

AS AMENDED ON AUGUST 1, 2013
Ordinance No. 2259

AN ORDINANCE 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, AS FURTHER AMENDED AND SUPPLEMENTED BY ORDINANCE NO. 2139, PASSED BY THE COUNCIL ON FEBRUARY 28, 2011, APPROVED BY THE MAYOR ON MARCH 1, 2011, AND EFFECTIVE ON MARCH 1, 2011, 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") (I) ORIGINALLY ALLOCATED TO A PROJECT IDENTIFIED THEREIN AS "WAVERLY DRIVE STORM SEWER PROJECT" TO A PROJECT IDENTIFIED HEREIN AS "SALISBURY ZOO - ANIMAL HEALTH BUILDING CONSTRUCTION" AND (II) TO COSTS OF CONSTRUCTION AS WELL AS ENGINEERING OF REPAIRS OF THE RIVERWALK ALONG THE WICOMICO RIVER EAST PRONG, ALL AS FURTHER DESCRIBED HEREIN; 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 the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, and Ordinance No. 2044, passed 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"~~ "Ordinance No. 2044"), 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 Ordinance No. 2044) of the projects identified in Section 3(b) of Ordinance No. 2044 (herein referred to as the "Authorized Projects" and referred to as the "Projects" in Ordinance No. 2044); and

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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"~~ "Resolution No. 1620"), the City determined to borrow money for the public purpose of financing or reimbursing "costs" (as defined in Section 2(b) of Resolution No. 1620) of the Authorized Projects specified in Section 2(a) of Resolution No. 1620 (which included all of the Authorized Projects other than the one identified in Ordinance No. 2044 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 the principal amount of Three Million Six Hundred Five Thousand Dollars (\$3,605,000) (the "2008 Bond"); and

WHEREAS, pursuant to the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, Ordinance No. 2044 and Resolution No. 1620, the City issued and delivered the 2008 Bond to SunTrust Equipment Finance & Leasing Corporation on January 22, 2008; and

WHEREAS, Section 2 of Resolution No. 1620 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 Resolution No. 1620); and

WHEREAS, subsequent to the passage of Ordinance No. 2044 and Resolution No. 1620 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 Ordinance No. 2044 and Resolution No. 1620, 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 Ordinance No. 2044 and Resolution No. 1620 (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 Ordinance No. 2044 and Resolution No. 1620 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

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WHEREAS, by issuance of the 2008 Bond, the City did not exhaust all of the bonding authority provided for in Ordinance No. 2044, but Resolution No. 1620 provided 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 Ordinance No. 2044 (exclusive of investment earnings that may be applied for such purpose) were allocated to the 2008 Bond; and

WHEREAS, while the City originally intended to repair Beaverdam Drive Bridge, in 2011 it determined that Beaverdam Drive Bridge would likely need to be replaced, and the City determined 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, pursuant to Ordinance No. 2139, passed by the Council on February 28, 2011, approved by the Mayor on March 1, 2011 and effective on March 1, 2011 (“Ordinance No. 2139”), and Resolution No. 2034, adopted by the Council on February 28, 2011, approved by the Mayor on March 1, 2011 and effective on March 1, 2011 (“Resolution No. 2034”), the City respectively amended Ordinance No. 2044, as amended and supplemented by Ordinance No. 2069, and Resolution No. 1620, as amended and supplemented by Resolution No. 1750, in order to provide for the application of proceeds of the 2008 Bond to the 2011 Modified Project; and

WHEREAS, the term “costs” has identical meanings as used in Ordinance No. 2044, Ordinance No. 2069 and Ordinance No. 2139; and

WHEREAS, Ordinance No. 2044, as amended and supplemented by Ordinance No. 2069 and Ordinance No. 2139, is herein referred to as the “Existing Ordinance”, and Resolution No. 1620, as amended and supplemented by Resolution No. 1750 and Resolution No. 2034, is herein referred to as the “Existing Resolution”; and

WHEREAS, Ordinance No. 2044 provides that not to exceed \$500,000.00 of proceeds of the bonds authorized thereby may be applied to costs of a project identified therein as “Salisbury Zoo – Animal Health Building Construction”, and as noted above, by issuance of the 2008 Bond, the City did not exhaust all of the bonding authority provided for in Ordinance No. 2044; and

WHEREAS, pursuant to the Enabling Act, Sections SC7-45 and SC7-46 of the Charter, Ordinance No. 2044, 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 (“Ordinance No. 2071”) and Resolution No. 1850, adopted by the Council on October 26, 2009, approved by the Mayor on October 26, 2009, and effective on October 26, 2009 (“Resolution No. 1850”), the City on November 6, 2009 issued and delivered its \$2,600,000 City of Salisbury Public Improvements Bond of 2009 (the “2009 Bond”), up to \$500,000.00 of the proceeds of which (exclusive of

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investment earnings that may be applied for such purpose) were allocated to the project identified in Ordinance No. 2044 as “Salisbury Zoo – Animal Health Building Construction”; and

WHEREAS, pursuant to Ordinance No. 2093, passed by the Council on December 21, 2009, approved by the Mayor on December 24, 2009 and effective on December 24, 2009, and Resolution No. 1874, adopted by the Council on December 21, 2009, approved by the Mayor on December 24, 2009 and effective on December 24, 2009, the City amended and supplemented Ordinance No. 2071 and Resolution No. 1850, respectively, to expand the scope of one of the projects to which proceeds of the 2009 Bond were allocated, but did not change the allocation of not to exceed \$500,000.00 of the proceeds of the 2009 Bond (exclusive of investment earnings that may be applied for such purpose) to the project identified in Ordinance No. 2044 and Resolution No. 1850 as “Salisbury Zoo – Animal Health Building Construction”; and

WHEREAS, the City has determined that costs of the project described in Ordinance No. 2044 as “Salisbury Zoo – Animal Health Building Construction” are more than authorized to be financed by such Ordinance; and

WHEREAS, by issuance of the 2009 Bond, the City exhausted the bonding authority provided in Ordinance No. 2044 for the project described therein as “Salisbury Zoo – Animal Health Building Construction”; and

WHEREAS, the Existing Ordinance and the Existing Resolution provide that up to \$1,300,000.00 of the proceeds of the 2008 Bond may be applied to costs of the project identified therein as “Waverly Drive Storm Sewer Project” (exclusive of investment earnings that may be applied for such purpose), and the City has determined that other sources of funding are available for such project and would like to redirect up to \$539,000.00 of the proceeds of the 2008 Bond allocated to the “Waverly Drive Storm Sewer Project” (exclusive of investment earnings that may be applied for such purpose) to the project identified in the Existing Ordinance as “Salisbury Zoo – Animal Health Building Construction” (~~the “2013 Modified Project”~~), *in addition to* proceeds of the 2009 Bond authorized to be applied to such project as described in these Recitals; and

WHEREAS, the Existing Ordinance and the Existing Resolution provide that up to \$100,000.00 of proceeds of the 2008 Bond may be applied to costs of the project identified therein as “Riverwalk – Engineering for Repairs Along Wicomico River East Prong”, and the City would like to spend proceeds of the 2008 Bond for construction costs of such project; and

WHEREAS, the redirection of up to \$539,000.00 of proceeds of the 2008 Bond to the “Salisbury Zoo – Animal Health Building Construction” project (exclusive of investment earnings that may be applied for such purpose) as described in the second preceding WHEREAS clause, and the expansion of the project described in the preceding WHEREAS clause to include construction costs, are collectively referred to herein as the “2013 Modified Project”; and

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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 2013 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, Sections SC7-45 and SC7-46 of the Charter and Ordinance No. 2044, Section 3(b) of Ordinance No. 2044, Section 1(a) of Ordinance No. 2069, and Section 2(a) of Ordinance No. 2139 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 <u>and</u> Salisbury Zoo – Animal Health Building Construction	\$ 1,300,000.00
2.	Fire Station #2 – Renovations	90,000.00
3.	Fire Station #16 - Truck Replacement	950,000.00
4.	Riverwalk – Engineering <u>and</u> <u>Construction</u> 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”. With respect to the project identified in item 1 above, it is the City’s current intention that the total Bond (or BAN) funds to be appropriated or applied to the costs of the project identified in such item 1 as “Waverly Drive Storm Sewer Project” shall not exceed \$761,000.00 and the total Bond (or BAN) funds to be appropriated or applied to the costs of the project identified in such item 1 as “Salisbury Zoo – Animal Health Building Construction” shall not exceed \$539,000.00 (exclusive of investment earnings that may be applied for such purposes). 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 Ordinance No. 2044, Section 1(a) of Ordinance No. 2069 (which amends Section 3(b) of Ordinance No. 2044) and Section 2(a) of Ordinance No. 2139 (which further amends Section 3(b) of Ordinance No. 2044, as amended by Ordinance No. 2069) provided for in subsection (a) of this Section 2, the City is revising the description of the project identified as number 1 in Section 3(b) of Ordinance No. 2044, Section

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1(a) of Ordinance No. 2069 and Section 2(a) of Ordinance No. 2139 to allow for application of 2008 Bond proceeds to costs of the project identified therein as "Salisbury Zoo – Animal Health Building Construction" in the amount of up to \$539,000.00 (exclusive of investment earnings that may be applied for such purpose); to the extent the City does not apply up to \$539,000.00 of the proceeds of the 2008 Bond to the project identified in item 1 of Section 2(a) above as "Salisbury Zoo – Animal Health Building Construction" (exclusive of investment earnings that may be applied for such purpose), such proceeds shall be applied to the project identified in item 4 of Section 2(a) above as ~~"Waverly Drive Storm Sewer Project"~~ "Riverwalk – Engineering and Construction for Repairs Along Wicomico River East Prong". By undertaking the amendments provided for in subsection (a) of this Section 2, the City is superseding the amendments to Section 3(b) of Ordinance No. 2044 provided for in Section 1(a) of Ordinance No. 2069 and Section 2(a) of Ordinance No. 2139, without undoing the intended effect of Section 1(a) of Ordinance No. 2069 and Section 2(a) of Ordinance No. 2139 with respect to the projects identified therein, respectively, as "Water Storage – Engineering" and "Beaverdam Drive Bridge". Furthermore, by undertaking the amendments provided for in subsection (a) of this Section 2, the City is *not* changing the allocation of proceeds of the Authorized Bonds in the Existing Ordinance to the project identified in item 7 of subsection (a) above as "Salisbury Zoo – Animal Health Building Construction", which were appropriated for the purposes of the 2009 Bond as described in the Recitals to this Ordinance.

(c) The projects identified in the chart set forth in subsection (a) above are collectively referred to herein as the "2013 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 2013 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 Ordinance No. 2044, Section 1(a) of Ordinance No. 2069 and Section 2(a) of Ordinance No. 2139 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 2013 Modified Project unless and until the City adopts a resolution making corresponding amendments to the provisions of Section 2(a) of Resolution No. 1620, as amended and supplemented by Resolution No. 1750, and as further amended and supplemented by Resolution No. 2034, to allow proceeds of the 2008 Bond to be applied to costs of the 2013 Modified Project.

(e) Notwithstanding the foregoing provisions of this Section 2, proceeds of the 2008 Bond shall be applied to costs of the project identified in item 1 of subsection (a) above as "Salisbury Zoo – Animal Health Building Construction" in the amount of up to \$539,000.00 (exclusive of investment earnings that may be applied for such purpose) only after other sources of funding for such project are first applied for such purpose.

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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 Resolution No. 1620, as amended and supplemented by Resolution No. 1750, and as further amended and supplemented by Resolution No. 2034, to allow proceeds of the 2008 Bond to be applied to costs of the 2013 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.

THIS ORDINANCE was introduced and read at a meeting of the Council of the City of Salisbury held on the 22nd day of July, 2013, 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] ✓ [as amended] [CHECK APPLICABLE LINE] on the 1~~st~~ day of August, 2013.

ATTEST:

Kimberly R. Nichols
Kimberly R. Nichols, City Clerk

Jacob R. Day
Jacob R. Day, City Council President

APPROVED BY ME THIS 5th DAY OF August, 2013

James Ireton, Jr.
James Ireton, Jr., Mayor

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