

Ordinance No. 2138

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY ENTITLED AN ORDINANCE AMENDING AND 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, AS AMENDED AND SUPPLEMENTED BY ORDINANCE NO. 2068, PASSED BY THE COUNCIL ON DECEMBER 22, 2008, APPROVED BY THE MAYOR ON DECEMBER 24, 2008 AND EFFECTIVE ON DECEMBER 24, 2008, IN ORDER TO AUTHORIZE AND EMPOWER CITY OF SALISBURY TO USE AND APPLY PORTIONS OF THE PROCEEDS OF THE \$4,950,000 CITY OF SALISBURY PUBLIC IMPROVEMENTS BOND OF 2007 ISSUED ON APRIL 12, 2007 (THE "2007 BOND") ORIGINALLY ALLOCATED TO THE PROJECTS IDENTIFIED IN ORDINANCE NOS. 2020 AND 2068 AS ISABELLA STREET-SHORELINE STABILIZATION AND ANIMAL HEALTH BUILDING/SALISBURY ZOO-ENGINEERING TO THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING COSTS RELATING TO ONE OR BOTH OF THE PROJECTS IDENTIFIED HEREIN AS BEAVERDAM DRIVE BRIDGE AND ISABELLA STREET WATER/SEWER/ROAD IMPROVEMENTS; 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, 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 (the "Council") on December 11, 2006, approved by the Mayor of the City (the "Mayor") on December 15, 2006 and effective on December 15, 2006 (the "Original Ordinance"), the City authorized general obligation bonds to be issued from time to time in one or more series in an aggregate principal amount not to exceed Four Million Nine Hundred Fifty Thousand Dollars (\$4,950,000.00) (the "Authorized Bonds") in order to finance, reimburse or refinance the "costs" (as defined in Section 3(b) of the Original Ordinance) of the projects identified in Section 3(b) of the Original Ordinance (herein referred to as the "Authorized Projects" and referred to as the "Projects" in the Original Ordinance); and

WHEREAS, pursuant to Resolution No. 1511, adopted by the Council on April 9, 2007, approved by the Mayor on April 10, 2007 and effective on April 10, 2007 (the "Original Resolution"), the City determined to issue and sell its Public Improvements Bond of 2007 in the principal amount of Four Million Nine Hundred Fifty Thousand Dollars (\$4,950,000) (the "2007 Bond") in order to finance, reimburse or refinance "costs" (as defined in Section 3(b) of the

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Original Ordinance and Section 2(b) of the Original Resolution) of the Authorized Projects; and

WHEREAS, by issuance of the 2007 Bond, the City utilized all of the Authorized Bonds bonding authority provided for in the Original Ordinance, and the terms “costs” and “Projects” as used in the Original Ordinance and the Original Resolution have identical meanings; 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

WHEREAS, Section 3(b) of the Original Ordinance and Section 2(a) 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	<u>30,000.00</u>
	<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, subsequent to the passage of the Original Ordinance and the Original Resolution and the issuance of the 2007 Bond, the City 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 would 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, pursuant to Ordinance No. 2068, passed by the Council on December 22, 2008, approved by the Mayor on December 24, 2008 and effective on December 24, 2008 (“Ordinance No. 2068”), and Resolution No. 1741, adopted by the Council on December 22, 2008, approved by the Mayor on December 24, 2008 and effective on December 24, 2008 (“Resolution No. 1741”), the City respectively amended and supplemented the Original Ordinance and the Original Resolution in order to provide for the application of \$2,760,000.00 of the proceeds of the 2007 Bond (exclusive of investment earnings that may be applied for such purpose) to costs of the 2008 Modified Project; and

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WHEREAS, the term “costs” has identical meanings in the Original Ordinance and in Ordinance No. 2068; and

WHEREAS, the Original Ordinance, as amended and supplemented by Ordinance No. 2068, is herein referred to as the “Existing Ordinance”, and the Original Resolution, as amended and supplemented by Resolution No. 1741, is herein referred to as the “Existing Resolution”; and

WHEREAS, the Existing Ordinance and the Existing Resolution provide that \$2,050,000.00 of the proceeds of the 2007 Bond (exclusive of investment earnings that may be applied for such purpose) are to be applied to costs of a project identified therein as “Isabella Street–Shoreline Stabilization” and \$67,500.00 of the proceeds of the 2007 Bond (exclusive of investment earnings that may be applied for such purpose) are to be applied to costs of a project identified therein as “Animal Health Building/Salisbury Zoo-Engineering”; and

WHEREAS, costs of the projects identified in the Existing Ordinance as “Isabella Street-Shoreline Stabilization” and “Animal Health Building/Salisbury Zoo-Engineering” were less than expected and, accordingly, approximately \$244,932.00 of the proceeds of the 2007 Bond originally allocated to such projects remains unspent; and

WHEREAS, the City desires to allow \$242,432.00 of the proceeds of the 2007 Bond originally allocated to the Isabella Street-Shoreline Stabilization project and \$2,500.00 of the proceeds of the 2007 Bond originally allocated to the Animal Health Building/Salisbury Zoo-Engineering project to be applied for payment of costs of one or both of the projects identified herein as “Beaverdam Drive Bridge”, which involves the repair and/or replacement of the Beaverdam Drive Bridge and related activities, and “Isabella Street Water/Sewer/Road Improvements”, which involves replacement of water mains and sewer laterals in the Isabella Street area, together with road repaving and related activities (collectively, the “2011 Modified Projects”); and

WHEREAS, accordingly, the City desires to revise the description of the projects as set forth in the Existing Ordinance in order to allow certain proceeds of the 2007 Bond to be applied to costs of the 2011 Modified Projects.

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 the Sections of this Ordinance that are not defined therein shall have the meanings given to such terms in the Recitals.

SECTION 2. BE IT FURTHER ORDAINED that (a) pursuant to the authority of the Enabling Act, the Charter and the Original Ordinance, Section 3(b) of the Original Ordinance and

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Section 1(a) of Ordinance No. 2068 are hereby deleted in their respective entireties and inserted in place thereof shall be the following:

“(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	\$1,807,568.00
2	Water/Sewer/Stormwater Management	2,760,000.00
3	Animal Health Building/Salisbury Zoo-Engineering	65,000.00
4	Fire Station #2 Renovation – Engineering	42,500.00
5	Costs of Issuance	30,000.00
6	Beaverdam Drive Bridge and/or Isabella Street Water/Sewer/Road Improvements	244,932.00
TOTAL		\$4,950,000.00

The projects identified in items 1-6 above are collectively referred to herein as the “Projects”. With respect to the two Projects identified in item 6 above, the City, without notice to or the consent of the holders of the Bonds (or the holders of any of the BANs, as applicable), may determine in compliance with applicable budgetary procedures or applicable law how much of the maximum principal amount of the Bonds (and of any of the BANs, as applicable) allocated to the two Projects identified in item 6 above shall be spent on each such Project, which determination may include a decision not to expend any proceeds of the Bonds (or of any of the BANs, as applicable) on one of such Projects. In addition, 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

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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. Further, it is the intention of the City that proceeds of the Bonds (or of any of the BANs, as applicable) may be spent on any applicable costs (as defined above) relating to the Projects identified in items 1-6 above.”

(b) By undertaking the amendments to Section 3(b) of the Original Ordinance and Section 1(a) of Ordinance No. 2068 provided for in subsection (a) of this Section 2, the City is (i) reducing the maximum principal amount of the 2007 Bond allocated to the projects identified as numbers 1 and 3 in Section 3(b) of the Original Ordinance and Section 1(a) of Ordinance No. 2068 and (ii) adding the projects identified as number 6 in the chart set forth in subsection (a) above as projects to the costs of which proceeds of the 2007 Bond may be applied. By undertaking the amendments provided for in subsection (a) of this Section 2, the City is superseding the amendments to Section 3(b) of the Original Ordinance provided for in Section 1(a) of Ordinance No. 2068, without undoing the intended effect of Section 1(a) of Ordinance No. 2068 with respect to the project identified therein as “Water/Sewer/Stormwater Management”.

(c) The projects identified in the chart set forth in subsection (a) above are collectively referred to herein as the “2011 Revised Projects”. From and after the effective date of this Ordinance, all references to the Projects in the Existing Ordinance shall be deemed to be references to the 2011 Revised Projects, as identified in this Ordinance. From and after the effective date of this Ordinance, the provisions of this Section 2 shall supersede the provisions of Section 3(b) of the Original Ordinance and Section 1(a) of Ordinance No. 2068 with respect to the application of proceeds of the 2007 Bond.

(d) Notwithstanding the foregoing provisions of this Section 2, proceeds of the 2007 Bond may not be applied to costs of the 2011 Modified Projects unless and until the City adopts a resolution making corresponding amendments to the provisions of Section 2(a) of the Original Resolution, as amended and supplemented by Resolution No. 1741, to allow proceeds of the 2007 Bond to be applied to costs of the 2011 Modified Projects.

SECTION 3. BE IT FURTHER ORDAINED that from and after the effective date of this Ordinance, the Existing Ordinance shall be deemed amended and supplemented as provided herein and all other terms and provisions of the Existing Ordinance shall remain in full force and effect.

SECTION 4. 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 5. 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(a) of the Original

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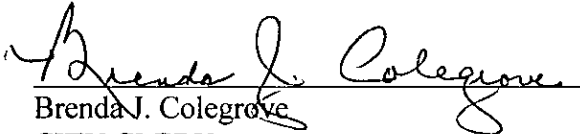
Resolution, as amended and supplemented by Resolution No. 1741, to allow proceeds of the 2007 Bond to be applied to costs of the 2011 Modified Projects, the City may not apply proceeds of the 2007 Bond for such purpose, notwithstanding the effective date of this Ordinance. Pursuant to Charter Section SC2-16, this Ordinance shall not be subject to petition to referendum.

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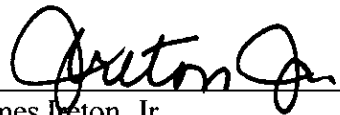
THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 14th day of February, 2011, and thereafter, a statement of the substance of this Ordinance having been published as required by law, was finally passed by the Council as introduced on the 28th day of February, 2011.

ATTEST:


Brenda J. Colegrove
CITY CLERK


Louise Smith
PRESIDENT, City Council

Approved by me this 1st day of
March, 2011.


James Heton, Jr.
MAYOR, City of Salisbury