

AN ACT

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To authorize the issuance of tax increment financing bonds to support certain infrastructure and other costs for a portion of the land located within the Union Market Area.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the “Union Market Tax Increment Financing Act of 2017”.

Sec. 2. Definitions.

For the purposes of this act, the term:

(1) “Authorized Delegate” means the Deputy Mayor for Planning and Economic Development, the Chief Financial Officer, the Treasurer, or any officer or employee 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.

(2) “Available Increment” shall have the same meaning as set forth in the Reserve Agreement.

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

(4) “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 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), and any amounts to be made available to the Washington Metropolitan Transit Authority pursuant to section 7102 of the Revised Revenue Contingency List Act of 2017, enacted on July 31, 2017 (D.C. Act 22-130; 62 DCR 7652), and section 2(b)(A) of the Stable and Reliable Source of Revenues for WMATA Act of 1982, effective April 30, 1982 (D.C. Law 4-103; D.C. Official Code 9-1111.15(b)(2)(A)).

(5) “Available Tax Increment” means the sum of the Available Sales Tax Revenues and Available Real Property Tax Revenues generated in the Union Market TIF Area in any fiscal year of the District minus the sum of Available Sales Tax Revenues and Available

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Real Property Tax Revenues generated in the Union Market TIF Area in the applicable base year.

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

(7) “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 act.

(8) “Chairman” means the Chairman of the Council of the District of Columbia.

(9) “Chief Financial Officer” means the Chief Financial Officer established by section 424(a)(1) of the Home Rule Act.

(10) “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.

(11) “Council” means the Council of the District of Columbia.

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

(13) “Development Costs” has the same meaning as in section 2(13) of the Tax Increment Financing Authorization Act of 1998, effective September 11, 1998 (D.C. Law 12-143; D.C. Official Code § 2-1217.01(13)).

(14) “Development Sponsor” means Union Market Infrastructure Corp., qualified to do business in the District of Columbia, or any other entity that undertakes the development of the project with the approval of the Mayor.

(15) “District” means the District of Columbia.

(16) “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.

(17) “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.*).

(18) “Project” means the financing, refinancing, or reimbursing of Development Costs incurred for construction of infrastructure and retail parking within the Union Market TIF Area and adjoining public space.

(19) “Retail Parking” means structured parking located within the Union Market TIF Area that is designed to support the development of the Union Market TIF Area as a retail hub.

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

(21) “TIF” means tax increment financing.

(22) “Union Market TIF Area” means the geographical area described in section 4(a).

Sec. 3. Creation of the Union Market TIF Fund.

(a) There is established as a nonlapsing fund the Union Market TIF Fund. The Chief Financial Officer shall deposit into the Union Market TIF Fund the Available Tax Increment and any other taxes or fees specifically designated by law for deposit in the Union Market TIF Fund.

(b) The Mayor may pledge and create a security interest in the funds in the Union Market TIF Fund, or any sub-account within the Union Market TIF Fund, for the payment of debt service on the bonds without further action by the Council as permitted by section 490(f) of the Home Rule Act. The payment of debt service 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.

(c) If, at the end of any fiscal year of the District, the balance of cash and investments in the Union Market TIF Fund exceeds the amount of debt service (including prepayment of principal and interest), reserves on any bonds, and any approved bond-related administrative expenses during the upcoming fiscal year, 50% of the excess shall be used to prepay the principal of the bonds and the remaining 50% of the excess shall be transferred to the unrestricted balance of the General Fund of the District of Columbia.

Sec. 4. Creation of the Union Market TIF Area.

(a) There is created a TIF area designated as the Union Market TIF Area. The Union Market TIF Area is defined as the real property located in Lots 0001, 0002, and 0003 in Square 3594; Lots 0003, 0007, 0808, 0823, 0824, 0825, 0826, 0828, 0829, 0830, 0831, 0832, 7006, 7007, 7008, 7009, 7010, 7011, 7012, 7013, 7014, 7015, 7016, 7017, 7018, 7019, 7020, 7021, 7022, and 7023 in Square 3587; Lots 0004, 0015, 0016, 0017, 0018, 0019, 0020, 0021, 0022, 0025, 0801, 0802, and 0803 in Square 3588; Lots 0003, 0008, 0009, 0029, 0030, 0031, 0032, 0033, 0034, 0035, 0036, 0049, 0050, 0051, 0052, 0053, 0804, 0805, 0806, and 0808, in Square 3589; Lots 0001, 0002, 0003, 0004, 0005, 0006, 0010, 0011, 0013, 0014, 0800, 0801, and 0802 in Square 3590; Lots 0002, 0003, 0004 and 0800 in Square 3591; Lots 0001, 0002, 0006, 0007, 0008, 0009, 0010, 0011, 0012, 0013, 0014, 0015, 0016, 0019, 0020, 0021, 0022, 0023, 0024, 0025, 0802, and 0803 in Square 3592; and Lots 0027, 0028, 0030, 0034, 0043, 0045, 0068, 0070, 0072, 0089, 0090, 0103, 0104, 0106, and 0112 in Parcel 0129.

(b) As provided under section 3, the Available Tax Increment from the Union Market TIF Area shall be deposited in the Union Market TIF Fund and may be used for the purposes set forth in section 3.

(c)(1)(A) The base amount for determination of Available Sales Tax Revenues shall be:

- (i) \$2,644,943 in base year 2018;
- (ii) \$4,924,957 in base year 2019;
- (iii) \$5,984,737 in base year 2020; and
- (iv) \$6,529,609 in base year 2021.

(B) For base years 2022 through 2051, the base amount for determination of Available Sales Tax Revenues shall reflect an increase in the amount of 3.6% from each previous base year's amount.

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(2)(A) The base amount for determination of Available Real Property Tax Revenues shall be:

- (i) \$3,746,069 in base year 2018;
- (ii) \$4,858,887 in base year 2019;
- (iii) \$6,202,452 in base year 2020; and
- (iv) \$7,488,037 in base year 2021.

(B) For base years 2022 through 2051, the base amount for determination of Available Real Property Tax Revenues shall reflect an increase in the amount of 3.0% from each previous base year's amount.

(3) The Union Market TIF Area shall terminate on the earliest of:

(A) Twenty-five years after the issuance of the last bonds issued pursuant to this act;

(B) The date on which the bonds are paid in full or are defeased and are no longer outstanding; or

(C) March 1, 2027 if no bonds are issued.

Sec. 5. Bond authorization.

(a)(1) The Council approves and authorizes the issuance of one or more series of bonds in an aggregate principal amount not to exceed \$82.4 million to fund the project. 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 6.

(2) Bonds in the aggregate principal amount of \$46.4 million may be issued to pay for the construction of infrastructure and related Development Costs.

(3) Bonds in the aggregate principal amount not to exceed \$36 million may be issued to pay for the construction of Retail Parking and related Development Costs.

(b) 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, credit enhancement, marketing, sale, and printing costs and expenses.

Sec. 6. Payment and security.

(a) Except as may be otherwise provided in this act, the principal of, premium, if any, and interest on, the bonds, and the payment of ongoing administrative expenses related to the bond financing shall be payable solely from proceeds received from the sale of the bonds, income realized from the temporary investment of those proceeds, receipts and revenues realized by the District from the Union Market TIF Fund, income realized from the temporary investment of those receipts and revenues prior to payment to the bond owners, 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 the payment of debt service, on up to \$36 million of the bonds the Available Increment, subordinate to the allocation of Available Increment to the Budgeted Reserve, as defined in the Reserve Agreement, all as more fully described in the Reserve

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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 on the bonds to the extent that the revenues allocated in subsection (a) of this section are inadequate to pay debt service on the bonds. 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. The foregoing allocation of Available Increment may be increased to apply to bonds in excess of \$36 million; provided, that the Development Sponsor advances the amount of any reserve required in the District's budget to support such increased allocation and any amount remaining in such reserve upon payment in full of such bonds shall be returned to Development Sponsor.

(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 owners 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 or paying agent is authorized to deposit, invest, and disburse the proceeds received from the sale of the bonds pursuant to the Financing Documents.

Sec. 7. 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 that 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;

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(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 any 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 Available Tax Increment, the Available Increment, and any other taxes and fees allocated to the Union Market TIF Fund), 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 or paying agent 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, the interest thereon, and the income therefrom, and all funds 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 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 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.

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(i) Consistent with section 490(a)(4)(B) of the Home Rule Act and notwithstanding Article 9 of Chapter 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. 8. Issuance 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 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 Procurement Practices Reform Act of 2010, effective April 8, 2011 (D.C. Law 18-371; D.C. Official Code § 2-351.01 *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 the purposes of this act.

Sec. 9. 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.

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(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. 10. 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 Available Tax Increment, the Available Increment, and any other taxes or fees allocated to the Union Market TIF Fund), 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 owner, 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 act, 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. 11. District officials.

(a) Except as otherwise provided in section 10(c), the elected or appointed officials, officers, employees, or agents of the District shall not be liable personally for the payment of the bonds or be subject to any personal liability by reason of the issuance of the bonds, or for any representations, warranties, covenants, obligations, or agreements of the District contained in this act, 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.

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Sec. 12. Maintenance of documents.

Copies of the specimen bonds and of the final Financing Documents and Closing Documents shall be filed in the Office of the Secretary of the District of Columbia.

Sec. 13. 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. 14. Expiration of issuance authority.

The authority to issue the bonds shall expire on March 1, 2027; provided, that the expiration of the authority shall have no effect on any bonds issued prior to the expiration date.

Sec. 15. Repealer.

The Union Market District TIF Inducement Act of 2015, effective October 22, 2015 (D.C. Law 21-36; D.C. Official Code § 2-1217.36a *et seq.*), is repealed.

Sec. 16. Applicability.

(a) This act shall apply upon the date of inclusion of its fiscal effect in an approved budget and financial plan.

(b) The Chief Financial Officer shall certify the date of the inclusion of the fiscal effect in an approved budget and financial plan, and provide notice to the Budget Director of the Council of the certification.

(c)(1) The Budget Director shall cause the notice of the certification to be published in the District of Columbia Register.

(2) The date of publication of the notice of the certification shall not affect the applicability of this act.

Sec. 17. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 4a of the General Legislative Procedures Act of 1975, approved October 16, 2006 (120 Stat. 2038; D.C. Official Code § 1-301.47a).

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Sec. 18. 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