

Ordinance No. 2114

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY (THE "COUNCIL") TO AUTHORIZE AND EMPOWER CITY OF SALISBURY (THE "CITY") TO ISSUE AND SELL, UPON ITS FULL FAITH AND CREDIT, A GENERAL OBLIGATION PROMISSORY NOTE IN A MAXIMUM PRINCIPAL AMOUNT NOT TO EXCEED ONE HUNDRED FORTY-TWO THOUSAND EIGHT HUNDRED DOLLARS (\$142,800.00) (THE "NOTE") TO EVIDENCE A LOAN TO THE CITY FROM THE MARYLAND ENERGY ADMINISTRATION THROUGH THE JANE E. LAWTON CONSERVATION FUND, SUCH NOTE TO BE ISSUED AND SOLD AND THE PROCEEDS THEREOF TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING COSTS INCURRED IN CONNECTION WITH THE REPLACEMENT OF APPROXIMATELY 238 CONVENTIONAL 250-WATT BULBS WITH HIGH EFFICIENCY LIGHT-EMITTING DIODE (LED) FIXTURES AT THE PUBLIC PARKING GARAGE LOCATED AT THE CORNERS OF MARKET STREET AND DIVISION STREET IN THE CITY IN ORDER TO ACHIEVE ENERGY COST SAVINGS; PROVIDING, TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, THAT ANY MONEYS THE CITY IS ENTITLED TO RECEIVE FROM THE STATE OF MARYLAND, INCLUDING INCOME TAX DISTRIBUTIONS, MAY BE OFF-SET OR INTERCEPTED TO SECURE ITS OBLIGATIONS UNDER THE NOTE AND THE RELATED LOAN AGREEMENT IDENTIFIED HEREIN; PROVIDING FOR THE ADOPTION OF A RESOLUTION TO DETERMINE AND PROVIDE FOR VARIOUS MATTERS RELATING TO THE AUTHORIZATION, SALE, SECURITY, ISSUANCE, DELIVERY, PAYMENT AND PREPAYMENT OF AND FOR THE NOTE; AUTHORIZING AND DIRECTING THE PAYMENT OF ANY ADDITIONAL FEES, COSTS OR SUMS PROVIDED FOR IN THE LOAN AGREEMENT OR THE NOTE (INCLUDING INTEREST THEREON); PROVIDING THAT THE CITY SHALL USE AND APPLY PROCEEDS OF THE NOTE ONLY AS PERMITTED BY THE LOAN AGREEMENT, THE ADMINISTRATION AND APPLICABLE LAW; PROVIDING FOR THE LEVY OF AD VALOREM TAXES UPON ALL REAL AND PERSONAL PROPERTY WITHIN THE CITY'S CORPORATE LIMITS SUBJECT TO ASSESSMENT FOR UNLIMITED MUNICIPAL TAXATION TO PAY THE PRINCIPAL OF AND INTEREST ON THE NOTE; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE NOTE; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON THE NOTE ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE CITY FOR THAT PURPOSE; 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 AND FOR THE NOTE.

RECITALS

WHEREAS, Sections 9-20A-01 through 9-20A-10, inclusive, of the State Government Article of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Program Statute") provide for financial assistance in the form of low-interest loans through the Jane E. Lawton Conversation Program (the "Program") to various classes of borrowers in order to promote energy conservation, the development and use of renewable energy resources in the State of

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Maryland (the "State"), self-sustaining buildings and emergency generating units that use renewable energy resources and the infrastructure for renewable energy generation in the State; reduce consumption of fossil fuels; improve energy efficiency; and enhance energy-related economic development and stability in business, commercial and industrial sectors; and

WHEREAS, pursuant to the Program, the Maryland Energy Administration (the "Administration") is authorized to make a loan to a Maryland municipal corporation (identified in the Program Statute as a "municipality") of moneys from the Jane E. Lawton Conservation Fund (the "Fund"); and

WHEREAS, the types of "projects" for which loans can be made from the Fund pursuant to the Program include (i) one or more improvements or modifications that enhance the energy efficiency and reduce the operating expenses of a structure or (ii) installation of infrastructure for renewable energy generation by local jurisdictions and nonprofit organizations; and

WHEREAS, loans made under the Program may be used for (i) the costs of implementing projects, including the costs of all necessary technical assessments, studies, surveys, plans and specifications, and start-up, architectural, engineering or other special services; (ii) the costs of procuring necessary technology, equipment, licenses or materials; and (iii) the costs of construction, rehabilitation or modification, including the purchase and installation of any necessary machinery, equipment or furnishings; and

WHEREAS, each borrower is required to make a contribution to a project of a type and in an amount satisfactory to the Administration; and

WHEREAS, loans made under the Program shall be repayable by a borrower from specified revenues; and

WHEREAS, City of Salisbury, a municipal corporation of the State (the "City"), has applied to the Program for a loan from the Fund in order to fund costs of replacing approximately 238 conventional 250-watt bulbs with high efficiency light-emitting diode (LED) fixtures at the public parking garage located at the corners of Market Street and Division Street in the City, and has demonstrated to the Administration's satisfaction that such project is expected to result in anticipated energy savings of approximately \$27,077.00 per year; and

WHEREAS, the Administration has determined that the City's intended project qualifies as a "project" for purposes of the Program and has agreed to make a loan to the City from the Fund in a maximum principal amount not to exceed One Hundred Forty-two Thousand Eight Hundred Dollars (\$142,800.00) for such project; and

WHEREAS, the loan will be evidenced by a loan agreement between the Administration and the City (the "Loan Agreement") and by a promissory note of the City payable to the Administration, and the Administration is requiring the City to pledge its full faith and credit and unlimited taxing power to the repayment of the promissory note; and

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WHEREAS, because the Program Statute does not contain express authority for the City to pledge its full faith and credit and unlimited taxing power to the repayment of the promissory note, the City must comply with applicable general obligation debt creation procedures; and

WHEREAS, 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, 2008 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, notes or other evidences of indebtedness; and

WHEREAS, the City has determined to accept and secure the loan from the Fund for the public purposes described in these Recitals pursuant to the authority of the Program Statute, the Enabling Act and the Charter.

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 Sections 2 - 10 of this Ordinance and not otherwise defined herein shall have the meanings given to such terms in the Recitals.

SECTION 2. BE IT FURTHER ORDAINED that pursuant to the authority of the Program Statute, the Enabling Act and the Charter, the City hereby determines to borrow money and incur indebtedness for the public purpose of achieving energy cost savings by financing, reimbursing or refinancing costs incurred in connection with the replacement of approximately 238 conventional 250-watt bulbs with light-emitting diode (LED) fixtures at the public parking garage located at the corners of Market Street and Division Street in the City, including costs of related purchase, installation, equipping and other activities, all to the extent permitted by the Administration and the Program Statute (including the COMAR provisions relating thereto) (collectively, the "Project"). The total cost of the Project not otherwise payable from other sources is not expected to exceed One Hundred Forty-two Thousand Eight Hundred Dollars (\$142,800.00). As required by the Administration, the City will contribute approximately \$14,280.00 to the completion of the Project (or such lesser amount as may be agreed to by the Administration), which contribution may be made by in-kind services to the extent permitted by the Administration.

SECTION 3. BE IT FURTHER ORDAINED that to evidence the borrowing and indebtedness authorized in Section 2 of this Ordinance, the City, acting pursuant to the authority of the Program Statute, the Enabling Act and the Charter, hereby determines to issue and sell to the Administration, upon the City's full faith and credit, a general obligation indebtedness in the form of a promissory note in a maximum principal amount not to exceed One Hundred Forty-two Thousand Eight Hundred Dollars (\$142,800.00) (the "Note").

SECTION 4. BE IT FURTHER ORDAINED that the proceeds of the Note shall be used and applied by the City exclusively and solely for the public purposes described in Section 2 of this Ordinance, and only as permitted by the Note, the Loan Agreement, the Administration and the

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Program Statute (including the COMAR provisions relating thereto), unless a supplemental ordinance or supplemental resolution, as applicable, is passed by the Council of the City (the "Council") to provide for the use and application of such proceeds for some other proper public purpose authorized by the Program Statute, the Enabling Act or the Charter and permitted by the Administration.

SECTION 5. BE IT FURTHER ORDAINED that as required by the Administration, to the extent not prohibited by applicable law, the City agrees that the Administration may set off against and apply any funds of the City on deposit with, or under the control of, the State, including income tax distributions, to the payment of the City's obligations under the Note and the Loan Agreement, without notice and without resort to any judicial proceeding. Such agreement shall be evidenced and detailed in the Note and the Loan Agreement.

SECTION 6. BE IT FURTHER ORDAINED that pursuant to the authority of the Enabling Act and the Charter, the Council, prior to the issuance, sale and delivery of the Note, shall adopt a resolution (the "Resolution") specifying, prescribing, determining, providing for and approving such matters, details, forms, documents or procedures as may be required by the Program Statute (including the COMAR provisions relating thereto), the Enabling Act, the Charter (including Section SC7-46 thereof) or this Ordinance or as the Council may deem appropriate for the authorization, sale, security, issuance, delivery, payment or prepayment of or for the Note. The Resolution shall set forth, approve or provide for the approval of, among other things, the maximum principal amount of the Note; the principal installment or installments of, or the method of determining the principal installment or installments of, the Note; 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 Note (and which may include a rate of zero percent (0.0%), with a provision for an increase in such rate upon the occurrence of an event of default or other specified event); provisions relating to the prepayment of the Note; the method of sale of the Note; the substantially final forms of the Note and the Loan Agreement; and all other terms and conditions pursuant to which the Note will be issued, sold and delivered.

SECTION 7. BE IT FURTHER ORDAINED that, to the extent not prohibited by applicable law, the City is hereby authorized and directed to pay any fees, costs or other sums provided for in the Note or the Loan Agreement, together with interest thereon, including (without limitation) expenses or administrative costs of the Administration, any amounts payable in connection with the City's agreement to indemnify the Administration under certain circumstances, and any amounts payable in connection with an event of default and a corresponding exercise of remedies. The obligation of the City to pay such amounts shall be provided for in the Note and the Loan Agreement.

SECTION 8. BE IT FURTHER ORDAINED that (a) the City shall levy or cause to be levied, for each and every fiscal year during which the Note 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 payment, when due, of the principal of and interest on the Note payable in each such fiscal year and, in the event the proceeds from the collection of the taxes so levied may prove inadequate for such purposes in any fiscal year, additional taxes shall be levied in the subsequent fiscal year to make up any deficiency.

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(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 the Note as and when the same are 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 the Note. The City hereby covenants with the registered owner of the Note to take any action that may be lawfully appropriate from time to time during the period that the Note remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and 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 the Note from the proceeds of the sale of any other obligations of the City or from any other funds legally available for that purpose. The City may apply to the payment of the principal of or interest on the Note any funds received by it from the State or the United States of America, or any governmental agency or instrumentality, or from any other source, if the funds are granted or paid to the City for the purpose of assisting the City in accomplishing the type of project which the Note is issued to finance or refinance, including (without limitation) to the extent the same are identifiable subject to applicable budgetary procedures, the energy cost savings achieved by the Project, 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.

SECTION 9. 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 10. 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 Section SC2-16 of the Charter, this Ordinance shall not be subject to petition to referendum.

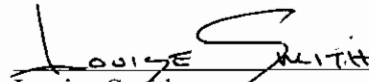
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THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 12<sup>th</sup> day of July, 2010, and thereafter, a statement of the substance of this Ordinance having been published as required by law, was finally passed by the Council as introduced on the 9<sup>th</sup> day of August, 2010.

ATTEST:

  
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Kimberly R. Nichols  
ASSISTANT CITY CLERK

  
\_\_\_\_\_  
Louise Smith  
PRESIDENT, City Council

Approved by me this 10<sup>th</sup> day of  
August, 2010.

  
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James Getton, Jr.  
MAYOR, City of Salisbury

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