

Ordinance No. 2093

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY ENTITLED AN ORDINANCE SUPPLEMENTING AND AMENDING ORDINANCE NO. 2071, PASSED BY THE COUNCIL ON JANUARY 26, 2009, APPROVED BY THE MAYOR ON JANUARY 27, 2009 AND EFFECTIVE ON JANUARY 27, 2009, IN ORDER TO AUTHORIZE AND EMPOWER CITY OF SALISBURY TO USE AND APPLY A PORTION OF THE PROCEEDS OF THE \$2,600,000 CITY OF SALISBURY PUBLIC IMPROVEMENTS BOND OF 2009 ISSUED ON NOVEMBER 6, 2009 (THE "2009 BOND") FOR THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING COSTS OF THE PLANNING, DESIGN, ENGINEERING, RETROFITTING, REWORKING AND MODIFICATION OF EXISTING AND PLANNED COMPONENTS OF THE CITY'S WASTEWATER TREATMENT 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, RECONSTRUCTION, RENOVATION, MODIFICATION, IMPROVEMENT AND EQUIPPING EXPENSES AND COSTS OF ANY RELATED STUDIES IN ADDITION TO THE PURPOSES ORIGINALLY CONTEMPLATED BY ORDINANCE NO. 2071; 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 2009 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 7, 20008 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 the authority of Ordinance No. 2071, adopted by the Council of the City on January 26, 2009, approved by the Mayor on January 27, 2009 and effective on January 27, 2009 ("Ordinance No. 2071"), the City authorized the issuance and sale from time to time of its 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) 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

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Council pursuant to the Resolution (as defined in Section 6 of Ordinance No. 2071) paying interest during construction and for a reasonable period thereafter (collectively, the "Original Project"); and

WHEREAS, pursuant to the authority of Ordinance No. 2071, Ordinance No. 2044, passed by the Council of the City on December 17, 2007, approved by the Mayor on December 19, 2007 and effective on December 19, 2007 ("Ordinance No. 2044"), as supplemented, and Resolution No. 1850, adopted by the Council of the City on October 26, 2009, approved by the Mayor on October 26, 2009 and effective on October 26, 2009 ("Resolution No. 1850"), on November 6, 2009 the City issued and delivered to Hebron Savings Bank its Public Improvements Bond of 2009 in the principal amount of Two Million Six Hundred Thousand Dollars (\$2,600,000.00) (the "2009 Bond"); and

WHEREAS, Section 2(a) of Resolution No. 1850 provides that proceeds of the 2009 Bond shall be appropriated and allocated for the public purpose of financing or reimbursing the following, in the maximum principal amount indicated in parentheses in each of the following clauses (i) through (iii) (exclusive of any investment earnings that may be applied for such purposes): (i) costs (as defined in Section 3(b) of Ordinance No. 2044) of the project identified therein as "Salisbury Zoo – Animal Health Building Construction" (maximum principal amount: \$500,000.00), (ii) 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, 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 (maximum principal amount: \$2,083,000.00), and (iii) costs of issuance (maximum principal amount: \$17,000.00, \$3,400.00 being allocable to the project identified in clause (i) and \$13,600.00 being allocable to the project identified in clause (ii)); and

WHEREAS, the project described in clause (i) of the preceding Recital and the allocable portion of the costs of issuance of the 2009 Bond identified in clause (iii) of the preceding Recital was authorized by Ordinance No. 2044, and the project described in clause (ii) of the preceding Recital and the allocable portion of the costs of issuance of the 2009 Bond identified in clause (iii) of the preceding Recital was authorized by Ordinance No. 2071; and

WHEREAS, since the passage of Ordinance No. 2071 and Resolution No. 1850 and the issuance of the 2009 Bond, the City has determined to expand the purposes to which the portion of the proceeds of the 2009 Bond as described in clause (ii) of the second preceding WHEREAS clause may be applied; and

WHEREAS, accordingly, the City desires to revise the description of the Original Project identified in Ordinance No. 2071 in order to expand the scope of activities to which a portion of the proceeds of the 2009 Bond may be applied, as further described herein; and

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WHEREAS, by the passage of this Ordinance, the City does *not* intend to amend, modify or supplement the purposes to which the portion of the proceeds of the 2009 Bond issued pursuant to the authority of Ordinance No. 2044 (relating to the Salisbury Zoo – Animal Health Building Construction and allocable costs of issuance) may be applied.

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 Ordinance No. 2071, Section 2 of Ordinance No. 2071 is hereby deleted in its entirety and inserted in place thereof shall be the following:

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 all or a portion of one or more of the following: (i) costs of the planning, design, engineering, retrofitting, reworking, and modification of existing and planned components of the City's wastewater treatment 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, reconstruction, renovation, modification, improvement and equipping expenses and costs of any related studies and (ii) 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, in either such case, 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").

(b) By undertaking the amendments to Section 2 of Ordinance No. 2071 provided for in subsection (a) of this Section 1, the City is revising the description of the Original Project identified in Section 2 of Ordinance No. 2071 (defined therein as the Project) to change and expand the scope of activities for which a portion of the proceeds of the 2009 Bond may be applied. The project

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identified in subsection (a) above is referred to herein as the "2009 Revised Project". From and after the effective date of this Ordinance, all references to the Project in Ordinance No. 2071 shall be deemed to be references to the 2009 Revised Project, as identified in this Ordinance. Subject to the provisions of subsection (c) below, 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 2 of Ordinance No. 2071 with respect to the application of a portion of the proceeds of the 2009 Bond.

(c) Notwithstanding the foregoing provisions of this Section 1, proceeds of the 2009 Bond may not be applied to costs of the 2009 Revised Project unless and until the City adopts a resolution making corresponding amendments to the provisions of Section 2 of Resolution No. 1850 to allow proceeds of the 2009 Bond to be applied to costs of the 2009 Revised Project.

SECTION 2. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, Ordinance No. 2071 shall be deemed supplemented and amended as provided herein and all other terms and provisions of Ordinance No. 2071 shall remain in full force and effect.

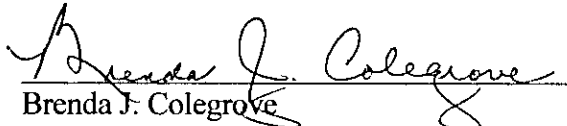
SECTION 3. BE IT FURTHER ORDAINED that the title of this Ordinance shall be deemed to be, and is, a fair statement of the substance of this Ordinance for publication and all other purposes.

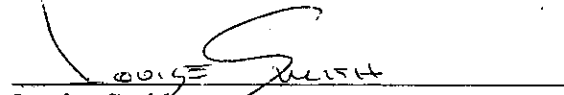
SECTION 4. BE IT FURTHER ORDAINED that this Ordinance shall become effective following approval by the Mayor or subsequent passage by the Council in accordance with the provision of Section SC2-12 of the Charter; provided, however, in the event the City fails to adopt a resolution making corresponding amendments to the provisions of Section 2 of Resolution No. 1850 to allow proceeds of the 2009 Bond to be applied to costs of the 2009 Revised Project, the City may not apply proceeds of the 2009 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 14th day of December, 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 21st day of December, 2009.

ATTEST:


Brenda J. Colegrove
CITY CLERK


Louise Smith
PRESIDENT, City Council

Approved by me this 24th day of
December, 2009.


James Ireton, Jr.
MAYOR, City of Salisbury

#126850;58111.001

Memo

To: John R. Pick, City Administrator
From: Pamela B. Oland, Director of Internal Services
Date: December 8, 2009
Re: Bond Reallocation

Attached please find an ordinance that reallocates the proceeds from the November 2009 General Obligation bond issuance. As discussed at the November 30, 2009 Council work session, the City issued bonds at the beginning of November that we intended to use for dimunitors/communitors and odor control at the North and South side pump stations. Based on the issues at the waste water treatment plant, the City would like to contract with the firm Brown & Caldwell to provide us with a corrective action program and preliminary engineering to improve the WWTP to facilitate compliance with our permit discharge limits. Council indicated a willingness to reprogram the bond funds to pay for the Brown & Caldwell contract as well as some interim changes to improve the plant. Attached please find a bond ordinance that amends the original ordinance to allow for these new items. The original projects will be included in the overall corrective action plan created by Brown & Caldwell. Additionally, after the second reading of the ordinance we will introduce a resolution that makes the same changes. If you have any questions, please let me know.