

Ordinance No. 2071

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY TO AUTHORIZE AND EMPOWER CITY OF SALISBURY TO ISSUE AND SELL FROM TIME TO TIME, UPON ITS FULL FAITH AND CREDIT, GENERAL OBLIGATION BONDS IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THREE MILLION EIGHT HUNDRED TWENTY THOUSAND DOLLARS (\$3,820,000.00), THE PROCEEDS OF THE SALE THEREOF TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING COSTS OF UPGRADING AND IMPROVING THE CITY'S WASTEWATER TREATMENT PLANT AND SYSTEM BY UNDERTAKING ONE OR MORE OF THE FOLLOWING ACTIVITIES: ADDING ODOR CONTROL IMPROVEMENTS AT VARIOUS PUMP STATIONS, ADDING DIMINUTORS AND COMMINUTORS AT VARIOUS PUMP STATIONS, UPGRADING LIFT STATIONS, AND UNDERTAKING OTHER IMPROVEMENTS IN ORDER TO GENERALLY UPGRADE AND IMPROVE SUCH PLANT AND SYSTEM, AND, IN CONNECTION THEREWITH, ACQUIRING OR PAYING FOR, AS THE CASE MAY BE, NECESSARY PROPERTY RIGHTS AND EQUIPMENT, RELATED SITE AND UTILITY IMPROVEMENTS, RELATED ARCHITECTURAL, FINANCIAL, LEGAL, PLANNING, DESIGN, ENGINEERING, CONSTRUCTION, IMPROVEMENT AND EQUIPPING EXPENSES AND COSTS OF ISSUANCE AND, TO THE EXTENT DETERMINED BY THE COUNCIL PURSUANT TO A SUBSEQUENT RESOLUTION, PAYING CAPITLIZED INTEREST; DETERMINING THAT THE BONDS OF EACH SERIES BE SOLD BY PRIVATE (NEGOTIATED) SALE WITHOUT ADVERTISEMENT OR SOLICITATION OF COMPETITIVE BIDS UNLESS A SUBSEQUENT RESOLUTION OR RESOLUTIONS OF THE COUNCIL PROVIDES FOR THE SOLICITATION OF COMPETITIVE BIDS AT PUBLIC SALE AFTER PUBLICATION OR DISSEMINATION OF NOTICE OF SALE OF ANY SERIES OF THE BONDS; AUTHORIZING THE ADOPTION OF A RESOLUTION OR RESOLUTIONS OF THE COUNCIL TO DETERMINE, APPROVE OR PROVIDE FOR VARIOUS MATTERS RELATING TO THE AUTHORIZATION, SALE, SECURITY, ISSUANCE, DELIVERY, PAYMENT AND REDEMPTION OF AND FOR EACH SERIES OF THE BONDS; AUTHORIZING THE CITY TO ISSUE AND SELL FROM TIME TO TIME ONE OR MORE SERIES OF GENERAL OBLIGATION BOND ANTICIPATION NOTES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THREE MILLION EIGHT HUNDRED TWENTY THOUSAND DOLLARS (\$3,820,000.00), PRIOR TO AND IN ANTICIPATION OF THE ISSUANCE OF ANY OF THE BONDS AUTHORIZED HEREBY IN ORDER TO FINANCE PROJECT COSTS ON AN INTERIM BASIS; AUTHORIZING THE CITY TO ISSUE AND SELL FROM TIME TO TIME ONE OR MORE SERIES OF GENERAL OBLIGATION BONDS IN ORDER TO REFUND ANY OF THE BONDS ISSUED PURSUANT TO THE AUTHORITY OF THIS ORDINANCE (INCLUDING PAYING RELATED COSTS OF ISSUANCE AND INTEREST ON SUCH REFUNDING BONDS), PROVIDED THAT, THE AGGREGATE PRINCIPAL AMOUNT OF ANY SUCH ISSUE OF REFUNDING BONDS SHALL NOT EXCEED ONE HUNDRED THIRTY PERCENT (130%) OF THE AGGREGATE PRINCIPAL AMOUNT OF THE BONDS REFUNDED THEREFROM; PROVIDING THAT ANY SUCH SERIES OF BOND ANTICIPATION NOTES OR REFUNDING BONDS SHALL BE SOLD BY PRIVATE (NEGOTIATED) SALE, UNLESS OTHERWISE DETERMINED BY THE COUNCIL BY RESOLUTION, AND AUTHORIZING THE COUNCIL TO DETERMINE CERTAIN

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MATTERS RELATING TO ANY SUCH BOND ANTICIPATION NOTES OR REFUNDING BONDS BY RESOLUTION; PROVIDING THAT PRINCIPAL OF AND INTEREST ON EACH SERIES OF THE BONDS, BOND ANTICIPATION NOTES OR REFUNDING BONDS AUTHORIZED HEREBY SHALL BE PAYABLE IN THE FIRST INSTANCE FROM MONEYS IN THE SEWER FUND, TO THE EXTENT AVAILABLE FOR SUCH PURPOSE; PROVIDING FOR THE LEVY AND COLLECTION OF AD VALOREM TAXES SUFFICIENT FOR, AND PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO, THE PROMPT PAYMENT OF SUCH PRINCIPAL AND INTEREST; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON EACH SERIES OF SUCH OBLIGATIONS ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE CITY FOR SUCH PURPOSE; PROVIDING THAT ANY OF THE BONDS, THE BOND ANTICIPATION NOTES OR THE REFUNDING BONDS AUTHORIZED HEREBY MAY BE CONSOLIDATED WITH ANY BONDS, BOND ANTICIPATION NOTES AND/OR REFUNDING BONDS AUTHORIZED BY ONE OR MORE OTHER ORDINANCES OF THE COUNCIL AND ISSUED AS A SINGLE SERIES OF BONDS, BOND ANTICIPATION NOTES AND/OR REFUNDING BONDS; AUTHORIZING AND DIRECTING APPROPRIATE OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE SALE AND DELIVERY OF THE BONDS, BOND ANTICIPATION NOTES AND REFUNDING BONDS PROVIDED FOR HEREBY; PROVIDING THAT THIS TITLE SHALL BE DEEMED A STATEMENT OF THE SUBSTANCE OF THIS ORDINANCE FOR ALL PURPOSES; AND OTHERWISE GENERALLY RELATING TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF THE BONDS, BOND ANTICIPATION NOTES AND REFUNDING BONDS PROVIDED FOR HEREBY.

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, the City has determined to upgrade and improve the City's wastewater treatment plant and system by undertaking one or more of the following activities: adding odor control improvements at various pump stations, adding diminutors and comminutors at various pump stations, upgrading lift stations, and undertaking other improvements in order to generally upgrade and improve such plant and system, and, in connection therewith, to acquire or pay for, as the case may be, necessary property rights and equipment, related site and utility improvements, related architectural, financial, legal, planning, design, engineering, construction, improvement and equipment expenses and costs of issuance, and has determined to borrow money for the public

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purpose of financing, reimbursing or refinancing costs of such project, and to evidence this borrowing by the issuance and sale of its general obligation bonds; and

WHEREAS, by this Ordinance, the Council desires to authorize the issuance and sale from time to time of one or more series of its general obligation bonds in order to finance, reimburse or refinance costs of such project and, to the extent provided in a subsequent resolution of the Council, capitalized interest; and

WHEREAS, the City has determined that each series of the bonds authorized hereby shall be sold by private (negotiated) sale, unless a subsequent resolution or resolutions of the Council provides for the sale of any series of the bonds by solicitation of competitive bids at public sale; and

WHEREAS, prior to issuing any of the bonds authorized hereby, the City may need to obtain interim financing in order to finance or reimburse project costs on a timely basis through the issuance from time to time of general obligation bond anticipation notes in one or more series pursuant to the authority of Section 12 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Bond Anticipation Note Enabling Act"); and

WHEREAS, subsequent to the issuance of any bonds provided for herein, the City may desire to refund or advance refund all or a portion of such bonds through the issuance from time to time of one or more series of its general obligation refunding bonds pursuant to the authority of Section 24 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Refunding Act"); and

WHEREAS, the City has determined to pledge its full faith and credit and unlimited taxing power to the prompt payment of debt service on any bonds, bond anticipation notes or refunding bonds authorized hereby; provided that, debt service on any such obligations shall be payable in the first instance from the source described in Section 10 of this Ordinance, unless otherwise provided by the Council in a subsequent resolution; and

WHEREAS, the City has determined to issue any bonds, bond anticipation notes or refunding bonds authorized hereby in accordance with the terms and conditions provided for in a resolution or resolutions to be adopted by the Council pursuant to this Ordinance.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND that the recitals to this Ordinance are deemed a substantive part of this Ordinance and incorporated by reference herein.

SECTION 2. BE IT FURTHER ORDAINED that pursuant to the authority of the Enabling Act and the Charter, the City hereby determines to borrow money and incur indebtedness from time to time for the public purpose of financing, reimbursing or refinancing costs of upgrading and improving the City's wastewater treatment plant and system by undertaking one or more of the following activities: adding odor control improvements at various pump stations, adding diminutors and comminutors at various pump stations, upgrading lift stations, and

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undertaking other improvements in order to generally upgrade and improve such plant and system, and, in connection therewith, acquiring or paying for, as the case may be, necessary property rights and equipment, related site and utility improvements, related architectural, financial, legal, planning, design, engineering, construction, improvement and equipping expenses and costs of issuance and, to the extent determined by the Council pursuant to the Resolution (as defined in Section 6 below) paying interest during construction and for a reasonable period thereafter (collectively, the "Project").

SECTION 3. BE IT FURTHER ORDAINED that (a) to evidence the borrowing and indebtedness authorized in Section 2 of this Ordinance, the City, acting pursuant to the authority of the Enabling Act and the Charter, hereby determines to issue and sell from time to time, in one or more series, upon its full faith and credit, its general obligation bonds in an aggregate principal amount not to exceed Three Million Eight Hundred Twenty Thousand Dollars (\$3,820,000.00) (collectively, the "Bonds"). Any series of the Bonds may be issued as one or more general obligation installment bonds.

(b) In the event the City issues any series of BANs pursuant to Section 7 of this Ordinance, proceeds of the Bonds of any series in anticipation of which such BANs were issued may also be applied to prepay or pay principal, premium and/or interest on such series of the BANs in accordance with the Bond Anticipation Note Enabling Act.

SECTION 4. BE IT FURTHER ORDAINED that pursuant to the authority of the Enabling Act and the Charter, the City hereby determines that it is in the public interest of the City to sell each series of the Bonds by private (negotiated) sale without advertisement or solicitation of competitive bids due to market conditions, the ability to time the market, the ability to negotiate flexible terms and to thereby achieve a beneficial interest rate or rates and other beneficial terms, unless the Resolution provides for the solicitation of competitive bids at public sale after publication or dissemination of the notice of sale.

SECTION 5. BE IT FURTHER ORDAINED that the proceeds of the Bonds shall be used and applied by the City exclusively and solely for the public purposes described in Section 2 of this Ordinance, unless a supplemental ordinance is enacted by the Council to provide for the use and application of such proceeds for some other proper public purpose authorized by the Enabling Act or the Charter.

SECTION 6. BE IT FURTHER ORDAINED that pursuant to the authority of this Ordinance, the Council, prior to the issuance, sale and delivery of each series of the Bonds, shall adopt a resolution or resolutions (in each such case and, collectively, the "Resolution") specifying, prescribing, determining, providing for or approving such matters, details, forms (including, without limitation, the complete forms of the Bonds of such series and the bond purchase agreement or any similar agreement with the purchaser or purchasers of such series of Bonds, if deemed necessary or desirable, or if the bonds are sold by solicitation of competitive bids at public sale, the form of notice of sale of such series of Bonds), documents or procedures as may be required by the Enabling Act, the Charter or this Ordinance or as the Council may deem appropriate for the authorization,

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sale, security, issuance, delivery, payment or prepayment of or for such series of the Bonds. The Resolution shall set forth, approve or provide for the approval of, among other things, the designation of the Bonds of such series; the date of issue of the Bonds of such series; the denomination or denominations of the Bonds of such series; the aggregate principal amount of the Bonds of such series; the maturities of or principal installments payable on the Bonds of such series; the rate or rates of interest, or the method of determining the rate or rates of interest, which may be fixed or variable, payable on the Bonds of such series; provisions relating to the prepayment of the Bonds of such series; the procedure for the sale on a private (negotiated) basis of the Bonds of such series, unless the Resolution shall provide for the solicitation of competitive bids at public sale of the Bonds of such series, in which case the Resolution shall set forth the procedures for such sale and the award of the bonds to the successful bidder; and all other terms and conditions pursuant to which the Bonds of such series will be issued, sold and delivered, including, without limitation, any determinations to be made by resolution as required by Charter Section SC7-46.A. Among other matters, the Council, pursuant to the Resolution, may authorize, approve or otherwise provide for (i) the commitment of the City to pay to the purchaser or purchasers of such series of the Bonds (A) any commitment fee or similar fee and any other costs in connection with such purchaser's or purchasers' agreement to purchase such series of the Bonds and/or (B) any breakage compensation or other amount that may be determined to be due to such purchaser or purchasers in the event the City fails to deliver such series of the Bonds and, in connection therewith, to approve or provide for the approval, and the execution and delivery of, any agreement relating to such payment or payments (which such agreement may, but shall not be required to be, contained within any purchase or similar agreement for such series of the Bonds), (ii) the obtaining of credit enhancement for such series of the Bonds (and the execution and delivery of any agreements or documents relating thereto), and (iii) any other agreements necessary to enhance the marketability of or as security for such series of the Bonds, including (without limitation) any ratings, any official statement or similar disclosure document and any continuing disclosure undertaking required to satisfy the requirements of Securities and Exchange Commission Rule 15c2-12.

SECTION 7. BE IT FURTHER ORDAINED that pursuant to the authority of the Bond Anticipation Note Enabling Act and the Charter, the City is hereby authorized and empowered to issue and sell, upon its full faith and credit, its general obligation bond anticipation notes in one or more series from time to time in an aggregate principal amount not to exceed Three Million Eight Hundred Twenty Thousand Dollars (\$3,820,000.00) (collectively, the "BANs"), prior to and in anticipation of the sale of any series of the Bonds, for the public purpose of financing (including by reimbursing prior Project expenditures) costs of the Project on an interim basis, paying costs and expenses in connection with the issuance, sale and delivery of such BANs, and, to the extent determined by the Council in a subsequent resolution, paying capitalized interest on such BANs. Any such series of the BANs may consist of one or more notes and any such note may be issued in installment form and/or draw-down form. Prior to the issuance, sale and delivery of any series of the BANs, the Council shall adopt a resolution or resolutions pursuant to the authority of the Bond Anticipation Note Enabling Act, the Charter and this Ordinance authorizing such series of the BANs and specifying, prescribing, determining, providing for or approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law. Unless the Council determines otherwise in a resolution providing for any series of the BANs, each series of

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the BANs shall be sold by private negotiation without advertisement or publication of notice of sale or solicitation of competitive bids, due to the ability to time the market, negotiate flexible terms and thereby achieve a beneficial interest rate or rates and other beneficial terms by undertaking a private (negotiated) sale.

SECTION 8. BE IT FURTHER ORDAINED that pursuant to the authority of the Refunding Act and the Charter, the City is hereby authorized and empowered to issue and sell, upon its full faith and credit, its general obligation refunding bonds in one or more series from time to time (collectively, the "Refunding Bonds"), for the purpose of refunding or advance refunding any of the Bonds authorized hereby, including the payment of any prepayment premium and any interest accrued or to accrue to the date of prepayment, purchase or maturity of the Bonds to be refunded, paying costs and expenses in connection with the issuance, sale and delivery of such Refunding Bonds, and, to the extent determined by the Council in a subsequent resolution, paying interest on such Refunding Bonds, for the public purpose of realizing savings to the City in the aggregate cost of debt service on either a direct comparison, present value or other basis or in order to accomplish any debt restructuring that is permitted by applicable law; provided that, the aggregate principal amount of any issue of the Refunding Bonds shall not exceed one hundred thirty percent (130%) of the aggregate principal amount of the Bonds refunded therefrom. Any such series of the Refunding Bonds may consist of one or more bonds and any such bond may be issued in installment form. Prior to the issuance, sale and delivery of any series of the Refunding Bonds, the Council shall adopt a resolution or resolutions authorizing such series of the Refunding Bonds and specifying, prescribing, determining, providing for or approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law. Unless the Council determines otherwise in a resolution providing for any series of the Refunding Bonds, each series of the Refunding Bonds shall be sold on a negotiated basis, due to the ability to time the market, negotiate flexible terms and thereby achieve a beneficial interest rate or rates by undertaking a private (negotiated) sale.

SECTION 9. BE IT FURTHER ORDAINED that the Council is hereby authorized, pursuant to a resolution or resolutions, to make any further determinations deemed necessary or desirable in connection with the issuance of any series of the BANs or the Refunding Bonds authorized hereby, including, without limitation, (i) any determination required or authorized by the Bond Anticipation Note Enabling Act or the Refunding Act or other law, as applicable, (ii) to commit or provide for the commitment of the City to pay to the purchaser or purchasers of such series of the BANs or the Refunding Bonds (A) any commitment fee or similar fee and any other costs in connection with such purchaser's or purchasers' agreement to purchase such series of the BANs or the Refunding Bonds and/or (B) any breakage compensation or other amount that may be determined to be due to such purchaser or purchasers in the event the City fails to deliver such series of the BANs or the Refunding Bonds and, in connection therewith, to approve or provide for the approval, and the execution and delivery of, any agreement relating to such payment or payments (which such agreement may, but shall not be required to be, contained within any purchase or similar agreement for such series of the BANs or the Refunding Bonds), (iii) the obtaining of credit enhancement for such series of the BANs or the Refunding Bonds (and the execution and delivery of any agreements or documents relating thereto), and (iv) any other agreements necessary to

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enhance the marketability of or as security for such series of the BANs or the Refunding Bonds, including (without limitation) any ratings, any official statement or similar disclosure document and any continuing disclosure undertaking required to satisfy the requirements of Securities and Exchange Commission Rule 15c2-12.

SECTION 10. BE IT FURTHER ORDAINED that (a) the principal of and interest on any series of the Bonds, the BANs or the Refunding Bonds, as applicable (the "Obligations"), will be payable in the first instance from moneys in the Sewer Fund to the extent such moneys are available for such purpose, unless otherwise provided in a resolution of the Council. Notwithstanding the foregoing sentence, for the purpose of paying the principal of and interest on the Obligations when due, the City shall levy or cause to be levied, for each and every fiscal year during which any series of the Obligations may be outstanding, ad valorem taxes upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation in rate and amount sufficient to provide for the prompt payment, when due, of the principal of and interest on such Obligations in each such fiscal year, provided that, to the extent of any funds received or receivable as described in the first sentence of this Section 10(a) in any fiscal year, the taxes hereby required to be levied may be reduced proportionately. If the proceeds from the taxes so levied in any such fiscal year are inadequate for such payment, additional taxes shall be levied in the succeeding fiscal year to make up such deficiency.

(b) The full faith and credit and unlimited taxing power of the City are hereby irrevocably pledged to the prompt payment of the principal of and interest on each series of the Obligations as and when they become due and payable and to the levy and collection of the taxes hereinabove described as and when such taxes may become necessary in order to provide sufficient funds to meet the debt service requirements of such series of the Obligations. The City hereby covenants and agrees with the registered owners, from time to time, of each series of the Obligations to levy and collect the taxes hereinabove described and to take any further lawful action that may be appropriate from time to time during the period that such series of the Obligations remains outstanding and unpaid to provide the funds necessary to pay promptly the principal thereof and the interest due thereon.

(c) The foregoing provisions shall not be construed so as to prohibit the City from paying the principal of and interest on any series of the Obligations from the proceeds of the sale of any other obligations of the City or from any other funds legally available for that purpose (including, without limitation, with respect to the BANs from the proceeds of the Bonds authorized hereby and, with respect to the Bonds, from the proceeds of the Refunding Bonds authorized hereby). The City may apply to the payment of the principal of or interest on any series of the Obligations any funds received by it from the State of Maryland or the United States of America, or any governmental agency or instrumentality, or from any other source, if such funds are granted or paid to the City for the purpose of assisting the City in the type of project which the Obligations of such series are issued to finance, reimburse or refinance, and to the extent of any such funds received or receivable in any fiscal year, the taxes hereby required to be levied may be reduced proportionately.

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SECTION 11. Pursuant to a subsequent resolution or resolutions, the Council may determine that any of the Bonds, the BANs or the Refunding Bonds authorized hereby may be consolidated with any bonds, bond anticipation notes and/or refunding bonds authorized by one or more other ordinances of the Council and issued as a single series of bonds, bond anticipation notes and/or refunding bonds.


SECTION 12. BE IT FURTHER ORDAINED that the Mayor, the City Administrator, the Director of Internal Services, the City Clerk and all other appropriate officials and employees of the City are hereby authorized and directed to take any and all action necessary to complete and close the sale and delivery of the Bonds, the BANs or the Refunding Bonds and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith.

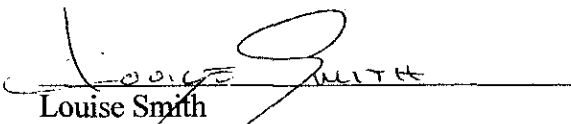
SECTION 13. BE IT FURTHER ORDAINED that the title of this Ordinance shall be deemed to be, and is, a statement of the substance of this Ordinance for publication and all other purposes.

SECTION 14. 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 provisions of Section SC2-12 of the Charter. Pursuant to Charter Section SC2-16, this Ordinance shall not be subject to petition to referendum.


THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 22nd day of December, 2008, a public hearing was held on the 12th day of January, 2009, 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 26th day of January, 2009.

ATTEST:


Brenda J. Colegrove
CITY CLERK


Louise Smith
PRESIDENT, City Council

Approved by me this 27th day of
January, 2009.


Barrie P. Tilghman
MAYOR, City of Salisbury

#119300;58111.010

Memo

To: John R. Pick, City Administrator
From: Pamela B. Oland, Director of Internal Services
Date: December 15, 2008
Re: FY 2009 General Obligation Bonds

As discussed at the City Council work session on November 25, 2008, the City is planning to bond for specific Sewer Fund projects. These projects are the odor control at the North and South side pump stations, Diminutors/Comminutors for these same pump stations and Funds to upgrade the DP&L lift station. The attached bond ordinance would issue \$3.82 million to complete these projects and pay for any costs of issuance. With approving the attached ordinance, you are allowing the details of the bond issuance (bank, interest rate, closing date, etc.) be fixed by resolution at a later date once we have solicited proposals. If you have any questions, please let me know.