District, unless the relocation involves a significant expansion of the size of the business.

(9) “Retail Development Costs” means any costs associated with, arising out of, or incurred in connection with:

(A) A Retail Development Project;

(B) The issuance of, or debt service or any other payments in respect of, the Bonds, including costs of issuance, capitalized interest, credit enhancement fees, reserve funds, or working capital; or

(C) The relocation of any business where the purpose of the relocation is to make space for a Retail Development Project.

(10) “Retail Priority Area” means:

(A) The Downtown Retail Priority Area; and

(B) Any other area or areas of the District so designated by the Mayor and approved by the Council in accordance with this act.

(11) “Rules of Operation” means the rules and procedures, established by the Mayor pursuant to section 5, by which Retail Development Projects will be approved as TIF Areas and receive proceeds of Bonds to pay Retail Development Costs.

(12) “Tax Increment Revenues” means the portion of the Available Real Property Tax Revenues, Available Sales Tax Revenues, or both, allocable to one or more tax allocation funds pursuant to section 7.

(13) “TIF” means tax increment financing.

(14) “TIF Act” means the Tax Increment Financing Act of 1998, effective September 11, 1998 (D.C. Law 12-84; D.C. Official Code § 2-1217.01 *et seq.*), or any successor act.

(15) “TIF Area” means a Retail Development Project that has been approved by the Mayor to receive proceeds of Bonds in accordance with the applicable Rules of Operation for the Retail Priority Area in which the Retail Development Project is located.

Sec. 3. Limitations on issuance of Bonds.

(a) Bonds shall not be issued pursuant to this act to the extent the issuance will cause the aggregate principal amount of Bonds issued pursuant to this act and the TIF Act to exceed \$300 million.

(b) Bonds shall not be issued pursuant to this act after December 31, 2013.

Sec. 4. Retail Priority Areas.

(a)(1) The Mayor shall identify areas within the District where:

(A) There exist barriers to entry that impede Retail Development Projects; and

(B) The proceeds of Bonds may be used to eliminate these barriers to entry and promote Retail Development Projects.

(2)(A) The Mayor may designate additional Retail Priority Areas by submitting to the Council for a 45-day period of review, excluding weekends, holidays, and periods of Council recess, a proposed resolution, which:

(I) Designates one or more Retail Priority Areas;
(ii) States the maximum aggregate principal amount of Bonds that may be issued with respect to each Retail Priority Area; and
(iii) States the latest date by which the Bonds may be issued with respect to each Retail Priority Area.

(B) In addition to the resolution, the Mayor shall submit to the Council information supporting the Mayor’s determinations concerning the use of TIF to promote retail development in each Retail Priority Area, including findings of the CFO that the proposed Retail Priority Area is not inconsistent with the financial plan and budget for the fiscal year of the District and does not exceed the limitations set forth in section 3(a).

(C) If the Council does not approve or disapprove the proposed resolution within the 45-day period of review, excluding weekends, holidays, and periods of Council recess, the proposed resolution shall be deemed approved.

(b) In addition to Retail Priority Areas that may be approved pursuant to subsection (a) of this section:

(1) The Downtown Retail Priority Area is designated as a Retail Priority Area;
(2) The issuance of Bonds with respect to the Downtown Retail Priority Area, not to exceed the aggregate principal amount of \$30 million, is approved;

(3) The latest date for the issuance of such Bonds is 4 years from the date that the Mayor establishes the Rules of Operation for the Downtown Retail Priority Area; and

(4) The base year for the calculation of Available Sales Tax Revenues shall be the fiscal year beginning October 1, 2002 and the base year for the calculation of Available Real Property Tax Revenues shall be the fiscal year beginning October 1, 2003.

(c) The Mayor shall prepare and deliver an annual report to the Council each year on January 1st through the year ending December 31, 2013. The annual report shall contain a listing and description of each Retail Development Project approved as a TIF Area pursuant to this act. Each listing shall contain specific information about the nature of the Retail Development Project, the use of the proceeds of the Bonds, the projected Tax Increment Revenues attributable to each listed TIF Area, and any other information the Council may request regarding such TIF Areas.

(d) If the Mayor determines that a Retail Priority Area is no longer necessary, the Mayor may abolish the Retail Priority Area; provided, that if any Bonds are outstanding with respect to any TIF Area therein, the Mayor shall take no action to abolish the Retail Priority Area or that otherwise will adversely affect the security of the holders of the Bonds.

(e) The Mayor shall identify potential Retail Priority Areas. Within 180 days of the effective date of this act, the Mayor shall submit to the Council resolutions designating as Retail Priority Areas the following areas:

- (1) Columbia Heights;
- (2) Georgia Avenue;
- (3) Minnesota/Benning;
- (4) Shaw; and
- (5) H Street, NE Corridor.

Sec. 5. Rules of Operation.

(a) Upon approval by resolution pursuant to section 4(a) with respect to any Retail Priority Area, or upon the effective date of this act in the case of the Downtown Retail Priority Area, the Mayor shall establish Rules of Operation with respect to each Retail Priority Area as the Mayor considers necessary or appropriate for:

(1) The approval and certification by the Mayor of Retail Development Projects within the Retail Priority Area as TIF Areas;

(2) The issuance of Bonds secured by the Tax Increment Revenues or any other security authorized by this act which is generated by or relates to the Retail Development Projects;

(3) The allocation of the proceeds of the Bonds to fund Retail Development Costs of the Retail Development Projects; and

(4) Such other matters as the Mayor considers necessary or appropriate to achieve the goals and objectives for the Retail Priority Area.

(b) The Rules of Operation for the Downtown Retail Priority Area shall include the

following:

(1) A rating system designed to rank Retail Development Projects based on the following objective criteria:

(A) The likelihood of Bond repayment based on projected Tax Increment Revenues or any other security authorized by this act from or relating to the Retail Development Project;

(B) The uniqueness of the retailer;

(C) The likelihood that the retailer will attract other retailers to locate nearby;

(D) The position of the retailer in its market and whether the retailer is the first in its market to locate in the Downtown Retail Priority Area;

(E) The extent to which the retailer promotes the Downtown Retail Priority Area in its advertising;

(F) The vertical integration of the retailer;

(G) The intention of the retailer to locate on more than one level of the building in which it is located;

(H) Whether the retailer builds an expressive storefront;

(I) Whether the retailer is owned by a District resident or is based in the District;

(J) The amount of space occupied by the retailer; and

(K) Whether the retailer is one of multiple retailers that co-locate in the Downtown Retail Priority Area;

(2) A numeric formula based upon the foregoing rating system that, for any proposed Retail Development Project, will produce a dollar amount of proceeds of Bonds that shall be allocated to the Retail Development Project if it is approved as a TIF Area;

(3) The establishment of a committee comprised of the Mayor, retail brokers and property owners in the Downtown Retail Priority Area, and such other persons as the Mayor shall designate, which committee shall:

(A) Apply the rating system to proposed Retail Development Projects and review and revise the rating system from time to time as necessary to respond to market conditions;

(B) Adjust the formula for the allocation of Bond proceeds as may be necessary or appropriate to maximize the use of Bond proceeds to achieve the purposes of this act;

(C) Recommend Retail Development Projects for designation as TIF Areas to the Mayor; and

(D) Take such other actions as the Mayor may consider necessary or appropriate to facilitate the selection and funding of TIF Areas in the Downtown Retail Priority Area;

(4)(A) A procedure pursuant to which the Mayor shall certify:

- (I) The rating of Retail Development Project, based upon the rating system;
- (ii) The amount of Bond proceeds that, based upon the allocation formula, may be allocated to Retail Development Projects; and
- (iii) Retail Development Projects as TIF Areas; and
- (B) The procedure shall permit the Mayor to suspend and re-institute from time to time the designation of TIF Areas pursuant to this act in response to market conditions;
- (5) A requirement that the owner of any building in which a TIF Area is located enter into a development agreement, satisfactory to the Mayor, that sets forth:
 - (A) The goals and objectives for achieving the revitalization of retail development in the Downtown Retail Priority Area;
 - (B) Requirements for the leasing of retail space in the building in a manner that will advance the goals and objectives;
 - (C) The terms and conditions pursuant to which Bond proceeds will be advanced to pay Retail Development Costs incurred in connection with the TIF Area;
 - (D) The owner's agreement to use good faith efforts to use LSDBEs to perform any construction work the cost of which is paid for or reimbursed by Bond proceeds;
 - (E) The owner's agreement to require the retailer of the Retail Development Project to execute a first source agreement with the Department of Employment Services that establishes a goal of hiring District residents for at least 51% of the new jobs created by the Retail Development Project;
 - (F) Such matters as may be required in connection with the issuance of the Bonds; and
 - (G) Such other matters as the Mayor determines to be necessary or appropriate in connection with such TIF Area;
- (6) Requirements that Bonds shall not be issued with respect to any TIF Area and the proceeds of the Bonds shall not be advanced to pay Retail Development Costs until the TIF Area is open for business to the general public; and
- (7) Procedures and timetables for the approval of Retail Development Projects as TIF Areas that are designed to facilitate, and not impede, negotiations between building owners and retailers in the Downtown Retail Priority Area.
- (c) The Rules of Operation shall be uniformly applied within any given Retail Priority Area, but may vary across different Retail Priority Areas to address the specific needs of each Retail Priority Area. Notwithstanding anything to the contrary herein, the Rules of Operation shall provide that a Retail Development Project that, either directly or as part of a larger development project, has already received proceeds of Bonds through another TIF program shall not be designated a TIF Area under this act.

Sec. 6. Use of Bond proceeds; funding agreement.

(a) When a Retail Development Project is certified as a TIF Area by the Mayor pursuant to this act, the proceeds of Bonds issued with respect to the TIF Area shall be used to pay Retail Development Costs and shall be subject to such terms, conditions, and requirements as the Mayor determines to be in the best interests of the District and will further the purposes of this act. The terms, conditions and requirements shall be included in an agreement entered into between the District and the recipient of the proceeds prior to the advance of the proceeds; provided, that, in the Downtown Retail Priority Area, Tax Increment Revenues or any other security authorized by this act shall be used for the payment of debt service on Bonds issued to Bondholders arranged by the recipient of the proceeds of the Bonds prior to the issuance of the Bonds and the proceeds of the Bonds shall be available to the recipient only after the issuance of a certificate of occupancy for the Retail Development Project. In the case of Bonds issued with respect to the Downtown Retail Priority Area, the recipient of the proceeds of the Bonds shall guarantee the Bonds.

(b) In the case of the Downtown Retail Priority Area, Tax Increment Revenues and the proceeds of Bonds may also be used to pay costs and expenses:

(1) Incurred in connection with the start-up and administration of a TIF program in the Downtown Retail Priority Area (including feasibility studies, market studies, and legal costs), and marketing the TIF program and the Downtown Retail Priority Area to prospective retailers; provided, that the amount expended pursuant to this paragraph shall not exceed \$1 million in the aggregate; and

(2) Of establishing, maintaining, and operating a program to support parking for customers of retail businesses in the Downtown Retail Priority Area and providing streetscape and facade improvements in the Downtown Retail Priority Area; provided, that the amount expended pursuant to this paragraph shall not exceed \$5 million in the aggregate.

Sec. 7. Allocation of Tax Increment Revenues.

(a) Within 60 days after the certification of a TIF Area by the Mayor, the CFO shall provide for the allocation of Tax Increment Revenues within each TIF Area. The CFO shall establish one or more separate tax increment allocation accounts within the General Fund of the District of Columbia for the deposit and application of Available Sales Tax Revenues and Available Real Property Tax Revenues from each TIF Area. Monies shall be transferred from such accounts at the times and in the amounts required pursuant to financing documents relating to any Bonds. Monies held or to be held in a tax allocation account may be used to (1) pay debt service on Bonds, (2) pay other costs due and payable under the applicable financing documents, and (3) to pay any other costs or expenses permitted by this act. Monies in a tax allocation account or in any fund or account established under any financing documents may be pledged as security for the payment of debt service on Bonds.

(b) Notwithstanding any other law, after a TIF Area has been certified by the Mayor, the portion of Tax Increment Revenues that results from the real property and sales tax levied within the TIF Area each year beginning from the date of the certification of the TIF Area shall

be paid to the CFO for deposit into one or more of the tax increment accounts established by the CFO pursuant to subsection (a) of this section.

(c) If Bonds have been issued and are outstanding, the amounts, if any, remaining in the tax increment accounts for a TIF Area at the end of each tax year, after provision for the payment of debt service on any Bonds, any costs of credit or liquidity enhancement, other costs, fees, and expenses of administering, carrying, and paying the Bonds and the funds, trusts, and escrows pertaining to them, and providing for reasonably required reserves, all as provided in the financing documents, and after payment of any other costs or expenses permitted by this act, shall revert to the General Fund of the District of Columbia.

Sec. 8. Issuance of Bonds.

The issuance of Bonds, including any refunding Bonds, is authorized pursuant to section 490 of the Home Rule Act to finance Retail Development Costs of TIF Areas certified by the Mayor pursuant to this act. This act constitutes an act of Council authorizing the issuance of Bonds, including refunding Bonds, as required by section 490 of the Home Rule Act. The Bonds shall be secured by Tax Increment Revenues in amounts not to exceed the limits provided for in this act or other security authorized by this act. The issuance of Bonds, including any refunding Bonds in specified aggregate principal amounts, shall be approved by the Mayor in accordance with this act.

Sec. 9. Details of Bonds.

(a) The Mayor may take any action necessary or appropriate in accordance with this act in connection with the preparation, execution, issuance, sale, delivery, and payment of Bonds, including determinations of:

- (1) The final form, content, designation, and terms of the Bonds, including a determination that the Bonds may be issued in certificate 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 each series of 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 they are properly applied to their respective eligible project and used to accomplish the purposes of this act; and

(10) Actions necessary to qualify the Bonds under blue sky laws of any jurisdiction where the Bonds are marketed.

(b) The Bonds shall contain a legend, which shall provide that the Bonds shall be special obligations of the District, shall be nonrecourse to the District, shall not be a pledge of, and shall not involve, the faith and credit or the taxing power of the District (other than the Tax Increment Revenues or any other security authorized by this act), 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.

(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. The Mayor's execution and delivery of the Bonds shall constitute conclusive evidence of the Mayor's approval, on behalf of the District, of the final form and content of the same.

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

(e) The Bonds may be issued at any time or from time to time in one or more issues and in one of more series.

Sec. 10. Security for Bonds.

(a) A series of Bonds may be secured by a trust agreement or trust indenture between the District and a corporate trustee having trust powers, or secured by a loan agreement or other instrument giving power to a corporate trustee by means of which the District may do the following:

(1) Make and enter into any and all covenants and agreements with the trustee or the holders of the Bonds that the District may determine to be necessary or desirable covenants and agreements as to:

(A) The application, investment, deposit, use, and disposition of the proceeds of Bonds and the other monies, securities, and property of the District;

(B) The assignment by the District of its rights in any agreement;

(C) Terms and conditions upon which additional Bonds of the District may be issued;

(D) Providing for the appointment of a trustee to act on behalf of bondholders and abrogating or limiting the rights of the bondholders to appoint a trustee; and

(E) Vesting in a trustee for the benefit of the holders of Bonds, or in the bondholders directly, such rights and remedies as the District shall determine to be necessary or desirable;

(2) Pledge, mortgage or assign monies, agreements, property or other assets of the District, either presently in hand or to be received in the future, or both;

(3) Provide for bond insurance and letters of credit, or otherwise enhance the credit of and security for the payment of the Bonds; and

(4) Provide for any other matters of like or different character that in any way affect the security for or payment of the Bonds.

(b) 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.

(c) The District does hereby pledge to and covenant and agree with the holders of any Bonds that, subject to the provisions of the financing documents, the District will not limit or alter the revenues pledged to secure the Bonds or the basis on which such revenues 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, and will not modify in any way the exemptions from taxation provided for in this act, until the Bonds, together with interest thereon, with interest on any unpaid installment of interest and all costs and expenses in connection with any suit, action or proceeding by or on behalf of the holders, are fully met and discharged. This pledge and agreement of the District may be included as part of the contract with the holders of any of its Bonds. This subsection shall constitute a contract between the District and the holders of the Bonds authorized by this act. To the extent that any acts or resolutions of the Council may be in conflict with this act, this act shall be controlling.

(d) 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 any 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. 11. Default.

If there shall be a default in the payment of the principal of, or interest on, any Bonds of a series after the principal or interest shall become due and payable, whether at maturity or upon call for redemption, or if the District shall fail or refuse to carry out and perform the terms of any agreement with the holders of any of the Bonds, the holders of the Bonds, or the trustee appointed to act on behalf of the holders of the Bonds, may, subject to the provisions of the financing documents, do the following:

(1) By action, writ, or other proceeding, enforce all rights of the holders of the Bonds, including the right to require the District to carry out and perform the terms of any agreement with the holders of the Bonds or its duties under this act;

(2) By action, require the District to account as if it were the trustee of an express trust;

(3) By action, petition to enjoin any acts or things that may be unlawful or in violation of the rights of the holders of the Bonds; and

(4) Declare all the Bonds due and payable, whether or not in advance of maturity and, if all the defaults be made good, annul the declaration and its consequences.

Sec. 12. Liability.

(a) The members of the Council, the Mayor, or any person executing Bonds shall not be liable personally on the Bonds by reason of the issuance thereof.

(b) Notwithstanding any other provision of this act, the Bonds shall not be general obligations of the District and shall not be in any way a debt or liability of the District within the meaning of any debt or other limit prescribed by law. The full faith and credit or the general taxing power of the District (other than the Tax Increment Revenues or other security authorized under this act) shall not be pledged to secure the payment of any Bonds.

Sec. 13. Prior legislation.

This act shall not adversely affect any actions taken, agreements entered into, pledge of security made or Bonds issued prior to the effective date of this act.

Sec. 14. Promulgation of rules and regulations.

The Mayor shall promulgate rules and regulations setting forth the criteria and procedures necessary to implement the provisions of this act.

Sec. 15. Construction.

This act shall be liberally construed to effect the purposes stated herein.

Sec. 16. 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. 17. 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

ENROLLED ORIGINAL

24, 1973 (87 Stat. 788; D.C. Official Code § 1-204.12(a)), and publication in the District of Columbia Register.

Chairman
Council of the District of Columbia

Mayor
District of Columbia