

AN ACT

*Codification
District of
Columbia
Official Code*

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

To amend Chapter 10 of Title 47 of the District of Columbia Official Code to authorize a payment in lieu of taxes for portions of Square 456.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Square 456 Payment in Lieu of Taxes Act of 2002".

Sec. 2. Chapter 10 of Title 47 of the District of Columbia Official Code is amended as follows:

(a) The table of contents is amended by adding at the end the section designation "47-1052. Payments in lieu of taxes, lots 878 and 880, square 856."

(b) A new section 47-1052 is added to read as follows:

"§ 47-1052. Payments in lieu of taxes, lots 878 and 880, square 856.

New
§ 47-1052

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

"(1) "Bonds" means any bonds, notes, or other instruments issued by the District pursuant to section 490 of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 774; D.C. Official Code § 1-204.90), the proceeds of which shall be used in whole or in part to finance or refinance the construction of a theater with a floor area of not less than 18,000 square feet to be used for theater and ancillary facilities on a Parcel.

"(2) "District" means the District of Columbia.

"(3) "Initial PILOT period" means the period:

"(A) Beginning on the earlier of the date on which some or all of the Site is:

"(i) Under contract to a contract purchaser who is the Qualified Theater Company; or

"(ii) Owned by the Qualified Theater Company; and

"(B) Ending on the 6th anniversary of the beginning date.

"(4) "Owner" means an owner of a Parcel, other than the Qualified Theater Company.

"(5) "Parcel" means each portion of the Site.

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

"(7)(A) "PILOT period" means the period:

"(i) Beginning on the earlier of the date on which some or all of the Site is:

"(I) Under contract to a contract purchaser who is the Qualified Theater Company; or

"(II) Owned by the Qualified Theater Company; and

"(ii) Ending upon the earlier of:

"(I) The date on which the Initial PILOT Period expires if, on that date, the District has not issued a building permit for a theater with a floor area of not less than 18,000 square feet to be used for theater and ancillary facilities on any Parcel; or

"(II) The real property tax year in which the total amount of payments in lieu of taxes pursuant to this section shall equal or exceed \$30 million.

"(B) Notwithstanding subparagraph (A) of this paragraph, the PILOT period shall not begin if, on or before February 15, 2002, the District shall make and fund a grant to a Qualified Theater Company which is the contract purchaser of all or a portion of the Site, in an amount of not less than \$15 million for use by the Qualified Theater Company in connection with the planning, development, acquisition, construction, or operation of a theater of the type described in § 47-1002(19) on all or a portion of the Site, which grant may be subject to the following condition: if a building permit has not been issued for a theater with a floor area of not less than 18,000 square feet to be used for theater and ancillary facilities on any Parcel before the 6th anniversary of the date the grant is made and funded, or if the grant recipient determines that it is unable or unwilling to acquire title to all or a portion of the Site by December 31, 2003, the grant recipient shall:

"(i) Repay the District the principal amount of the grant, less the actual third-party expenses incurred by the grant recipient for costs in furtherance of the development of a building to include a theater with a floor area of not less than 18,000 square feet on the site, including architectural and engineering fees and expenses; title, survey, and environmental fees and expenses; development and consultant fees and expenses; legal fees; permit fees; insurance costs; marketing expenses and related costs, fees, and expenses; and land acquisition deposits, costs, fees, and expenses not to exceed \$6 million in the aggregate; and

"(ii)(I) Convey title to such portions of the Site as it has acquired to the District for the sum of its cost thereof, plus any interest costs incurred by it in carrying the property so conveyed; or

"(II) Proceed to closing and convey title to the District at the grant recipient's cost pursuant to simultaneous all-cash closings.

"(8) "Qualified Theater Company" means any entity that:

"(A) Operates a theater of the type described in § 47-1002(19); and

"(B)(i) Owns some or all of the Site; or

"(ii) Is the contract purchaser of some or all of the Site.

"(9) "Site" means lots 878 and 880 in square 456 in the District of Columbia, including any improvements thereon, and any combination thereof, all portions of such lots without regard to any subsequent subdivision or resubdivision of such lots, and any other lots developed along with any part of lots 878 and 880 in square 456 pursuant to the combined lot development method.

"(b) Except as provided in subsection (d) of this section, during the PILOT period, no real property taxes shall be due and payable from the owner of a Parcel during the PILOT period. In lieu of real property taxes during the PILOT period, the owner of each Parcel shall pay a PILOT, in the amount that would be owed to the District if the Parcel were subject to real property taxation (including interest and penalties in the same amount that would be imposed on delinquent real property tax payments), to the Qualified Theater Company in the manner provided in this section.

"(c) Except as provided in subsection (d) of this section, during the PILOT period, the District shall, in lieu of any real property tax bills, send a PILOT bill to each owner of each Parcel, and shall send a copy of the PILOT bills to the Qualified Theater Company. The PILOT bills shall be sent out at the same time and in the same manner as real property tax bills would be sent for the Parcels and shall state the amount of the PILOT owed by the property owner. Except as otherwise provided for pursuant to subsection (g) of this section, the PILOT bill shall state that payments shall be made to the Qualified Theater Company, or at the Qualified Theater Company's direction, within the same time period that real property tax payments are required to be made.

"(d) If, before the expiration of the Initial PILOT Period, on the date that a PILOT payment is made, the total amount of PILOT payments equals or exceeds \$6 million and no building permit for a theater with a floor area of not less than 18,000 square feet to be used for theater and ancillary facilities on any Parcel has been issued, the collection of the PILOT shall be suspended and the imposition of real property taxes on the Site shall resume. If, after the suspension of the collection of the PILOT but during the Initial PILOT Period, the building permit is issued, then collection of the PILOT shall resume and PILOT bills shall be sent as provided in subsection (c) of this section.

"(e) The PILOT shall constitute a prior lien on the applicable Parcel senior to the liens of all other persons.

"(f) The Qualified Theater Company may pledge its interest in the PILOT as an account pursuant to Article 9 of Title 28.

"(g) If the District issues Bonds, the District may, in financing documents that it enters into in connection with that transaction, provide for the PILOT to be made to the bond trustee for the benefit of the holders of the Bonds, to be used only to pay principal, premium, and interest on the Bonds and for any other payments set forth in the financing documents. If such

provisions are included in the financing documents, the PILOT shall constitute a lien against the property on which the PILOT was assessed to the same extent as a real property tax lien and shall be deemed to be a tax within the meaning of 11 U.S.C. §§ 502(b), 505, and 507(a)(8)(B).

“(h) The Qualified Theater Company, through its counsel, may file suit in the Superior Court of the District of Columbia against any owner of a Parcel whose PILOT is at least 60 days overdue. The Qualified Theater Company may recover as damages a delinquent PILOT, including interest and penalties, and the Qualified Theater Company’s attorneys’ fees.

“(i) Any judgment obtained pursuant to subsection (h) of this section shall not be waived or reduced by the District and shall only be satisfied by the payment to the Qualified Theater Company of the full amount of the judgment, by waiver or compromise by the Qualified Theater Company, or by sale of the relevant Parcel pursuant to subsection (k) of this section.

“(j) If the Qualified Theater Company obtains a judgment in a suit filed pursuant to subsection (h) of this section, it may execute upon the judgment using any method authorized by District law.

“(k) If a PILOT shall remain unpaid for 180 days after it is due, upon the request of the Qualified Theater Company or its designee, and upon presentment of evidence in a form satisfactory to the District of the PILOT delinquency, the District shall sell the applicable Parcel in the same manner and under the same conditions as property sold for delinquent real property taxes, at the next ensuing tax sale for which proper notice may be given, if the PILOT, including interest and penalties thereon, shall not have been paid in full prior to the sale. The proceeds shall be applied towards the delinquent PILOT, including interest and penalties thereon; provided, that the proceeds from the sale shall be applied first toward any delinquent water and sewer charges, and then toward any delinquent litter control nuisance fines, in accordance, respectively with §§ 34-2407.02 and 34-2110, and § 8-807). The proceeds for the delinquent PILOT, including interest and penalties thereon, and the Qualified Theater Company’s costs associated with the sale shall be delivered to the Qualified Theater Company within 30 business days after their receipt by the District.

“(l) A Parcel owner may challenge the accuracy of any PILOT bill in the same manner as if it were a real property tax bill. If, after a Parcel owner pays a PILOT bill, the District determines that the amount of the PILOT bill was incorrect and resulted in an overpayment of some or all of that payment by the Parcel owner, the amount of the overpayment shall be credited against the next PILOT bill with respect to the Parcel.”.

Sec. 3. Inclusion in the budget and financial plan.

This act shall take effect subject to the inclusion of its fiscal effect in an approved budget and financial plan.

Sec. 4. Fiscal impact statement.

The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by § 602(c)(3) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Official Code § 1-206(c)(3)).

Sec. 5. 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 § 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