

Ordinance No. 2139

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY ENTITLED AN ORDINANCE AMENDING AND SUPPLEMENTING ORDINANCE NO. 2044, PASSED BY THE COUNCIL ON DECEMBER 17, 2007, APPROVED BY THE MAYOR ON DECEMBER 19, 2007 AND EFFECTIVE ON DECEMBER 19, 2007, AS AMENDED AND SUPPLEMENTED BY ORDINANCE NO. 2069, PASSED BY THE COUNCIL ON JANUARY 12, 2009, APPROVED BY THE MAYOR ON JANUARY 13, 2009 AND EFFECTIVE ON JANUARY 13, 2009, IN ORDER TO AUTHORIZE AND EMPOWER CITY OF SALISBURY TO USE AND APPLY A PORTION OF THE PROCEEDS OF THE \$3,605,000 CITY OF SALISBURY PUBLIC IMPROVEMENTS BOND OF 2008 ISSUED ON JANUARY 22, 2008 (THE "2008 BOND") FOR THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING COSTS RELATING TO THE REPAIR AND/OR REPLACEMENT OF THE BEAVERDAM DRIVE BRIDGE; 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 2008 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. 2044, adopted by the Council of the City (the "Council") on December 17, 2007, approved by the Mayor of the City (the "Mayor") on December 19, 2007 and effective on December 19, 2007 (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 One Hundred Twenty-nine Thousand Dollars (\$4,129,000) (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. 1620, adopted by the Council on January 14, 2008, approved by the Mayor on January 15, 2008 and effective on January 15, 2008 (the "Original Resolution"), the City determined to borrow money for the public purpose of financing or reimbursing "costs" (as defined in Section 2(b) of the Original Resolution) of the Authorized Projects specified in Section 2(a) of the Original Resolution (which included all of the Authorized Projects other than the one identified in the Original Ordinance as "Salisbury Zoo – Animal Health Building Construction" plus a portion of the authorized "Costs of Issuance"), and to evidence this borrowing by the issuance and sale of its Public Improvements Bond of 2008 in

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the principal amount of Three Million Six Hundred Five Thousand Dollars (\$3,605,000) (the "2008 Bond"); and

WHEREAS, pursuant to the Enabling Act, the Charter, the Original Ordinance and the Original Resolution, the City issued and delivered the 2008 Bond to SunTrust Equipment Finance & Leasing Corporation on January 22, 2008; and

WHEREAS, Section 2 of the Original Resolution provides that proceeds of the 2008 Bond shall be appropriated and allocated to the specified Authorized Projects identified therein, subject to the further provisions of such Section 2 (which projects are referred to as the "Projects" in the Original Resolution); and

WHEREAS, subsequent to the passage of the Original Ordinance and the Original Resolution and the issuance of the 2008 Bond, the City determined that instead of applying \$500,000.00 of the proceeds of the 2008 Bond (exclusive of investment earnings that may be applied for such purpose) to the project identified as "Elevated Water Tower/North – Engineering" in both the Original Ordinance and the Original Resolution, the City would apply such 2008 Bond proceeds to engineering costs for water storage that may involve a water tank, a water tower or some other type of improvement for water storage and that may be located in a different geographic area of the City other than the northern area and, therefore, determined to modify the description of such project and to remove the geographic reference to such project as contained in the Original Ordinance and the Original Resolution (the "2009 Modified Project"); and

WHEREAS, pursuant to Ordinance No. 2069, passed by the Council on January 12, 2009, approved by the Mayor on January 13, 2009 and effective on January 13, 2009 ("Ordinance No. 2069"), and Resolution No. 1750, adopted by the Council on January 12, 2009, approved by the Mayor on January 13, 2009 and effective on January 13, 2009 ("Resolution No. 1750"), the City respectively amended and supplemented the Original Ordinance and the Original Resolution in order to provide for the application of \$500,000.00 of the proceeds of the 2008 Bond (exclusive of investment earnings that may be applied for such purpose) to costs of the 2009 Modified Project; and

WHEREAS, the term "costs" has identical meanings as used in the Original Ordinance and Ordinance No. 2069; and

WHEREAS, the Original Ordinance, as amended and supplemented by Ordinance No. 2069, is herein referred to as the "Existing Ordinance", and the Original Resolution, as amended and supplemented by Resolution No. 1750, is herein referred to as the "Existing Resolution"; and

WHEREAS, the Existing Ordinance and the Existing Resolution provide that \$322,000.00 of the proceeds of the 2008 Bond (exclusive of investment earnings that may be applied for such purpose) are to be applied to costs of a project identified therein as "Beaverdam Drive Bridge – Repairs"; and

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WHEREAS, by issuance of the 2008 Bond, the City did not exhaust all of the bonding authority provided for in the Original Ordinance, but the Original Resolution provides that the \$322,000.00 maximum principal amount of 2008 Bond proceeds authorized to be applied to the Beaverdam Drive Bridge – Repair project identified in the Original Ordinance (exclusive of investment earnings that may be applied for such purpose) are allocated to the 2008 Bond; and

WHEREAS, while the City originally intended to repair Beaverdam Drive Bridge, it has subsequently determined that Beaverdam Drive Bridge will likely need to be replaced, and the City desires to allow the use of proceeds of the 2008 Bond for costs of any combination of repair and/or replacement of the Beaverdam Drive Bridge and related activities (the “2011 Modified Project”); and

WHEREAS, accordingly, the City desires to revise the description of the projects as set forth in the Existing Ordinance in order to allow proceeds of the 2008 Bond to be applied to costs of the 2011 Modified Project.

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 Section 1(a) of Ordinance No. 2069 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:

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	<u>Project Description</u>	<u>Maximum Principal Amount</u>
1.	Waverly Drive Storm Sewer Project	\$ 1,300,000.00
2.	Fire Station #2 – Renovations	90,000.00
3.	Fire Station #16 - Truck Replacement	950,000.00
4.	Riverwalk – Engineering for Repairs Along Wicomico River East Prong	100,000.00
5.	Beaverdam Drive Bridge	322,000.00
6.	Mill Street Bridge – Repairs	327,000.00
7.	Salisbury Zoo – Animal Health Building Construction	500,000.00
8.	Water Storage – Engineering	500,000.00
9.	Costs of Issuance	40,000.00
	Total	<u>\$ 4,129,000.00</u>

The projects identified in items 1-9 above are collectively referred to herein as the “Projects”. 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 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 1-9 above.”

(b) By undertaking the amendments to Section 3(b) of the Original Ordinance and Section 1(a) of Ordinance No. 2069 provided for in subsection (a) of this Section 2, the City is revising the description of the project identified as number 5 in Section 3(b) of the Original Ordinance and Section 1(a) of Ordinance No. 2069 to allow for application of 2008 Bond proceeds to costs of the repair and/or replacement of the Beaverdam Drive Bridge and any other related activities. 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. 2069, without undoing the intended effect of Section 1(a) of Ordinance No. 2069 with respect to the project identified therein as “Water Storage – Engineering”.

(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

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Original Ordinance and Section 1(a) of Ordinance No. 2069 with respect to the application of proceeds of the Authorized Bonds.

(d) Notwithstanding the foregoing provisions of this Section 2, proceeds of the 2008 Bond may not be applied to costs of the 2011 Modified Project 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. 1750, to allow proceeds of the 2008 Bond to be applied to costs of the 2011 Modified Project.

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.

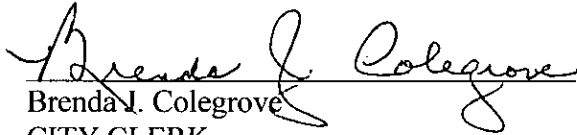
SECTION 4. BE IT FURTHER ORDAINED that the title of this Ordinance shall be deemed to be, and is, a fair statement of the substance of this Ordinance for publication and all other purposes.

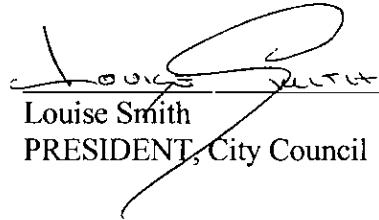
SECTION 5. BE IT FURTHER ORDAINED that this Ordinance shall become effective following approval by the Mayor or subsequent passage by the Council following the Mayor's veto in accordance with the provision of Section SC2-12 of the Charter; provided, however, in the event the City fails to adopt a resolution making corresponding amendments to the provisions of Section 2(a) of the Original Resolution, as amended and supplemented by Resolution No. 1750, to allow proceeds of the 2008 Bond to be applied to costs of the 2011 Modified Project, the City may not apply proceeds of the 2008 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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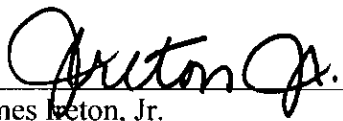
THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 14th day of February, 2011, and thereafter, a statement of the substance of this Ordinance having been published as required by law, was finally passed by the Council as introduced on the 28th day 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