

Ordinance No. 2068

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY ENTITLED AN ORDINANCE SUPPLEMENTING ORDINANCE NO. 2020, PASSED BY THE COUNCIL ON DECEMBER 11, 2006, APPROVED BY THE MAYOR ON DECEMBER 15, 2006 AND EFFECTIVE ON DECEMBER 15, 2006, IN ORDER TO AUTHORIZE AND EMPOWER CITY OF SALISBURY TO USE AND APPLY A PORTION OF THE PROCEEDS OF THE \$4,950,000 CITY OF SALISBURY PUBLIC IMPROVEMENTS BOND OF 2007 ISSUED ON APRIL 12, 2007 (THE "2007 BOND") FOR THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING COSTS OF PLANNING, DESIGNING, DEVELOPING, ACQUIRING, CONSTRUCTING, IMPROVING, INSTALLING AND/OR EQUIPPING WATER, SEWER AND STORMWATER MANAGEMENT FACILITIES AND RELATED COSTS (INSTEAD OF APPLYING 2007 BOND PROCEEDS TO ACQUIRE COMPLETED FACILITIES OF SUCH NATURE AS ORIGINALLY CONTEMPLATED BY ORDINANCE NO. 2020); PROVIDING THAT THIS TITLE IS A FAIR STATEMENT OF THE SUBSTANCE OF THIS ORDINANCE; AND OTHERWISE GENERALLY RELATING TO THE USE OF PROCEEDS OF THE 2007 BOND.

RECITALS

WHEREAS, City of Salisbury, a municipal corporation of the State of Maryland (the "City"), is authorized and empowered by Sections 31 to 37, inclusive, of Article 23A of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Enabling Act"), and Sections SC7-45 and SC7-46 of the Charter of the City of Salisbury, as published in Municipal Charters of Maryland, Volume 6, 1990 Replacement Edition, as replaced, supplemented or amended (the "Charter"), to borrow money for any proper public purpose and to evidence such borrowing by the issuance and sale of its general obligation bonds; and

WHEREAS, pursuant to Ordinance No. 2020, adopted by the Council of the City on December 11, 2006, approved by the Mayor on December 15, 2006 and effective on December 15, 2006 (the "Original Ordinance"), and Resolution No. 1511, adopted by the Council of the City on April 9, 2007, approved by the Mayor on April 9, 2007 and effective on April 9, 2007 (the "Original Resolution"), the City determined to undertake certain projects identified in Section 3 of the Original Ordinance and Section 2 of the Original Resolution; and the City determined to borrow money for the public purpose of financing, reimbursing or refinancing "costs" (as identified in Section 3 of the Original Ordinance and Section 2 of the Original Resolution) of such projects, and to evidence this borrowing by the issuance and sale of its Public Improvements Bond of 2007 in the principal amount of Four Million Nine Hundred Fifty Thousand Dollars (\$4,950,000) (the "2007 Bond"); and

WHEREAS, pursuant to the Enabling Act, the Charter, the Original Ordinance and the Original Resolution, the City issued and delivered the 2007 Bond to SunTrust Leasing Corporation on April 12, 2007; and

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WHEREAS, Section 3(b) of the Original Ordinance and Section 2 of the Original Resolution provide that proceeds of the 2007 Bond shall be appropriated and allocated as follows:

<u>Project Description</u>	<u>Maximum Principal Amount</u>
1 Isabella Street-Shoreline Stabilization	\$2,050,000.00
2 Water/Sewer/Stormwater Management -Acquisition	2,760,000.00
3 Animal Health Building/Salisbury Zoo-Engineering	67,500.00
4 Fire Station #2 Renovation - Engineering	42,500.00
5 Costs of Issuance	30,000.00
	<u>\$4,950,000.00</u>

and the projects set forth above are herein referred to as the "Original Projects" and are referred to as the "Projects" in the Original Ordinance and the Original Resolution; and

WHEREAS, since the passage of the Original Ordinance and the Original Resolution and the issuance of the 2007 Bond, the City has determined that instead of applying \$2,760,000.00 of the proceeds of the 2007 Bond (exclusive of investment earnings that may be applied for such purpose) to acquire completed water, sewer and stormwater management facilities as contemplated by the Original Project identified as number 2 in the preceding WHEREAS clause, the City will apply such 2007 Bond proceeds to the costs of planning, designing, developing, acquiring, constructing, improving, installing and/or equipping such facilities and any related costs (the "2008 Modified Project"); and

WHEREAS, accordingly, the City desires to revise the description of the Original Projects as set forth in the Original Ordinance in order to allow proceeds of the 2007 Bond to be applied to costs of the 2008 Modified Project.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND that (a) pursuant to the authority of the Enabling Act, the Charter and the Original Ordinance, Section 3(b) of the Original Ordinance is hereby deleted in its entirety and inserted in place thereof shall be the following:

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“(b) With respect to the projects listed below, the word “costs” as used in Section 2 hereof shall include, as applicable, land and right-of-way acquisition and development; site and utility improvements; acquisition, construction, expansion, reconstruction, replacement, renovation, rehabilitation, improvement, installation, furnishing and equipping activities and expenses; planning, design, engineering, architectural, feasibility, surveying, financial and legal expenses; costs of issuance (which may include costs of bond insurance or other credit enhancement); interest during construction and for a reasonable period thereafter (whether or not expressly so stated); and any such costs that may represent the City’s share or contribution to the financing, reimbursement or refinancing of any such project. The total Bond (or BAN, as identified in Section 7 hereof) funds to be appropriated or applied to the costs of such projects (exclusive of any investment earnings that may be applied for such purposes) shall be allocated among the following public purpose projects in the maximum principal amount set forth opposite each, except as otherwise herein provided:

<u>Project Description</u>	<u>Maximum Principal Amount</u>
1 Isabella Street-Shoreline Stabilization	\$2,050,000.00
2 Water/Sewer/Stormwater Management	2,760,000.00
3 Animal Health Building/Salisbury Zoo-Engineering	67,500.00
4 Fire Station #2 Renovation – Engineering	42,500.00
5 Costs of Issuance	<u>\$ 30,000.00</u>
TOTAL	\$4,950,000.00

The projects identified in items 1-5 above are collectively referred to herein as the “Projects”. The City, without notice to or the consent of any holders of the Bonds (or the holders of any of the BANs, as applicable), may reallocate the maximum principal amount of the Bonds (and of any of the BANs, as applicable) to be spent among any of the Projects identified herein in compliance with applicable budgetary procedures or applicable law.”

(b) By undertaking the amendments to Section 3(b) of the Original Ordinance provided for in subsection (a) of this Section 1, the City is revising the description of the Original Project identified as number 2 in Section 3(b) of the Original Ordinance to change and expand the scope of activities for which proceeds of the 2007 Bond may be applied in respect of such project to include costs of planning, designing, developing, acquiring, constructing, improving, installing and/or equipping such facilities and any related costs. The projects identified in the chart set forth in subsection (a) above are collectively referred to herein as the “2008 Revised Projects”. From and after the effective date of this Ordinance, all references to the Projects in the Original Ordinance

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shall be deemed to be references to the 2008 Revised Projects, as identified in this Ordinance. From and after the effective date of this Ordinance, the provisions of this Section 1 shall supersede the provisions of the Recitals of and Section 3 of the Original Ordinance with respect to the application of proceeds of the 2007 Bond.

(c) Notwithstanding the foregoing provisions of this Section 1, proceeds of the 2007 Bond may not be applied to costs of the 2008 Modified Project unless and until the City adopts a resolution making corresponding amendments to the provisions of Section 2 of the Original Resolution to allow proceeds of the 2007 Bond to be applied to costs of the 2008 Modified Project.

SECTION 2. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, the Original Ordinance shall be deemed supplemented as provided herein and all other terms and provisions of the Original Ordinance shall remain in full force and effect.


SECTION 3. BE IT FURTHER ORDAINED that the title of this Ordinance shall be deemed to be, and is, a fair statement of the substance of this Ordinance for publication and all other purposes.

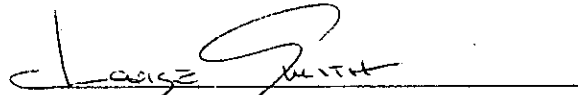
SECTION 4. BE IT FURTHER ORDAINED that this Ordinance shall become effective following approval by the Mayor or subsequent passage by the Council in accordance with the provision of Section SC2-12 of the Charter; provided, however, in the event the City fails to adopt a resolution making corresponding amendments to the provisions of Section 3 of the Original Ordinance to allow proceeds of the 2007 Bond to be applied to costs of the 2008 Modified Project, the City may not apply proceeds of the 2007 Bond for such purpose, notwithstanding the effective date of this Ordinance. Pursuant to Charter Section SC2-16, this Ordinance shall not be subject to petition to referendum.

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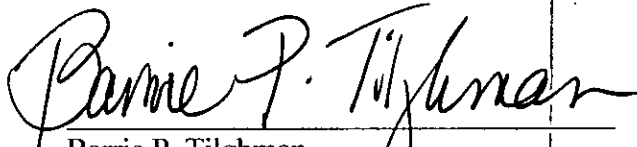
THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 24th day of November, 2008, a public hearing held on the 8th day of December, 2008 and thereafter, a statement of the substance of this Ordinance having been published as required by law, was finally passed by the Council as introduced on the 22nd day of December, 2008.

ATTEST:


Brenda J. Colegrove
CITY CLERK


Louise Smith
PRESIDENT, City Council

Approved by me this
24th day of December, 2008.


Barrie P. Tilghman
MAYOR, City of Salisbury

#117825;58111.001

Memo

To: John R. Pick, City Administrator
From: Pamela B. Oland, Director of Internal Services
Date: November 18, 2008
Re: FY 2007 Bond Amendment

When issued, the FY 2007 bond intended for certain portions of the funds to be used for developer reimbursements. Since that time, the plans have changed on two of these projects – University Village and Upshur Street. Therefore, the City is proposing to amend the proposed developer reimbursements as included in the FY 2007 Bond. This memo documents the individual reasons related to each project. Also attached to the memo is the amending ordinance and resolution allowing the adjustment to the bond proceeds.

Onley Road Associates, LLC signed a public works agreement that they would build a 6" force main along Onley Road from University Village to Perry Drive. There is \$52,000 available from the original bond amount for the construction of this force main. Onley Road Associates, LLC was required to install this section of force main, by the end of summer 2007, as part of the Public Works agreement that included both City and County infrastructure improvements. Onley Road Associates are in default of their agreement and the County has accessed the developer's letter of credit to pay for part of the roadway improvements. The force main construction will be included in a County contract to complete Onley Road, which is required for the opening of the new James M. Bennett High School in the fall of 2010. Attached to this memo is a letter from the City and County Attorneys declaring the intentions of both governments. If the County constructs the force main, the County will be paid from the FY 2007 Bond rather than the developer.

The City borrowed \$65,000 in FY 2007 to purchase the land on which the Upshur Street Stormwater Pond was to be built. The original agreement was that the property owner would construct the pond. The owner has expressed a preference to donate the land for the pond, and have the City construct the pond. Thus the funds would be used by the City for construction rather than property acquisition as provided in the FY 2007 bond. This stormwater pond will help reduce flooding in the Princeton Homes area, and it will provide benefit to the entire Monticello stormdrain system. Pipes and inlets upstream and downstream will flood less with the installation of this pond.

The attached amending ordinance and resolution would allow for construction of these items instead of purchase. If you have any questions, please let me know.