

Ordinance No. 2081

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY ENTITLED AN ORDINANCE AMENDING ORDINANCE NO. 1870, PASSED BY THE COUNCIL ON JANUARY 27, 2003, APPROVED BY THE MAYOR ON FEBRUARY 3, 2003 AND EFFECTIVE ON FEBRUARY 3, 2003, AS AMENDED BY ORDINANCE NO. 1888, PASSED BY THE COUNCIL ON DECEMBER 22, 2003, APPROVED BY THE MAYOR ON JANUARY 5, 2004 AND EFFECTIVE ON JANUARY 5, 2004, IN ORDER TO AUTHORIZE AND EMPOWER CITY OF SALISBURY TO USE AND APPLY A PORTION OF THE PROCEEDS OF THE \$5,614,000 THE CITY OF SALISBURY INFRASTRUCTURE BOND, 2003 SERIES A ISSUED ON JUNE 18, 2003 (THE "2003 BOND") FOR THE PUBLIC PURPOSE OF FUNDING COSTS OF CERTAIN PROJECTS IDENTIFIED IN THE CITY'S CAPITAL IMPROVEMENT PROGRAM AS (I) MILL STREET STORM DRAIN UPGRADE ENGINEERING, (II) SOUTH BAPTIST STREET STORM DRAIN CONSTRUCTION, (III) NORTHEAST COLLECTOR ROAD HIKE AND BIKE TRAIL, (IV) CIRCLE AVENUE BRIDGE REPAIR, AND (V) SPRINGFIELD CIRCLE STORM DRAIN REPAIR CONSTRUCTION IN ADDITION TO THE PROJECTS IDENTIFIED IN ORDINANCE NO. 1870, AS AMENDED BY ORDINANCE NO. 1888; AUTHORIZING AND DIRECTING OFFICIALS OF THE CITY TO APPROVE, EXECUTE AND DELIVER AMENDMENTS, MODIFICATIONS OR SUPPLEMENTS TO THE 2003 BOND AND CERTAIN OTHER DOCUMENTS, AGREEMENTS, INSTRUMENTS AND CERTIFICATES EXECUTED AND DELIVERED IN CONNECTION WITH THE ISSUANCE OF THE 2003 BOND AND SUCH ADDITIONAL DOCUMENTS OR INSTRUMENTS AS MAY BE NECESSARY OR DESIRABLE IN ORDER TO REFLECT MATTERS PROVIDED FOR IN THIS ORDINANCE; 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 2003 BOND.

RECITALS

WHEREAS, City of Salisbury (the "Issuer") is a municipal corporation of the State of Maryland organized and operating under a charter (the "Charter") adopted in accordance with Article XI-E of the Constitution of Maryland and Article 23A of the Annotated Code of Maryland, as amended (the "Maryland Code"); and

WHEREAS, pursuant to Ordinance No. 1870, passed by the Council on January 27, 2003, approved by the Mayor on February 3, 2003 and effective on February 3, 2003 ("Ordinance No. 1870") and the authority of Subtitle 2 of Title 2 of Article 83B of the Maryland Code (now codified at Subtitle 2 of Title 4 of the Housing and Community Development Article of the Maryland Code, and as amended, the "Act"), the Issuer on June 18, 2003 issued its The City of Salisbury Infrastructure Bond, 2003 Series A in the aggregate principal amount of \$5,614,000 (the "2003 Bond") in order to provide a portion of funds needed for costs of certain projects identified in Ordinance No. 1870, issuance costs, bond insurance premiums and other related costs (collectively, the "Original Project"); and

WHEREAS, the 2003 Bond constitutes the "Bonds" as identified in Ordinance No. 1870 and was sold to the Community Development Administration, an agency in the Division of

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Development Finance of the Department of Housing and Community Development, a principal department of the government of the State of Maryland (the "Administration") in connection with the Local Government Infrastructure Financing Program of the Administration (the "Program") in order to evidence a loan from the Administration to the Issuer to finance Development Costs of the Project (as defined in the Repayment Agreement identified herein); and

WHEREAS, the 2003 Bond, together with certain obligations of other borrowers issued to the Administration pursuant to the Program, secures the repayment of the \$14,560,000 Community Development Administration Local Government Infrastructure Bonds (Ambac Insured), 2003 Series A; and

WHEREAS, in connection with the issuance of the 2003 Bond to the Administration, (i) the City and the Administration entered into a Repayment Agreement dated as of March 1, 2003 (the "Repayment Agreement") and a Pledge Agreement dated as of March 1, 2003 (the "Pledge Agreement"), and (ii) the City executed and delivered certain additional documents, agreements, instruments and certificates (collectively with the Pledge Agreement and the Repayment Agreement, the "Program Documents"), including, without limitation, a Local Government General Certificate dated June 18, 2003 (the "General Certificate"), which General Certificate, among other matters, contains certain representations and covenants of the Issuer as to the use of the proceeds of the 2003 Bond and the Original Project and as to compliance with the provisions of the Internal Revenue Code of 1986, as amended and the Income Tax Regulations promulgated thereunder (collectively, the "Code"); and

WHEREAS, pursuant to Ordinance No. 1888, passed by the Council on December 22, 2003, approved by the Mayor on January 5, 2004 and effective on January 5, 2004 ("Ordinance No. 1888" and, together with Ordinance No. 1870, the "Amended Ordinance"), the City amended Ordinance No. 1870 in order to allow proceeds of the 2003 Bond to be applied to an additional project described in Ordinance No. 1888 (the "2004 Additional Project" and, together with the Original Project, the "Modified Project"); and

WHEREAS, the Issuer has achieved costs savings with respect to certain components of the Modified Project as described in the Amended Ordinance and desires to amend the Amended Ordinance in order to allow proceeds of the 2003 Bond to be applied to fund costs of certain additional projects described in the Issuer's capital improvement program as: (i) Mill Street Storm Drain Upgrade Engineering, (ii) South Baptist Street Storm Drain Construction, (iii) Northeast Collector Road Hike and Bike Trail, (iv) Circle Avenue Bridge Repair, and (v) Springfield Circle Storm Drain Repair Construction; and

WHEREAS, although the Issuer enacted Ordinance No. 1888 to modify the definition of the Project as set forth in Ordinance No. 1870 to include the 2004 Additional Project, and proceeds of the 2003 Bond have been applied to fund Development Costs of the 2004 Additional Project, the Issuer and the Administration, as applicable, did not execute and deliver amendments,

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modifications or supplements to the 2003 Bond or the Program Documents to reflect use of the 2003 Bond for such purpose; and

WHEREAS, accordingly, the Issuer desires to revise the description of the Modified Project as set forth in the Amended Ordinance and certain other documents, agreements, certificates and instruments executed and delivered by the Issuer in connection with the issuance of the 2003 Bond and to make or ratify certain covenants, agreements and representations with respect to the use of proceeds of the 2003 Bond as described herein and related matters.

SECTION 1. NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND that the Recitals to this Ordinance are incorporated by reference herein and deemed a substantive part of this Ordinance. Capitalized terms used in this Ordinance and defined in the Recitals shall have the meanings given to such terms in the Recitals except as otherwise provided in this Ordinance.

SECTION 2. BE IT FURTHER ORDAINED that (a) from and after the effective date of this Ordinance the projects identified as follows in the Issuer's capital improvement program shall be added to the description of the Modified Project contained in the Amended Ordinance and proceeds of the 2003 Bond may be applied to fund Development Costs (as defined in the Repayment Agreement) of such additional projects in accordance with the Program Documents, as the same may be amended, modified or supplemented as provided for herein: (i) Mill Street Storm Drain Upgrade Engineering, (ii) South Baptist Street Storm Drain Construction, (ii) Northeast Collector Road Hike and Bike Trail, (iv) Circle Avenue Bridge Repair, and (v) Springfield Circle Storm Drain Repair Construction (collectively, the "2009 Additional Project").

(b) By undertaking the amendments to the Amended Ordinance provided for in subsection (a) of this Section 2, the Issuer is revising the definition of the Original Project as contained in Ordinance No. 1870, as modified by the 2004 Additional Project identified in Ordinance No. 1888, to include the 2009 Additional Project, and proceeds of the 2003 Bond may be applied to fund Development Costs of the 2009 Additional Project in addition to Development Costs of the Original Project and the 2004 Additional Project as previously identified in the Amended Ordinance. From and after the effective date of this Ordinance, all references to the Project in Ordinance No. 1870 shall be deemed to include the 2009 Additional Project. From and after the effective date of this Ordinance, the provisions of this Section 2 shall amend the provisions of the Recitals of and Section 6 of Ordinance No. 1870 and the provisions of Ordinance No. 1888 with respect to the application of proceeds of the 2003 Bond.

SECTION 3. BE IT FURTHER ORDAINED that (a) the Mayor is hereby authorized and directed to approve, execute and deliver, on behalf of the City, any amendments, modifications or supplements to the 2003 Bond, the Repayment Agreement or the Pledge Agreement deemed necessary or desirable by the Administration in order to provide for or reflect the use of proceeds of the 2003 Bond to fund Development Costs of the 2004 Additional Project and the 2009 Additional Project and related matters, including, without limitation, to modify the definition of "Project"

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contained therein to include the 2004 Additional Project and the 2009 Additional Project. Any such amendments, modifications or supplements shall be in such form and shall contain such terms and conditions as shall be approved by the Mayor and acceptable to the Administration, and the execution thereof by the Mayor shall be conclusive evidence of his approval of the form and substance thereof.

(b) The appropriate official or officials of the Issuer are hereby authorized and directed to approve, execute and deliver, on behalf of the City, any amendments, modifications or supplements to the Program Documents other than the Repayment Agreement and the Pledge Agreement deemed necessary or desirable by the Administration in order to provide for or reflect the use of proceeds of the 2003 Bond to fund Development Costs of the 2004 Additional Project and the 2009 Additional Project and related matters, including, without limitation, to modify the definition of "Project" contained therein to include the 2004 Additional Project and the 2009 Additional Project or to provide for or ratify and confirm compliance with the provisions of the Code. Any such amendments, modifications or supplements shall be in such form and shall contain such terms and conditions as shall be approved by such appropriate official or officials and acceptable to the Administration, and the execution thereof by such appropriate official or officials shall be conclusive evidence of his, her or their approval of the form and substance thereof.

(c) The appropriate officials, officers and employees of the Issuer are hereby authorized and directed to do all acts and things required of them by the provisions of this Ordinance, for the full, punctual and complete performance of all of the terms, covenants and provisions of the 2003 Bond and the Program Documents, as the same may be amended, modified or supplemented in accordance with the provisions hereof, and to do and perform all acts and to execute, seal and deliver all documents or instruments of writing which may be necessary or desirable to carry out the full intent and purposes of this Ordinance and the 2003 Bond and the Program Documents, as so amended, modified or supplemented.

SECTION 4. BE IT FURTHER ORDAINED that the Issuer covenants with the Administration and for the benefit of the owners from time to time of the 2003 Bond that with respect to the use of proceeds of the 2003 Bond to fund Development Costs of the 2009 Additional Project, so long as the 2003 Bond or installments of principal thereof remain outstanding and unpaid, the Issuer will not (i) make any use of the proceeds of the 2003 Bond or any moneys, securities or other obligations on deposit to the credit of the Issuer or otherwise which may be deemed by the Internal Revenue Service to be proceeds of the 2003 Bond pursuant to Section 148 of the Code which would cause the 2003 Bond to be an "arbitrage bond" within the meaning of Section 148 of the Code, or (ii)(A) take any action, (B) fail to take any action, or (C) make any use of the proceeds of the 2003 Bond which would cause the interest on the 2003 Bond to be or become includible in gross income for federal income tax purposes in the hands of the owners thereof.

SECTION 5. BE IT FURTHER ORDAINED that as required by the Administration, prior to the passage of this Ordinance, the Issuer shall publish in a newspaper of general circulation in the jurisdiction of the Issuer a notice of the nature of the 2009 Additional Project to be financed from

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proceeds of the 2003 Bond, the time and place of the public hearing, and the name and address where written comments may be sent, and the Issuer shall hold a public hearing on the proposed use of proceeds of the 2003 Bond to fund Development Costs of the 2009 Additional Project.


SECTION 6. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, the Amended Ordinance shall be deemed amended as provided herein and all other terms and provisions of the Amended Ordinance shall remain in full force and effect.

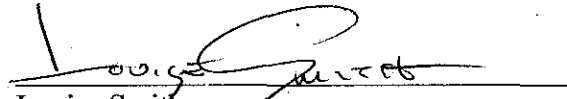
SECTION 7. BE IT FURTHER ORDAINED that the title of this Ordinance shall be deemed to be, and is, a fair statement of the substance of this Ordinance for publication and all other purposes.

SECTION 8. 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.

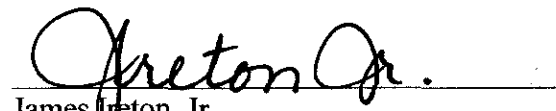
THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 13th day of July, 2009, and thereafter, a statement of the substance of this Ordinance having been published as required by law, was finally passed by the Council as introduced on the 10th day of August, 2009.

ATTEST:


Brenda J. Colegrove
CITY CLERK


Louise Smith
PRESIDENT, City Council

Approved by me this 10th day of
August, 2009.


James Preton, Jr.
MAYOR, City of Salisbury

#123314;58111.013

Memo

To: John R. Pick, City Administrator
From: Pamela B. Oland, Director of Internal Services *PBO*
Date: July 7, 2009
Re: Unspent Bond Proceeds

In 2008, City Council discussed how to reallocate bond proceeds unspent from the 2003 CDA bonds. Attached to this memo is a schedule that shows the original reallocation that was discussed. Since that time, certain projects have been adjusted or funds have been obtained through other sources, please see the schedule for further discussion about these changes. We have submitted the projects to the State of Maryland for their attorneys to review. The attorneys will determine if the bonds can be used for the projects presented. All indications from the State of Maryland are that the funds can be spent on the listed projects.

Attached please find the amending legislation that will allow the City to move forward with the bond reallocation process.

If you have any questions, please let me know.

City of Salisbury
Unspent Bond Proceeds Reallocation

Original Potential Uses of Funds

General Fund

Mill Street Storm Drain Engineering	32,000	
South Baptist St. Storm Drain Construction	120,000	
Circle Avenue Bridge Repair Construction	110,000	
City Service Garage	45,000	
Shumaker Pond Dam	50,000	A
Northeast Collector Hike and Bike Trail	66,750	
Energy Conservation Projects	64,500	B
Engineering for Springfield Circle Storm Sewer	22,000	
GOB Boiler Replacement	42,500	C
GOB Chiller Replacement	10,000	C
	<u>562,750</u>	

Amended Potential Uses of Funds

General Fund

Mill Street Storm Drain Engineering	50,000	
South Baptist St. Storm Drain Construction	222,000	
Circle Avenue Bridge Repair Construction	137,000	
City Service Garage	45,000	
Northeast Collector Hike and Bike Trail	66,750	
Springfield Circle Storm Sewer	42,000	D
	<u>562,750</u>	

A - On this project we have received an MDE stimulus grant, thus no additional funds will be needed.

B - On these projects, we are proposing to use funds we will receive from an energy efficiency and conservation block grant, thus no additional funds will be needed.

C - The County was able to complete these projects in FY 08 and still not expend all of the budgeted operating funds, thus the City has paid for them through its operating reimbursement to the County for FY 08.

D - The original request was to use the bond funds for engineering on this project. Now, we are performing the engineering in house, and the bond funds will pay for the cost of construction.

Note - All other balances have been reviewed and adjusted as necessary to reflect current estimates for project completion. Please see attached for further descriptions and maps of each project.

THE DAILY AND SUNDAY TIMES
DELMARVA'S LARGEST NEWSPAPER
618 BEAM STREET
SALISBURY, MARYLAND 21801
PHONE: 410-749-7171
FAX: 410-341-6709

CITY OF SALISBURY CITY CLERK
125 N DIVISION ST.
SALISBURY, MD 21801-4940

Dear Sir/Madame:

Here is the Certification of Publication for your ad that ran 07/17/09

Sincerely,

Donna Melson for MEGHAN STORKE
Legals ext. 220

CERTIFICATION OF PUBLICATION

We hereby certify that the

17-Jul-09

NOTICE OF PUBLIC HEARING

Was published on 7/17/09


The Daily Times

NOTICE OF PUBLIC HEARING

To be Held Before the Council of City of Salisbury
On Monday, July 27, 2009 at 6:05 p.m.
In the Government Office Building, 125 N. Division Street,
Council Chambers (Room 301)
Salisbury, Maryland 21801
Concerning Proposed Use of Proceeds of
\$5,614,000 The City of Salisbury Infrastructure
Bond, 2003 Series A to Fund Certain Additional
Projects Described Below

The Council of City of Salisbury (the "City") will conduct a public hearing on Monday, July 27, 2009 at 6:05 p.m. to discuss the proposed use of a portion of the proceeds of the \$5,614,000 The City of Salisbury Infrastructure Bond, 2003 Series A (the "2003 Bond") to fund costs of certain projects identified in the City's Capital Improvement Program as: (i) Mill Street Storm Drain Upgrade Engineering; (ii) South Baptist Street Storm Drain Construction; (iii) Northeast Collector Road Hike and Bike Trail; (iv) Circle Avenue Bridge Repair; and (v) Springfield Circle Storm Drain Repair Construction (collectively, the "2009 Additional Project") in addition to certain projects previously authorized by Ordinance No. 51870 as amended by Ordinance No. 1888. The proposed use of 2003 Bond proceeds to fund 2009 Additional Project costs is expected to be authorized pursuant to Ordinance No. 2081, which was introduced before the Council on July 13, 2009.

Copies of Ordinance No. 2081 may be obtained by contacting Brenda J. Colegrove, City Clerk, as indicated below. Ordinance No. 2081 may also be viewed over the internet at www.ci.salisbury.md.us under "City Government," "City Council of Salisbury MD," "City Council Agendas" and by then clicking on the briefing book for the July 13 meeting.

The public hearing is required by the Community Development Administration, an agency in the Division of Development Finance of the Maryland Department of Housing and Community Development, the entity to which the 2003 Bond was originally sold and delivered, and will be held at the date, time and place indicated above. Public testimony is encouraged. This hearing will be broadcast live on cable channel 14.

Questions on the public hearing may be directed to Brenda Colegrove, City Clerk, by e-mail to bcolegrove@ci.salisbury.md.us or by phone at 410-548-3140. Written comments may be submitted to the City Clerk at 125 N. Division Street, Room 305, Salisbury, Maryland 21801, or by e-mail to the City Clerk at bcolegrove@ci.salisbury.md.us.

mbs/7/17/09