

COUNTY COUNCIL OF ANNE ARUNDEL COUNTY, MARYLAND

Legislative Session 2010, Legislative Day No. 7

Bill No. 19-10

Introduced by Mr. Middlebrooks, Chairman
(by request of the County Executive)

By the County Council, April 5, 2010

Introduced and first read on April 5, 2010

Public Hearing set for May 3, 2010

Bill Expires July 9, 2010

By Order: Judy C. Holmes, Administrative Officer

A BILL ENTITLED

1 AN ORDINANCE concerning the repeal of Bill No. 10-10, Laws of Anne Arundel County,
2 2010; and concerning the creation of a special taxing district to be designated as “Village
3 South at Waugh Chapel Special Taxing District” located within the Village South at
4 Waugh Chapel Development District, a tax increment district within Anne Arundel
5 County, Maryland (the “County”); the creation of a special fund relating to such special
6 taxing district; providing for the levy of a special tax; providing for the financing of
7 certain infrastructure improvements relating to the Village South at Waugh Chapel
8 Special Taxing District and the Village South at Waugh Chapel Development District;
9 authorizing the issuance from time to time of special obligation bonds in an aggregate
10 principal amount not to exceed \$16,000,000 to be secured by taxes levied on the tax
11 increment in the Village South at Waugh Chapel Development District and by special
12 taxes; and determining certain terms and provisions in connection with the issuance, sale
13 and payment of such bonds.

14
15 FOR the purpose of repealing Bill No. 10-10, Laws of Anne Arundel County, 2010, which
16 provided for the creation and financing of the Village South at Waugh Chapel Special
17 Taxing District; providing for creation of the Village South at Waugh Chapel Special
18 Taxing District, located adjacent to the existing Village at Waugh Chapel commercial
19 development and within the boundaries of the County, pursuant to the provisions of
20 Section 9-1301 of Article 24 of the Annotated Code of Maryland (2005 Replacement
21 Volume and 2009 Supplement) and Sections 4-8-101 through 4-8-106 of the Anne
22 Arundel County Code (2005, as amended) (together, the “Special Taxing District Act”);
23 providing for the designation of a geographic area as a “special taxing district” as that
24 term is used in the Special Taxing District Act; providing for and determining the
25 various matters in connection with the creation of the Village South at Waugh Chapel
26 Special Taxing District; creating a special fund (the “Special Tax Fund”) to secure bonds

1 issued to finance infrastructure improvements permitted by the Special Taxing District
2 Act relating to the Village South at Waugh Chapel Special Taxing District and the
3 Village South at Waugh Chapel Development District, a tax increment development
4 district located within the County established pursuant to the provisions of Sections 12-
5 201 through 12-213 of the Economic Development Article of the Annotated Code of
6 Maryland (2008 Volume and 2009 Supplement) (the “Tax Increment Act”) and the
7 provisions of Resolution No. 20-10 adopted by the of the County Council (the “County
8 Council”) on _____, 2010 and approved by the County Executive (the
9 “County Executive”) on _____, 2010 (the “Development District Resolution”);
10 providing for the levy of a special tax in compliance with the Special Taxing District
11 Act; providing that special obligation bonds may be issued from time to time under the
12 provisions of this Ordinance, the Tax Increment Act, the Special Taxing District Act and
13 the Development District Resolution in an aggregate principal amount not to exceed
14 \$16,000,000 for the purpose of financing a portion of the infrastructure improvements;
15 providing for the creation of a debt service reserve fund, the funding of capitalized
16 interest and the payment of costs and expenses related to the issuance of the special
17 obligation bonds; making certain findings and determinations, among others, concerning
18 the public benefit and purpose of such special obligation bonds; providing that such
19 special obligation bonds shall be payable, first, from taxes levied on the tax increment in
20 the Village South at Waugh Chapel Development District and deposited in the Village
21 South at Waugh Chapel Development District Tax Increment Fund created pursuant to
22 the Development District Resolution (the “Development District Tax Increment Fund”),
23 and, secondly, to the extent the amount on deposit in the Development District Tax
24 Increment Fund and any other available funds are not sufficient to pay debt service on
25 such special obligation bonds and to pay certain expenses and fund certain reserves for
26 such special obligation bonds, from the special tax to be levied and deposited in the
27 Special Tax Fund, and that the special obligation bonds shall not constitute a general
28 obligation debt of the County or a pledge of the County’s full faith and credit or taxing
29 power other than the tax on the tax increment and the special tax levied hereunder;
30 authorizing the County Executive of the County to specify, prescribe, determine, provide
31 for and approve certain details, forms, documents and procedures in connection with
32 such special obligation bonds and any other matters necessary or desirable in connection
33 with the authorization, issuance, sale and payment of such special obligation bonds;
34 authorizing the County Executive to take certain actions, to execute documents and make
35 certain commitments on behalf of the County in connection with the issuance, sale and
36 delivery of such special obligation bonds; authorizing the execution and delivery of such
37 special obligation bonds and such other documents as may be necessary or desirable to
38 effectuate the financing of the infrastructure improvements and the issuance, sale and
39 delivery of such special obligation bonds; and generally providing for and determining
40 various matters in connection with the foregoing.

41
42 BY repealing: Bill No. 10-10
43 Laws of Anne Arundel County, 2010
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45 WHEREAS, Bill No. 10-10 was passed by the County Council on March 15, 2010,
46 and approved and enacted by the County Executive on March 18, 2010; and

47 WHEREAS, subsequent to the passage and enactment of Bill 10-10, Laws of Anne

1 Arundel County, 2010, it was discovered that the title or a summary of Bill No. 10-
2 10 had not been published in a newspaper of general circulation in the County, as
3 required by Maryland Constitution, Article XI-A, § 3; now, therefore
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5 SECTION 1. *Be it enacted by the County Council of Anne Arundel County, Maryland,*
6 That Bill No. 10-10, Laws of Anne Arundel County, 2010, be and is hereby repealed.
7

8 SECTION 2. *And be it further enacted,* That, pursuant to Section 9-1301 of Article 24 of
9 the Annotated Code of Maryland (2005 Replacement Volume and 2009 Supplement) and
10 Sections 4-8-101 through 4-8-106 of the Anne Arundel County Code (2005, as amended)
11 (together, the “Special Taxing District Act”), it is hereby found and determined that the
12 establishment by the County of a special taxing district consisting of the area described on
13 Exhibit A-1 attached hereto and made a part hereof, an unincorporated area of the County, to
14 be known as the “Village South at Waugh Chapel Special Taxing District” (the “Special
15 Taxing District,” as defined herein) coincident with the Village South at Waugh Chapel
16 Development District established pursuant to Sections 12-201 through 12-213 of the
17 Economic Development Article of the Annotated Code of Maryland (2008 Volume and 2009
18 Supplement) (the “Tax Increment Act”) and Resolution No. 20-10, adopted by the of the
19 County Council on _____, 2010 and approved by the County Executive on
20 _____, 2010 (the “Development District Resolution”), with the exception of
21 parcels and lots described in Exhibit B, in accordance with a petition filed with the County
22 by the owners of all of the property within the Special Taxing District, the creation of a
23 special fund as contemplated by the Special Taxing District Act and the issuance of special
24 obligation bonds pursuant to the Special Taxing District Act and the Tax Increment Act for
25 the purpose of providing funds to finance a portion of the costs of certain public
26 infrastructure improvements (the “Improvements,” as defined herein) related to the
27 development of retail, commercial and office facilities and residential units within the
28 Special Taxing District will accomplish the public purposes of the Special Taxing District
29 Act, the Tax Increment Act and the Development District Resolution.
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31 Notwithstanding the foregoing, if the County does not issue Bonds (defined herein)
32 within five years from the effective date of this Ordinance, the Village South at Waugh
33 Chapel Special Taxing District will no longer be a Special Taxing District on the fifth
34 anniversary date of the effective date of this Ordinance without further action of the County
35 Council. The Controller of the County will release the Village South at Waugh Chapel
36 Special Taxing District from declaration referenced in Section 7 at such time.
37

38 SECTION 3. *And be it further enacted,* That the Village South at Waugh Chapel Special
39 Taxing District (the “Special Taxing District”) is hereby created, which Special Taxing
40 District shall include the property listed in Exhibit A-1 attached hereto and made a part
41 hereof designated by tax lot listed in Exhibit A-2 to this Ordinance and all adjoining roads,
42 highways, alleys, rights of way and other similar property in order to form the area shown on
43 the map submitted to the County Council together with this Ordinance and shown in Exhibit
44 A-3 to this Ordinance.

45 SECTION 4. *And be it further enacted,* That there is hereby established a special fund to
46 be designated the “Village South at Waugh Chapel Special Taxing District Fund” (the
47 “Special Tax Fund”). The County hereby pledges all special taxes received by the County

1 for any tax year commencing on or after July 1, 2010 representing the special tax levied in
2 accordance with this Ordinance to the Special Tax Fund in accordance with the provisions of
3 the Special Taxing District Act and all such special taxes shall be deposited therein.

4
5 SECTION 5. *And be it further enacted*, That pursuant to the Special Taxing District Act
6 and the Tax Increment Act, the County is hereby authorized to issue its special obligations
7 bonds from time to time in an aggregate principal amount not to exceed \$16,000,000 (the
8 “Bonds”) for the purpose of financing the public infrastructure improvements described in
9 Exhibit B attached hereto and made a part hereof, which improvements will be situated
10 within the Special Taxing District or will be reasonably related to other infrastructure
11 improvements within the Special Taxing District, are necessary for the development and
12 utilization of the land within the Special Taxing District and will be owned by the County or
13 another governmental unit (collectively, the “Improvements”). Proceeds of the Bonds shall
14 be used to finance costs (as defined in the Special Taxing District Act) of the Improvements
15 permitted to be financed under the Special Taxing District Act and the Tax Increment Act,
16 including interest prior to and during construction and for such limited period after
17 completion of construction as shall be deemed appropriate by the County Executive to pay
18 costs of issuing the Bonds and to fund a debt service reserve fund and other reserves as shall
19 be determined by the County Executive prior to the issuance of such Bonds in accordance
20 with Section 10. The Bonds shall be special obligations of the County, the principal of and
21 premium, if any, and interest on which shall be payable, to the extent not otherwise paid,
22 first, from the portion of the Taxes (as defined in the Development District Resolution) on
23 the Tax Increment (as defined in the Development District Resolution) received by the
24 County for any tax year commencing after the effective date of the Development District
25 Resolution that normally would be paid to the County deposited in the Village South at
26 Waugh Chapel Development District Tax Increment Fund created by the Development
27 District Resolution in accordance with the Tax Increment Act and the Development District
28 Resolution (the “Development District Tax Increment Fund”) and, second, to the extent that
29 the Development District Tax Increment Fund does not contain sufficient money to pay the
30 principal of and premium, if any, and interest on the Bonds when due, from a special tax
31 (hereinafter defined) to be levied, collected and deposited in the Village South at Waugh
32 Chapel Special Taxing District Fund in accordance with the Special Taxing District Act and
33 this Ordinance. The Bonds will not constitute a general obligation debt of the County or a
34 pledge of the County’s full faith and credit or taxing power other than the Tax Increment and
35 the Special Tax on property in the Village South at Waugh Chapel Special Taxing District.

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37 SECTION 6. *And be it further enacted*, That there is hereby levied and imposed the
38 “Village South at Waugh Chapel District Special Tax” (the “Special Tax”) upon all real and
39 personal property within the Special Taxing District, unless exempted by law or by the
40 provisions hereof, in rate and amount sufficient to provide for the payment of the principal of
41 and premium, if any, and interest on the Bonds and other purposes set forth in this Section,
42 to the extent and in the manner provided in Exhibit D attached hereto and made a part
43 hereof, through the application of the procedures provided in Exhibit D. As set forth in
44 Exhibit D, commencing with the first tax year following the issuance of Bonds and thereafter
45 until all of the Bonds have been paid or provision for the payment thereof shall have been
46 made in accordance with the terms of the Bonds, the Special Tax shall be levied in the event
47 that amounts on deposit in the Development District Tax Increment Fund and other available
48 funds are not sufficient to pay the principal of and premium, if any, and interest on the Bonds

1 when due, to replenish the debt service reserve funds for the Bonds and to pay the expenses
2 incurred in connection with the Bonds, including (without limitation) the fees and expenses
3 of any fiscal agent, trustee or other agent, the expenses of the County in carrying out its
4 duties with respect to the Bonds, such as costs of complying with arbitrage rebate
5 requirements and disclosure requirements under applicable federal and state securities law,
6 the costs of levying and collecting the Special Tax, advertising expenses of public notices
7 and costs of administering the Special Taxing District, including the costs of any employees
8 of the County and fees and expenses of any professionals retained by the County to provide
9 such services, and all other costs and expenses of the County incurred in connection with the
10 Bonds or the administration of the Special Taxing District. The County hereby covenants to
11 levy the Village South at Waugh Chapel Special Taxing District Special Tax in accordance
12 with and to provide for the payments set forth in this Section in rate and amount at least
13 sufficient to provide for such payments, to the extent that such payments are not otherwise
14 provided for. The Special Tax also may be levied with respect to refunding bonds issued
15 under the Special Taxing District Act pursuant to the provisions of an ordinance or
16 resolution enacted or adopted by the County in connection with the issuance of such
17 refunding bonds.

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19 The County Council has been provided with documentation as to the methodology
20 utilized in apportioning the Village South at Waugh Chapel Special Taxing District Special
21 Tax among property owners within the Special Taxing District and, based on such
22 documentation, finds that the methodology is reasonable and results in fairly allocating the
23 cost of the Improvements as required by the Special Taxing District Act, conditioned on and
24 subject to certification by qualified experts as to the final methodology adopted in
25 apportioning the Special Tax among the property owners.

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27 Pursuant to the provisions of the Tax Increment Act and the Development District
28 Resolution, the County hereby pledges that until all of the Bonds have been paid or provision
29 for the payment thereof shall have been made in accordance with the terms of the Bonds, the
30 County shall deposit into the Development District Tax Increment Fund, taxes received by
31 the County for any tax year commencing on or after July 1, 2010 in an amount equal to that
32 portion of the taxes on the Tax Increment that normally would be paid to the County.
33 Money in the Development District Tax Increment Fund is hereby pledged to the payment of
34 the outstanding Bonds, subject to the right of the County to use the money in the
35 Development District Tax Increment Fund for other purposes authorized by the Tax
36 Increment Act and the Development District Resolution, including (without limitation)
37 payment of the principal of and premium, if any, and interest on any additional bonds issued
38 in accordance with the Tax Increment Act or other statutory authority and to fund reserves
39 and pay expenses in connection therewith, free and clear of the lien of such pledge to the
40 extent permitted by documents and instruments executed and delivered in connection with
41 the Bonds.

42
43 SECTION 7. *And be it further enacted*, That each contract of sale for real property
44 located in the Special Taxing District and each property tax bill for property in the Special
45 Taxing District shall comply with the provisions of and in accordance with Section 9-
46 1301(c)(3) of the Special Taxing District Act and Section 8-104 of Article 4, Disclosure to
47 buyers, of the Anne Arundel County Code (2005, as amended) and a seller's failure to
48 provide such disclosure renders the contract voidable at the option of the buyer before the

1 date of settlement.

2
3 In addition, before the Bonds are issued, the Controller of the County shall record among
4 the Land Records of the County at the cost of the Special Taxing District a declaration
5 encumbering all real property located in the Special Taxing District except for property
6 exempt by law and designating that property as subject to the Special Taxing District. The
7 declaration shall terminate when the Controller of the County records a release stating that
8 all Bonds are fully repaid or provision for the payment of the Bonds shall have been made in
9 accordance with the terms of the Bonds.

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11 No Special Tax shall accelerate by reason of a default on the Bonds and no increase in
12 the amount of the maximum Special Tax applicable to any individual property in the Special
13 Taxing District maximum Special Tax shall result from the delinquency in the payment of
14 the Special Tax by any other property owner.

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16 SECTION 8. *And be it further enacted*, That a debt service reserve fund shall be
17 established for the Bonds in an amount equal to the least of (i) 10% of the proceeds of the
18 Bonds, (ii) 125% of the average annual debt service on the Bonds and (iii) the maximum
19 annual debt service on outstanding Bonds or, if recommended by a financial advisor or
20 underwriter at the time of issuance of the Bonds, in a larger amount. All sinking funds and
21 other reserves securing the Bonds that are available for the payment of debt service on the
22 Bonds shall constitute “debt service reserve fund” for purposes of this Section. Based on
23 customary current municipal market requirements, the County Council considers a debt
24 service reserve fund in such amount adequate for purposes of Section 9-1301(c)(3) of the
25 Special Taxing District Act and Section 8-103(a)(9)(vi) of Article 4 of the Anne Arundel
26 County Code (2005, as amended).

27
28 SECTION 9. *And be it further enacted*, That the Bonds shall be executed in the name of
29 the County and on its behalf by the manual or facsimile signature of the County Executive
30 and the corporate seal of the County or a facsimile thereof shall be impressed or otherwise
31 reproduced thereon and attested by the Secretary to the County Executive by manual or
32 facsimile signature and the Bonds shall be authenticated by the manual or facsimile signature
33 of the Chief Administrative Officer or his authorized deputy as may be required by law.

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35 SECTION 10. *And be it further enacted*, That prior to the issuance of Bonds from time to
36 time, the County Executive by executive order, shall specify:

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38 (a) the actual principal amount of the Bonds to be issued;

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

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

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47 (d) the manner in which and the times and places that interest on such Bonds is to be
48 paid;

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(e) the time of execution, issuance and delivery of Bonds;

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

(g) the manner in which and the times and places that the principal of such Bonds is to be paid;

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

(i) such other matters in connection with the authorization, sale, issuance, delivery and payment of and for such Bonds and the security for such Bonds not inconsistent with the Special Taxing District Act, the Tax Increment Act or the Development District Resolution as the County Executive shall deem necessary or appropriate.

Without limiting the generality of the foregoing the County Executive is hereby authorized to appoint bond counsel, a financial advisor and any trustee, registrar, paying agent or other fiscal agent for such Bonds and to enter into one or more agreements on behalf of the County 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) one or more agreements providing for the construction of the Improvements and the acquisition thereof by the County, (ii) underwriting, purchase or placement agreements for Bonds sold at private (negotiated) sale; (iii) trust agreements with commercial banks or trust companies providing for the issuance and security of such Bonds; (iv) dealer, remarketing or similar agreements providing for the placement or remarketing of such Bonds; (v) agreements providing for any credit or liquidity facilities supporting any Bonds; (vi) agreements with commercial banks or trust companies providing for the deposit of proceeds of any Bonds; and (vii) agreements with fiscal agents providing for the issuance of Bonds, their authentication, registration or payment or other similar services. Each such agreement shall be in such form as shall be determined by the County Executive by order. The execution and delivery of each 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 prepare and distribute, in conjunction with the underwriter for the Bonds, both a preliminary and a final official statement or other similar 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 Chief Administrative Officer of the County (the “Chief Administrative Officer”), the Controller of the County and other County officials are hereby authorized to execute and deliver, for and on behalf of the County, any and all additional certificates and documents or other papers and to do any and all things necessary or appropriate in order to effect the issuance and sale of Bonds and to consummate and otherwise implement the transactions contemplated by the Special Taxing District Act, the Tax Increment Act, the Development District Resolution and this Ordinance, subject to the

1 limitations set forth in the Special Taxing District Act, the Tax Increment Act and this
2 Ordinance.

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4 The delegation of authority to the County Executive in this Ordinance is subject in all
5 respects to the discretion of the County Executive and no Bonds shall be issued unless the
6 County Executive shall have approved all matters in connection with the authorization, sale,
7 issuance, delivery and payment of and for such Bonds and the security for such Bonds.
8 None of the County, the County Executive, the members of the County Council and the
9 officers, employees and agents of the County shall be subject to any liability.

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11 SECTION 11. *And be it further enacted*, That the County Executive, on behalf of the
12 County, may make such covenants and agreements in connection with the issuance of Bonds
13 issued as tax-exempt bonds (“Tax-Exempt Obligations”) as he shall deem advisable in order
14 to assure owners of such Bonds that interest thereon shall be and remain excludable from
15 gross income for federal income tax purposes. The County Executive, on behalf of the
16 County, is further authorized to take any and all actions as may be necessary or desirable to
17 assure that any Bonds are allowed a tax credit, that the County is entitled to a subsidy from
18 the United States of America or any agency or instrumentality thereof with respect to such
19 Bonds or the interest payable thereon or that any such Bond or the interest thereon is entitled
20 to any other available benefits under the Internal Revenue Code pursuant to the American
21 Recovery and Reinvestment Act of 2009 or otherwise (any such Bonds being referred to
22 herein as “Tax Advantaged Obligations”). Without limiting the generality of the foregoing,
23 the County Executive is hereby authorized to make such covenants or agreements relating to
24 the investment of the proceeds of such Bonds, the payment of rebates (or payments in lieu of
25 rebate) to the United States, limitations on the times within which such proceeds may be
26 expended, the use of specified procedures for accounting for an segregating such proceeds,
27 any required or permitted elections or designations, any actions as shall be necessary to
28 permit any tax credit to be stripped and sold separately from the ownership interest in any
29 Tax Advantaged Obligation and to claim any cash subsidy with respect to any Tax
30 Advantaged Obligation. Such covenants or agreements shall be binding on the County so
31 long as the observance by the County of any such covenants or agreements is necessary in
32 connection with the maintenance of the exclusion of the interest on such Tax-Exempt
33 Obligations from gross income for federal income tax purposes or the entitlement of such
34 Tax Advantaged Obligations to such benefits, respectively.

35
36 SECTION 12. *And be it further enacted*, That in accordance with the provisions of
37 Article V, Section 504 of the Charter of the County, the County Executive is hereby
38 authorized to delegate to the Chief Administrative Officer the power and authority to take
39 any and all actions required or permitted to be taken by the County Executive pursuant to
40 this Ordinance.

41
42 SECTION 13. *And be it further enacted*, That by the enactment of this Ordinance, the
43 County has complied with the provisions of the Tax Increment Act and the Special Taxing
44 District Act, including but not limited to Sections 12-203, 12-208(c) and 12-208(d) of the
45 Tax Increment Act and subsection (f) of the Special Taxing District Act.

46
47 SECTION 14. *And be it further enacted*, That the authorization to issue Bonds pursuant
48 to this Ordinance shall not be exercised unless and until an appropriation shall have been

1 made for the expenditure of the proceeds of such Bonds for the Improvements and related
2 costs authorized to be financed hereunder to the extent required by law.

3
4 SECTION 15. *And be it further enacted,* That the enactment of this Ordinance shall not
5 be deemed to constitute the approval, authorization or consent of the County Council, the
6 County Executive or any department, office or agency of the County to any action or activity
7 within or required for the development of the Special Taxing District and the Village South
8 at Waugh Chapel Development District, including (without limitation) any land use
9 approval, requirements for the provision of public utilities or services or any administrative,
10 judicial, quasi-judicial, or legislative action that may be required therefor.

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12 SECTION 16. *And be it further enacted,* That the provisions of this Ordinance are
13 severable, and if any provision, sentence, clause, section or part hereof is held or determined
14 to be illegal, invalid or unconstitutional or inapplicable to any person or circumstances, such
15 illegality, invalidity or unconstitutionality or inapplicability shall not affect or impair any of
16 the remaining provisions, sentences, clauses, sections or parts of this Ordinance or their
17 application to other persons or circumstances. It is hereby declared to be the legislative
18 intent that this Ordinance would have been adopted if such illegal, invalid, unconstitutional
19 or inapplicable provision, sentence, clause, section or part had not been included herein and
20 as if the person or circumstances to which this Ordinance or any part hereof are inapplicable
21 had been specifically exempted herefrom.

22
23 SECTION 17. *And be it further enacted,* That this Ordinance shall take effect 45 days
24 from the date of its enactment.