

A RESOLUTION

18-279

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

October 6, 2009

To declare the existence of an emergency with respect to the need to provide for real property tax rebates for supermarkets that would qualify for the existing real property tax exemption but for the inability of the landlord to pass the tax abatement onto the supermarket.

RESOLVED, BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this resolution may be cited as the "Neighborhood Supermarket Tax Relief Clarification Emergency Declaration Resolution of 2009".

Sec. 2. (a) Under D.C. Official Code § 47-1002(23), qualifying supermarkets are exempt from real property taxes for 10 years, so long as the property is used as a supermarket.

(b) Ellwood Thompson's, an organic, natural and sustainable food store dedicated to sustainable practices, high-quality products, and to supporting local farmers and the community, has negotiated with DC USA Operating Co., LLC to lease space in the DC USA Shopping Center in Ward 1 to operate a qualifying grocery store.

(c) Ellwood Thompson's receipt of the full benefit of the District supermarket tax incentive is critical to it being able to open and operate a grocery store at the DC USA Shopping Center. Without this emergency legislation, Ellwood Thompson's and similarly situated qualifying grocery stores cannot receive the full intended benefit.

(d) Real property taxes are levied and collected in rem, meaning that they are imposed on the property itself. When the owner of the development is not the supermarket, the tax abatement is given to the owner of the development.

(e) To prevent landlords from pocketing the benefit of the tax exemption, existing section 47-1002(23) requires that the real property tax reduction received by the owner as a result of the use of the property by the supermarket be passed to the supermarket in the form of reduced rent. The law contemplates that the pass-through will be implemented by a provision in the lease or other arrangement between the supermarket and its landlord.

(f) When a supermarket is unanticipated in a development, existing leases with any tenants may obligate the owner of the development to pass any tax abatements that it receives to the tenants in the development on a ratable basis based on square footage. Thus, a supermarket

**ENROLLED ORIGINAL**

subsequently located on an existing development may not receive the full benefit of the tax abatement that is meant only for supermarkets, but rather a small, pro-rated amount. Without this clarification, Ellwood Thompson's faces considerable administrative and possibly legal hurdles to achieving the full intended benefit of the District tax incentive.

(g) This would be a second round of identical emergency and temporary law that the Council approved in December 2008, which is currently in effect. This new round of emergency legislation is necessary because temporary law on this matter is due to expire on October 31, 2009. Permanent legislation is currently before the Council's Committee on Finance and Revenue.

Sec. 3. The Council of the District of Columbia determines that the circumstances enumerated in section 2 constitute emergency circumstances making it necessary that the Neighborhood Supermarket Tax Relief Clarification Emergency Act of 2009 be adopted after a single reading.

Sec. 4. This resolution shall take effect immediately.