

COUNTY COUNCIL OF BALTIMORE COUNTY, MARYLAND
Legislative Session 2010, Legislative Day No. 17

Bill No. 103-10

Mr. John Olszewski, Sr. Chairman
By request of the County Executive

By the County Council, October 18, 2010

A BILL
ENTITLED

AN ORDINANCE concerning the designation of an area within Baltimore County, Maryland (the "County") in which the Owings Mills subway station is located as a "transit-oriented development", and the designation of a contiguous area "development district" and a "special taxing district" with such districts being located within the boundaries of such "transit-oriented development", the creation of a special tax increment fund into which certain property taxes on real property in the development district will be paid, the levy and collection of one or more special taxes on real property in the special taxing district, the creation of one or more special tax funds into which the special taxes will be paid, and the authorization of the pledge by the County under one or more agreements that amounts in the special tax increment fund and the special tax funds shall be paid over to secure one or more series of bonds or other indebtedness issued by Maryland Economic Development Corporation in an aggregate principal amount not to exceed \$135,000,000 to finance costs of certain infrastructure improvements relating to the development district and special taxing district and that amounts in a special tax fund shall be paid over to provide for the payment of costs of certain infrastructure improvements and costs of operation and maintenance of certain infrastructure relating to the development district and special taxing district.

FOR the purpose of making certain findings; designating an area within Baltimore County, Maryland (the "County") in which the Owings Mills subway station is located as a "transit-oriented development", as defined in Section 7-101(m) of the Transportation Article of the Annotated Code of Maryland (2008 Replacement Volume and 2009 Supplement), and designating a contiguous area as a "development district" within the meaning of the Tax Increment Financing Act, Sections 12-201 through 12-213 of the Economic Development Article of the Annotated Code of Maryland (2008 Volume and 2009 Supplement), as amended, and a "special taxing district" pursuant to the provisions of Section 9-1301 of Article 24 of the Annotated Code of Maryland (2005 Replacement Volume and 2009 Supplement), as amended, with such "development district" and "special taxing district" being located within the boundaries of such "transit-oriented development"; creating a special tax increment fund and one or more special tax funds; providing for the payment of certain property taxes on real property in the development district to the special tax increment fund; providing for the levy of one or more

special taxes on certain property within the special taxing district and the deposit of the special taxes in the special tax funds; authorizing the County to pledge that amounts on deposit in the special tax increment fund and any special tax fund shall be paid over to secure bonds, notes or other similar instruments issued by Maryland Economic Development Corporation (“MEDCO”) in an aggregate principal amount not to exceed \$135,000,000 (the “Bonds”) to finance certain infrastructure improvements relating to the development district and the special taxing district, including the payment of interest prior to and during construction and for such limited period after completion of construction as shall be approved by the County Executive of the County (the “County Executive”), the payment of costs of issuing the Bonds and the funding of a debt service reserve fund and other reserves; authorizing the County to pledge amounts on deposit in a special tax fund to the payment of costs of operation and maintenance of the improvements; authorizing the execution and delivery by the County of one or more pledge agreements in connection with such pledges; authorizing the County Executive to specify, prescribe, determine, provide for and approve certain details, forms, documents and procedures and any other matters necessary or desirable in connection with the foregoing; and providing for and determining various matters in connection with the foregoing.

SECTION 1. *Be it enacted by the County Council of Baltimore County, Maryland, That,* for the purposes of this Ordinance, the following terms shall have the meanings set forth below:

(a) “Adjusted Assessable Base” means the fair market value of real property that qualifies for a farm or agricultural use under Section 8-209 of the Tax – Property Article of the Annotated Code of Maryland (2007 Replacement Volume and 2009 Supplement), without regard to its agricultural use assessment for the property as of January 1, 2009.

(b) “Assessable Base” means the total assessable base, as determined by the Supervisor of Assessments, of all real property subject to taxation in the District.

(c) “Assessment Ratio” means a real property tax assessment ratio, however designated or calculated, that is used under applicable general law to determine the Assessable Base, including the assessment percentage specified under Section 8-103(c) of the Tax – Property Article of the Annotated Code of Maryland (2007 Replacement Volume and 2009 Supplement).

(d) “Bonds” means one or more series of revenue bonds or notes issued by MEDCO under authority other than the Enabling Acts to finance the costs of infrastructure improvements located in or supporting the District and approved by the County in accordance with Section 10 of this Ordinance, constituting “MEDCO obligations” within the meaning of the Enabling Acts.

(e) “Cost” has the meaning set forth in the Special Taxing District Act.

(f) “County” means Baltimore County, Maryland.

- (g) “County Executive” means the County Executive of the County.
- (h) “District” means the contiguous area in the County described in Exhibit A attached hereto and made a part of this Ordinance by this reference thereto.
- (i) “Enabling Acts” means the Tax Increment Financing Act and the Special Taxing District Act.
- (j) “Improvements” means the public infrastructure improvements to be financed and refinanced with proceeds of the Bonds, consisting of the facilities described in Exhibit B attached hereto and made a part of this Ordinance by this reference thereto.
- (k) “Mass Transit Act” means Title 7 of the Transportation Article of the Annotated Code of Maryland (2008 Replacement Volume and 2009 Supplement).
- (l) “MEDCO” means Maryland Economic Development Corporation, a body politic and corporate and an instrumentality of the State of Maryland.
- (m) “O&M Costs” means such costs of operation and maintenance of the Improvements, as shall be set forth in a Pledge Agreement which may include (without limitation) wages and salaries and benefits, which may include an allocable share of the salaries of County and MEDCO staff directly related to the operation and maintenance of the Improvements and a proportionate amount of County and MEDCO general administration overhead related thereto, costs of insurance and out-of-pocket costs and expenses of services and supplies related to the operation and maintenance of the Improvements, costs of necessary and proper repairs, replacements and renewals, including extraordinary maintenance and repair expenses, of the Improvements.
- (n) “Original Assessable Base” means the Assessable Base as of January 1, 2009.
- (o) “Original Full Cash Value” means the dollar amount that is determined by dividing the Original Assessable Base by the Assessment Ratio used to determine the Original Assessable Base.
- (p) “Original Taxable Value” means, for any Tax Year, the dollar amount that is:
- (i) the Adjusted Assessable Base if an Adjusted Assessable Base applies; or
 - (ii) in all other cases, the lesser of:
 - (A) the product obtained by multiplying the Original Full Cash Value by the Assessment Ratio applicable to that Tax Year; and
 - (B) the Original Assessable Base.

(q) “Pledge Agreement” means an agreement by and among the County, MEDCO and a trustee or other fiscal agent pledging that Special Taxes deposited to a Special Tax Fund shall be paid over to secure Bonds or to provide for the payment of O&M Costs that is executed and delivered by the County pursuant to Section 8 of this Ordinance.

(r) “Rate and Method” means the methodology for apportioning the Special Taxes and the procedures for the levy and collection thereof set forth in Exhibit C attached hereto and made a part of this Ordinance by this reference thereto.

(s) “Special Tax Fund” means a special tax fund established in Section 7 of this Ordinance.

(t) “Special Taxes” means special taxes levied and assessed on real property in accordance with Section 9 of this Ordinance.

(u) “Special Taxing District Act” means Section 9-1301 of Article 24 of the Annotated Code of Maryland (2005 Replacement Volume and 2009 Supplement), as amended.

(v) “Tax Increment” means, for any Tax Year, the amount by which the Assessable Base as of January 1 of the preceding Tax Year exceeds the Original Taxable Value divided by the Assessment Ratio used to determine the Original Taxable Value.

(w) “Tax Increment Financing Act” means Sections 12-201 through 12-213 of the Economic Development Article of the Annotated Code of Maryland (2008 Volume and 2009 Supplement), as amended.

(x) “Tax Increment Fund” means the special tax increment fund established in Section 6 of this Ordinance.

(y) “Tax Year” means the period from July 1 of a calendar year through June 30 of the next calendar year.

(z) “Transit-oriented development” has the meaning stated in Section 7-101 of the Mass Transit Act.

SECTION 2. *And be it further enacted by the County Council of Baltimore County, Maryland,* That, it is hereby found and determined as follows:

(a) The proposed mix of parking facilities, commercial and residential structures and appurtenant improvements on the property designated by the State Secretary of Transportation as a “transit-oriented development” (the “Secretary of Transportation Designation”):

(i) is part of a deliberate development plan involving property that is adjacent to or a part of which is within one-half mile of the passenger boarding and alighting location of the Owings Mills subway station;

(ii) is planned to maximize the use of transit, walking and bicycling by residents and employees; and

(iii) has been designated by the Secretary of Transportation of the State of Maryland as a Transit-oriented development.

(b) The Improvements are or will (i) be located in or supporting a Transit-oriented development, (ii) accomplish the public purposes of the Enabling Acts, (iii) be situated within the Special Taxing District or reasonably related to other infrastructure improvements within the Special Taxing District, (iv) be necessary for the development and utilization of the land within the Special Taxing District and (v) be owned by the County or another governmental unit.

(c) The establishment of the District as a “development district” and the creation of the Tax Increment Fund pursuant to the Tax Increment Financing Act for the purpose of providing funds for the development, redevelopment, revitalization and renovation of the District, the establishment of the District, an unincorporated area of the County, as a special taxing district pursuant to the Special Taxing District Act in accordance with a petition filed with the County by the sole owner of the property within the District, the creation of one or more Special Tax Funds as contemplated by the Special Taxing District Act and the execution and delivery of one or more Pledge Agreements pursuant to the Enabling Acts for the purpose of securing the Bonds and providing for the payment of O&M Costs will promote the health, welfare and safety of the residents of the State of Maryland and of the County and accomplish the public purposes of the Enabling Acts.

(d) The County Council has received and reviewed the Special Tax Report dated September 7, 2010 prepared by Municap, Inc. regarding the methodology for apportioning the Special Taxes. The Rate and Method sets forth a reasonable method of apportioning the Special Taxes that results in fairly allocating the Cost of the Improvements.

SECTION 3. *And be it further enacted by the County Council of Baltimore County, Maryland,* That the County hereby designates the property described within the Secretary of Transportation Designation as a “transit-oriented development” pursuant to Section 7-101(m) of

the Mass Transit Act. A copy of the Secretary of Transportation Designation which designates the property described therein as a “transit-oriented development” pursuant to Section 7-101(m) of the Mass Transit Act is attached hereto as Exhibit D.

SECTION 4. *And be it further enacted by the County Council of Baltimore County, Maryland,* That pursuant to Section 12-203 of the Tax Increment Financing Act, the District is hereby designated as a “development district” to be known as the “Owings Mills Town Center Development District.”

SECTION 5. *And be it further enacted by the County Council of Baltimore County, Maryland,* That pursuant to the Special Taxing District Act, the District is hereby designated as a “special taxing district” to be known as the “Owings Mills Town Center Special Taxing District.”

SECTION 6. *And be it further enacted by the County Council of Baltimore County, Maryland,* That there is hereby established a special fund to be designated the “Owings Mills Town Center Development District Tax Increment Fund” in accordance with Section 12-208 of the Tax Increment Financing Act. The County hereby pledges that until any Bonds are fully paid and, if and to the extent provided in any Pledge Agreement, all amounts payable by the County under such Pledge Agreement are paid or provision for the payment thereof is made in accordance with their respective terms, the real property taxes in the District that normally would be paid to the County and received by the County for any Tax Year commencing on or after July 1, 2011 shall be divided as follows: (i) the portion of the taxes that would be produced at the current tax rate on the Original Taxable Value shall be paid to the County in the same manner as taxes on other property are paid and (ii) the portion of the taxes on the Tax Increment that normally would be paid into the general fund of the County shall be paid into the Tax Increment Fund and applied in accordance with Section 12-209 of the Tax Increment Financing Act while this Ordinance remains in effect. The County Executive, the County Administrative Officer of the County, the Director of Budget and Finance of the County and other officers and employees of the County are hereby authorized and directed to take all necessary steps in order to establish the Tax Increment Fund as a separate fund to be held by the County.

SECTION 7. *And be it further enacted by the County Council of Baltimore County, Maryland,* That there is hereby established a special fund to be designated the “Owings Mills Town Center Special Taxing District Fund.” The County hereby pledges all Special Taxes received by the County for any Tax Year commencing on or after July 1, 2011 to the Special Tax Fund in accordance with the provisions of the Special Taxing District Act and all such Special Taxes shall be deposited therein. The County Executive, the County Administrative Officer of the County (the “County Administrative Officer”), the Director of Budget and Finance of the County (the “Director of Budget and Finance”) and other officers and employees of the County are hereby authorized and directed to take all necessary steps in order to establish the Special Tax Fund as a separate fund to be held by the County.

Prior to the issuance of any Bonds, the County Executive may, by executive order, provide for the creation of a separate special fund to be designated the “Owings Mills Town Center Special Taxing District O&M Fund” and pledge to such fund all Special Taxes received by the County for any Tax Year commencing on or after July 1, 2011 that are assessed for the purpose of providing for the payment of O&M Costs in accordance with the provisions of the Special Taxing District Act to the payment of such O&M Costs. In such event, references herein the “Special Tax Fund” shall include such separate special fund unless the context shall otherwise require. Notwithstanding any other provision of this Ordinance, in the event that a separate special fund is created to provide for the payment of O&M Costs as provided in this Section, all such Special Taxes received by the County to provide for the payment of O&M Costs shall be deposited therein, Special Taxes deposited in such separate special fund may be pledged solely to the payment of such O&M Costs and references herein to the pledge or payment of amounts on deposit in the Special Tax Fund to the payment of O&M Costs shall be deemed to refer to such separate special fund.

SECTION 8. *And be it further enacted by the County Council of Baltimore County, Maryland,* That pursuant to the Enabling Acts, the County is hereby authorized to pledge that (i) amounts deposited to the Tax Increment Fund and any Special Tax Fund shall be paid over to secure the payment of the principal of and premium, if any, and interest on Bonds in an aggregate principal amount not to exceed \$135,000,000, to pay Costs (as defined in the Special

Taxing District Act) of the Improvements, including interest prior to and during construction and for such limited period after completion of construction as shall be approved by the County Executive, to pay costs of issuing the Bonds and to fund a debt service reserve fund and other reserves as shall be approved by the County Executive prior to the issuance of such Bonds, subject to the right of the County to use the money in the Tax Increment Fund for other purposes authorized by the Tax Increment Act, including (without limitation) payment of the principal of and premium, if any, and interest on any additional bonds issued in accordance with the Tax Increment Act or other statutory authority and to fund reserves and pay expenses in connection therewith and any other purposes authorized by the Tax Increment Act, free and clear of the lien of such pledge to the extent permitted by the Pledge Agreement, and (ii) amounts on deposit in any Special Tax Fund shall be paid over to provide for the payment of O&M Costs and to fund reserves for O&M Costs.

The County is hereby authorized to enter into one or more agreements with MEDCO and, to the extent provided in the order of the County Executive in accordance with Section 10 of this Ordinance, a corporate trustee or other fiscal agent pursuant to which such pledge shall be made, providing that amounts on deposit in any Special Tax Fund shall be paid over to secure the Bonds and to provide for the payment of O&M Costs. Such agreements shall run to the benefit of and be enforceable on behalf of the holders of the Bonds to the extent provided therein and shall be in such forms as shall be approved by the County Executive in accordance with Section 10 of this Ordinance.

SECTION 9. And be it further enacted by the County Council of Baltimore County, Maryland, That there is hereby levied and imposed the “Owings Mills Town Center District Special Tax” upon all real property within the Special Taxing District, unless exempted by law or by the provisions hereof, in rate and amount sufficient to provide for the payment of the principal of and premium, if any, and interest on the Bonds and to pay O&M Costs and for other purposes set forth in this Section, to the extent and in the manner provided in the Rate and Method, through the application of the procedures provided therein. As set forth in the Rate and Method, commencing with the first Tax Year following the issuance of Bonds and thereafter until all of the Bonds have been paid and, to the extent required by the Pledge Agreements, all amounts payable under such Pledge Agreements have been paid or provision for the payment

thereof shall have been made in accordance with their respective terms, the Special Taxes shall be levied in each year in an amount equal to the sum of (a) the amount that, together with amounts on deposit in the Tax Increment Fund and other available funds, is sufficient (i) to pay the principal of and premium, if any, and interest on the Bonds when due, (ii) to replenish any debt service reserve funds for the Bonds, and (iii) to pay the expenses incurred in connection with the Bonds, including (without limitation) the fees and expenses of any fiscal agent, trustee or other agent, the expenses of the County and MEDCO in carrying out their respective duties with respect to the Bonds, such as costs of complying with arbitrage rebate requirements and disclosure requirements under applicable federal and state securities law, the costs of levying and collecting the Special Tax, advertising expenses of public notices and costs of administering the Special Taxing District, including the costs of any employees of the County and MEDCO and fees and expenses of any professionals retained by the County or MEDCO to provide such services and all other costs and expenses of the County or MEDCO incurred in connection with the Bonds or the administration of the Special Taxing District and (b) the amount sufficient to pay O&M Costs for such year. Prior to the issuance of any Bonds, the County Executive may, by executive order, provide for separate Special Taxes to provide for the payments referred to in clauses (a) and (b) above, respectively.

The County hereby covenants to levy the Special Taxes in accordance with this Ordinance to provide for the payments set forth in this Section in rate and amount at least sufficient to provide for such payments, to the extent that such payments are not otherwise provided for. The Special Taxes also may be levied with respect to refunding bonds issued under the Special Taxing District Act and Article 31, Section 24 of the Annotated Code of Maryland, as amended and pursuant to the provisions of an ordinance or resolution enacted or adopted by the County in connection with the issuance of such refunding bonds.

SECTION 10. *And be it further enacted by the County Council of Baltimore County, Maryland* That prior to the execution and delivery of any Pledge Agreement, the County Executive, by executive order, shall approve:

- (a) the actual principal amount of the Bonds to be issued from time to time;

(b) the actual rate or rates of interest to be borne by such Bonds, which shall not exceed a maximum rate of interest of ten percent (10%) per annum after giving effect to any federal subsidy;

(c) the manner in which and terms upon which such Bonds are to be sold, which may be at public or private (negotiated) sale at, above, or below the par amount of the Bonds;

(d) the times that interest on such Bonds is to be paid;

(e) the form and tenor of such Bonds, and denominations in which such Bonds may be sold;

(f) the times that the principal of such Bonds is to be paid;

(g) provisions pursuant to which any or all of such Bonds may be called for redemption prior to their stated maturity dates; and

(h) such amendments to the Rate and Method and other matters in connection with such Bonds and the security for such Bonds not inconsistent with the Enabling Acts as the County Executive shall deem necessary or appropriate.

Without limiting the generality of the foregoing the County Executive is hereby authorized to appoint or approve bond counsel to the County and a financial advisor to the County in connection with each issuance of Bonds, to approve any trustee, registrar, paying agent or other fiscal agent for any Bonds and to enter into or approve on behalf of the County such agreements as the County Executive shall deem necessary or appropriate for the issuance, sale, delivery or security of such Bonds, which may include (without limitation) (i) underwriting, purchase or placement agreements for Bonds sold at private (negotiated) sale, (ii) trust agreements with commercial banks or trust companies providing for the issuance and security of such Bonds, (iii) dealer, remarketing or similar agreements providing for the placement or remarketing of Bonds, (iv) agreements providing for any credit or liquidity facilities supporting any Bonds, (v) agreements with commercial banks or trust companies providing for the deposit of proceeds of any Bonds and (vi) agreements with fiscal agents. Any order of the County Executive approving any such agreement or the execution and delivery of any such agreement by the County Executive shall be conclusive evidence of the approval of the form of such agreement on behalf of the County.

In connection with the sale of any Bonds, the County may participate in the preparation and distribution of, in conjunction with MEDCO and any underwriter of Bonds, of both a preliminary and a final official statement or other offering document to the extent determined to be necessary or desirable for the sale of the Bonds by the County Executive in form and content acceptable to the County Executive.

The County Executive, the County Administrative Officer, the Director of Budget and Finance and other officers and employees of the County are hereby authorized to execute and deliver, for and on behalf of the County, one or more Pledge Agreements in such form as shall be approved by the County Executive by order and to execute and deliver on behalf of the County any additional agreements, certificates and other documents and to do any and all things necessary or appropriate in order to consummate and otherwise implement the transactions contemplated by the Enabling Acts and this Ordinance, subject to the limitations set forth in the Enabling Acts and this Ordinance.

The delegation of authority to the County Executive in this Ordinance is subject in all respects to the discretion of the County Executive and a Pledge Agreement shall not be executed and delivered unless the County Executive shall have approved all matters in connection with the Pledge Agreements and the Bonds. None of the County, the County Executive, the members of the County Council and the officers, employees and agents of the County shall be subject to any liability for any failure to execute and deliver any Pledge Agreement or any other document or instrument necessary for the issuance of Bonds.

SECTION 11. *And be it further enacted by the County Council of Baltimore County, Maryland* That the County Executive, on behalf of the County, may make such covenants and agreements in connection with the issuance of Bonds issued as tax-exempt bonds (“Tax-Exempt Obligations”) as he shall deem advisable in order to assure owners of such Bonds that interest thereon shall be and remain excludable from gross income for federal income tax purposes. The County Executive, on behalf of the County, is further authorized to take any and all actions as may be necessary or desirable to assure that any Bonds are allowed a tax credit, that a subsidy from the United States of America or any agency or instrumentality thereof is payable with respect to the Bonds or the interest payable thereon or that any Bond or the interest thereon is entitled to any other available benefits under the Internal Revenue Code of 1986, as amended,

pursuant to the American Recovery and Reinvestment Act of 2009 or otherwise (any such Bonds being referred to herein as “Tax-Advantaged Obligations”). Without limiting the generality of the foregoing, the County Executive is hereby authorized to make such covenants or agreements relating to the investment of the proceeds of such Bonds or other amounts that may be deemed to be proceeds of Bonds, the payment of rebates (or payments in lieu of rebate) to the United States, limitations on the times within which such proceeds may be expended, the use of specified procedures for accounting for segregating such proceeds, any required or permitted elections or designations, any actions as shall be necessary to permit any tax credit to be stripped and sold separately from the ownership interest in any Tax-Advantaged Obligation and to claim any cash subsidy with respect to any Tax-Advantaged Obligation. Such covenants or agreements shall be binding on the County so long as the observance by the County of any such covenants or agreements is necessary in connection with the maintenance of the excludability of the interest on such Tax-Exempt Obligations from gross income for federal income tax purposes or the entitlement of such Tax-Advantaged Obligations to such benefits, respectively.

SECTION 12. *And be it further enacted by the County Council of Baltimore County, Maryland* That in accordance with the provisions of Article IV, Section 402 of the Charter of the County, the County Executive is hereby authorized to delegate to the County Administrative Officer of the County the power and authority to take any and all actions required or permitted to be taken by the County Executive pursuant to this Ordinance.

SECTION 13. *And be it further enacted by the County Council of Baltimore County, Maryland* That by the enactment of this Ordinance, the County has complied with the provisions of the Enabling Acts, including but not limited to Sections 12-203 and 12-208(c) and (d) of the Tax Increment Financing Act to the extent required by the Tax Increment Financing Act and subsection (f) of the Special Taxing District Act.

SECTION 14. *And be it further enacted by the County Council of Baltimore County, Maryland* That the enactment of this Ordinance shall not be deemed to constitute the approval, authorization or consent of the County Council of the County, the County Executive or any department, office or agency of the County to any action or activity within or required for the

development of the District, including (without limitation) any land use approval, requirements for the provision of public utilities or services or any administrative, judicial, quasi-judicial, or legislative action that may be required therefor.

SECTION 15. *And be it further enacted by the County Council of Baltimore County, Maryland* That the provisions of this Ordinance are severable, and if any provision, sentence, clause, section or part hereof is held or determined to be illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of this Ordinance or their application to other persons or circumstances. It is hereby declared to be the legislative intent that this Ordinance would have been adopted if such illegal, invalid, unconstitutional or inapplicable provision, sentence, clause, section or part had not been included herein and as if the person or circumstances to which this Ordinance or any part hereof are inapplicable had been specifically exempted herefrom.

SECTION 16. *And be it further enacted by the County Council of Baltimore County, Maryland* That in the event that no Bonds have been issued to finance the Improvements by December 31, 2013, then the authority provided by the Ordinance shall expire without further action by the County Council of the County.

SECTION 17. *And be it further enacted by the County Council of Baltimore County, Maryland* That this Ordinance shall take effect 45 days from the date of its enactment.

