

Ordinance No. 2044

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SALISBURY TO AUTHORIZE AND EMPOWER CITY OF SALISBURY TO ISSUE AND SELL FROM TIME TO TIME, UPON ITS FULL FAITH AND CREDIT, GENERAL OBLIGATION BONDS IN ONE OR MORE SERIES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THREE MILLION TWO HUNDRED FORTY-FOUR THOUSAND FIVE HUNDRED DOLLARS (\$3,244,500.00), THE PROCEEDS OF THE SALE THEREOF TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING COSTS OF THE PUBLIC PURPOSE PROJECTS IDENTIFIED HEREIN AS: GOVERNMENT OFFICE BUILDING – BOILER REPLACEMENT, GOVERNMENT OFFICE BUILDING – CHILLER REPLACEMENT, FIRE STATION #2 – RENOVATIONS, FIRE STATION #16 – TRUCK REPLACEMENT, RIVERWALK – ENGINEERING FOR REPAIRS ALONG WICOMICO RIVER EAST PRONG, BEAVERDAM DRIVE BRIDGE – REPAIRS, MILL STREET BRIDGE – REPAIRS, SALISBURY ZOO – ANIMAL HEALTH BUILDING CONSTRUCTION, ELEVATED WATER TOWN/NORTH – ENGINEERING, ENERGY CONSERVATION PROJECTS – VARIOUS DEPARTMENTS, AND SPRINGFIELD CIRCLE – ENGINEERING OF STORM DRAIN UPGRADES, TOGETHER WITH RELATED COSTS AND COSTS OF ISSUANCE; SPECIFYING THE MAXIMUM PRINCIPAL AMOUNT OF THE BONDS OR BOND ANTICIPATION NOTES PROVIDED FOR HEREIN TO BE ALLOCATED TO EACH SUCH COMPONENT OF THE PROJECTS, SUBJECT TO REALLOCATION BY THE CITY IN ACCORDANCE WITH APPLICABLE BUDGETARY PROCEDURES OR LAW; DETERMINING THAT THE BONDS OF EACH SERIES BE SOLD BY PRIVATE (NEGOTIATED) SALE WITHOUT ADVERTISEMENT OR SOLICITATION OF COMPETITIVE BIDS UNLESS A SUBSEQUENT RESOLUTION OR RESOLUTIONS OF THE COUNCIL PROVIDES FOR THE SOLICITATION OF COMPETITIVE BIDS AT PUBLIC SALE AFTER PUBLICATION OR DISSEMINATION OF NOTICE OF SALE OF ANY SERIES OF THE BONDS; AUTHORIZING THE ADOPTION OF A RESOLUTION OR RESOLUTIONS OF THE COUNCIL TO DETERMINE, APPROVE OR PROVIDE FOR VARIOUS MATTERS RELATING TO THE AUTHORIZATION, SALE, SECURITY, ISSUANCE, DELIVERY, PAYMENT AND REDEMPTION OF AND FOR EACH SERIES OF THE BONDS; AUTHORIZING THE COUNCIL TO PROVIDE BY RESOLUTION FOR THE ISSUANCE AND SALE FROM TIME TO TIME OF ONE OR MORE SERIES OF GENERAL OBLIGATION BOND ANTICIPATION NOTES IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED THREE MILLION TWO HUNDRED FORTY-FOUR THOUSAND FIVE HUNDRED DOLLARS (\$3,244,500.00), PRIOR TO AND IN ANTICIPATION OF THE ISSUANCE OF ANY OF THE BONDS AUTHORIZED HEREBY; AUTHORIZING THE COUNCIL TO PROVIDE BY RESOLUTION FOR THE ISSUANCE AND SALE FROM TIME TO TIME OF ONE OR MORE SERIES OF GENERAL OBLIGATION BONDS IN ORDER TO REFUND ANY OF THE BONDS ISSUED PURSUANT TO THE AUTHORITY OF THIS ORDINANCE (INCLUDING PAYING RELATED COSTS OF ISSUANCE AND INTEREST ON SUCH REFUNDING BONDS), PROVIDED THAT, THE AGGREGATE PRINCIPAL AMOUNT OF ANY SUCH ISSUE OF REFUNDING BONDS SHALL NOT EXCEED ONE HUNDRED THIRTY PERCENT (130%) OF THE AGGREGATE PRINCIPAL AMOUNT OF THE BONDS REFUNDED THEREFROM; PROVIDING FOR THE LEVY AND COLLECTION OF AD VALOREM TAXES SUFFICIENT FOR, AND PLEDGING THE FULL FAITH AND

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CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO, THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON EACH SERIES OF THE BONDS, BOND ANTICIPATION NOTES OR REFUNDING BONDS AUTHORIZED HEREBY; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON EACH SERIES OF SUCH OBLIGATIONS ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE CITY FOR SUCH PURPOSE; AUTHORIZING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE SALE AND DELIVERY OF THE BONDS, BOND ANTICIPATION NOTES AND REFUNDING BONDS PROVIDED FOR HEREBY; 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 THE BONDS, BOND ANTICIPATION NOTES AND REFUNDING BONDS PROVIDED FOR HEREBY.

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 6, 1990 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, the City has determined to undertake the public purpose projects identified in Section 3 of this Ordinance; and

WHEREAS, the City has determined to authorize the issuance from time to time of one or more series of its general obligation bonds in order to finance, reimburse or refinance all or a portion of the costs of any of the public purpose projects identified in Section 3 of this Ordinance and related costs of issuance and capitalized interest; and

WHEREAS, the City has determined that each series of the bonds authorized hereby shall be sold by private (negotiated) sale, unless a subsequent resolution or resolutions of the Council provides for the sale of any series of the bonds by solicitation of competitive bids at public sale; and

WHEREAS, prior to issuing any of the bonds authorized hereby, the City may need to obtain interim financing in order to finance or reimburse applicable project costs on a timely basis through the issuance from time to time of general obligation bond anticipation notes in one or more series pursuant to the authority of Section 12 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the “Bond Anticipation Note Enabling Act”); and

WHEREAS, subsequent to the issuance of any bonds provided for herein, the City may desire to refund or advance refund all or a portion of such bonds through the issuance from time to

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time of one or more series of its general obligation refunding bonds pursuant to the authority of Section 24 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Refunding Act"); and

WHEREAS, the City has determined to pledge its full faith and credit and unlimited taxing power to the prompt payment of debt service on any bonds, bond anticipation notes or refunding bonds authorized hereby; provided that, a portion of the debt service on any such obligations allocable to certain of the projects identified herein shall be payable in the first instance from the sources described in Section 10 of this Ordinance, unless otherwise provided by the Council in a subsequent resolution; and

WHEREAS, the City has determined to issue any bonds, bond anticipation notes or refunding bonds authorized hereby in accordance with the terms and conditions provided for in a resolution or resolutions to be adopted by the Council pursuant to this Ordinance.

SECTION 1. NOW, THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND that the recitals to this Ordinance are deemed a substantive part of this Ordinance and incorporated by reference herein.

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 the costs of any of the Projects identified in Section 3(b) hereof, including paying costs of issuance and/or capitalized interest.

SECTION 3. BE IT FURTHER ORDAINED that (a) to evidence the borrowing and indebtedness authorized in Section 2 of this Ordinance, the City, acting pursuant to the authority of the Enabling Act and the Charter, hereby determines to issue and sell from time to time, in one or more series, upon its full faith and credit, its general obligation bonds in an aggregate principal amount not to exceed Three Million Two Hundred Forty-four Thousand Five Hundred Dollars (\$3,244,500.00) (collectively, the "Bonds"). Any series of the Bonds may be issued as one or more general obligation installment bonds.

(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. Government Office Building – Boiler Replacement	\$ 42,500.00
2. Government Office Building – Chiller Replacement	10,000.00
3. Fire Station #2 - Renovations	375,000.00
4. Fire Station #16 - Truck Replacement	950,000.00
5. Riverwalk – Engineering for Repairs Along Wicomico River East Prong	100,000.00
6. Beaverdam Drive Bridge - Repairs	322,000.00
7. Mill Street Bridge - Repairs	327,000.00
8. Salisbury Zoo – Animal Health Building Construction	500,000.00
9. Elevated Water Tower/North - Engineering	500,000.00
10. Energy Conservation Projects – Various Departments	56,000.00
11. Springfield Circle – Engineering of Storm Drain Upgrades	22,000.00
12. Costs of Issuance	<u>40,000.00</u>
Total	<u>\$ 3,244,500.00</u>

The projects identified in items 1-12 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.

(c) In the event the City issues any series of BANs pursuant to Section 7 of this Ordinance, proceeds of the Bonds of any series in anticipation of which such BANs were issued may also be applied to prepay or pay principal, premium and/or interest on such series of the BANs in accordance with the Bond Anticipation Note Enabling Act.

SECTION 4. BE IT FURTHER ORDAINED that pursuant to the authority of the Enabling Act and the Charter, the City hereby determines that it is in the public interest of the City to sell each series of the Bonds by private (negotiated) sale without advertisement or solicitation of competitive bids due to the ability to time the market, negotiate flexible terms and achieve a beneficial interest rate or rates, unless the Resolution provides for the solicitation of competitive bids at public sale after publication or dissemination of the notice of sale.

SECTION 5. BE IT FURTHER ORDAINED that the proceeds of the Bonds shall be used and applied by the City exclusively and solely for the public purposes described in Section 3 of this Ordinance, unless a supplemental ordinance is enacted by the Council to provide for the use and application of such proceeds for some other proper public purpose authorized by the Enabling Act or the Charter.

SECTION 6. BE IT FURTHER ORDAINED that pursuant to the authority of this Ordinance, the Council, prior to the issuance, sale and delivery of each series of the Bonds, shall

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adopt a resolution or resolutions (in each such case and, collectively, the “Resolution”) specifying, prescribing, determining, providing for and approving such matters, details, forms (including, without limitation, the complete forms of the Bonds of such series and the bond purchase agreement or any similar agreement with the purchaser or purchasers of such series of Bonds, if deemed necessary or desirable, or if the bonds are sold by solicitation of competitive bids at public sale, the form of notice of sale of such series of Bonds), documents or procedures as may be required by the Enabling Act, the Charter or this Ordinance or as the Council may deem appropriate for the authorization, sale, security, issuance, delivery, payment or prepayment of or for such series of the Bonds. The Resolution shall set forth, approve or provide for the approval of, among other things, the designation of the Bonds of such series; the date of issue of the Bonds of such series; the aggregate principal amount of the Bonds of such series; the maturities of or principal installments payable on the Bonds of such series; 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 Bonds of such series; provisions relating to the prepayment of the Bonds of such series; the components of the Projects on which the proceeds of the Bonds of such series shall be expended; the procedure for the sale on a private (negotiated) basis of the Bonds of such series, unless the Resolution shall provide for the solicitation of competitive bids at public sale of the Bonds of such series, in which case the Resolution shall set forth the procedures for such sale and the award of the bonds to the successful bidder; and all other terms and conditions pursuant to which the Bonds of such series will be issued, sold and delivered, including, without limitation, any determinations to be made by resolution as required by Charter Section SC7-46.A. Among other matters, the Council, pursuant to the Resolution, may authorize, approve or otherwise provide for (i) any commitment fee or similar fee and any other costs payable in connection with such series of the Bonds, (ii) the obtaining of credit enhancement for any series of the Bonds (and the execution and delivery of any agreements or documents relating thereto), and (iii) any other agreements necessary to enhance the marketability of or as security for any series of the Bonds, including (without limitation) any continuing disclosure undertaking required to satisfy the requirements of Securities and Exchange Commission Rule 15c2-12. Any Resolution may determine the matters identified in this Section 6 for more than one series of the Bonds.

SECTION 7. BE IT FURTHER ORDAINED that pursuant to the authority of the Bond Anticipation Note Enabling Act and the Charter, the City is hereby authorized and empowered to issue and sell, upon its full faith and credit, its general obligation bond anticipation notes in one or more series from time to time in an aggregate principal amount not to exceed Three Million Two Hundred Forty-four Thousand Five Hundred Dollars (\$3,244,500.00) (collectively, the “BANs”), prior to and in anticipation of the sale of any series of the Bonds, for the public purpose of financing (including by reimbursing prior Project expenditures) costs of the Projects on an interim basis, paying costs and expenses in connection with the issuance, sale and delivery of such BANs, and, to the extent determined by the Council in a subsequent resolution, paying interest on such BANs. Any such series of the BANs may consist of one or more notes and any note may be issued in installment form and/or draw-down form. Prior to the issuance, sale and delivery of any series of the BANs, the Council shall adopt a resolution or resolutions pursuant to the authority of the Bond Anticipation Note Enabling Act, the Charter and this Ordinance authorizing such series of the BANs and specifying, prescribing, determining, providing for or approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law,

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including (without limitation) the components of the Projects on which proceeds of such series of the BANs shall be expended. Unless the Council determines otherwise in a resolution providing for any series of the BANs, each series of the BANs shall be sold at private (negotiated) sale, without advertisement or publication of notice of sale, or solicitation of competitive bids.

SECTION 8. BE IT FURTHER ORDAINED that pursuant to the authority of the Refunding Act and the Charter, the City is hereby authorized and empowered to issue and sell, upon its full faith and credit, its general obligation refunding bonds in one or more series from time to time (collectively, the "Refunding Bonds"), for the purpose of refunding or advance refunding any of the Bonds authorized hereby, including the payment of any prepayment premium and any interest accrued or to accrue to the date of prepayment, purchase or maturity of the Bonds to be refunded, paying costs and expenses in connection with the issuance, sale and delivery of such Refunding Bonds, and, to the extent determined by the Council in a subsequent resolution, paying interest on such Refunding Bonds, for the public purpose of realizing savings to the City in the aggregate cost of debt service on either a direct comparison, present value or other basis or in order to accomplish any debt restructuring that is permitted by applicable law; provided that, the aggregate principal amount of any issue of the Refunding Bonds shall not exceed one hundred thirty percent (130%) of the aggregate principal amount of the Bonds refunded therefrom. Any such series of the Refunding Bonds may consist of one or more bonds and any bond may be issued in installment form and/or draw-down form. Prior to the issuance, sale and delivery of any series of the Refunding Bonds, the Council shall adopt a resolution or resolutions authorizing such series of the Refunding Bonds and specifying, prescribing, determining, providing for or approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law. Unless the Council determines otherwise in a resolution providing for any series of the Refunding Bonds, such series of the Refunding Bonds shall be sold at private (negotiated) sale, without advertisement or publication of notice of sale, or solicitation of competitive bids.

SECTION 9. BE IT FURTHER ORDAINED that the Council is hereby authorized, pursuant to a resolution or resolutions, to make any further determinations deemed necessary or desirable in connection with the issuance of any series of the BANs or the Refunding Bonds authorized hereby, including, without limitation (i) any determination required or authorized by the Bond Anticipation Note Enabling Act or the Refunding Act or other law, as applicable, (ii) to provide that any series of the BANs or the Refunding Bonds may be issued in installment form and/or draw-down form, (iii) to commit or provide for the commitment of the City to pay to the purchaser or purchasers of any series of the BANs or the Refunding Bonds (A) any commitment fee or similar fee and any legal costs in connection with such purchaser's or purchasers' agreement to purchase such series of the BANs or the Refunding Bonds and/or (B) any breakage compensation or other amount that may be determined to be due to such purchaser or purchasers in the event the City fails to deliver such series of the BANs or the Refunding Bonds and, in connection therewith, to approve or provide for the approval, and the execution and delivery of, any agreement relating to such payment or payments (which such agreement may, but shall not be required to be, contained within any purchase or similar agreement for such series of the BANs or the Refunding Bonds) and (iv) to provide for any credit enhancement, ratings, official statements or similar disclosure

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documents or continuing disclosure undertakings relating to such series of the BANs or the Refunding Bonds.

SECTION 10. BE IT FURTHER ORDAINED that (a) a portion of the principal of and interest on any series of the Bonds, the BANs or the Refunding Bonds, as applicable (the "Obligations"), allocated to the costs of that component of the Projects identified as Elevated Water Tower/North - Engineering in Section 3(b) of this Ordinance will be payable in the first instance from water system revenues to the extent such revenues are available, unless otherwise provided in a resolution of the Council. Notwithstanding the foregoing sentence, for the purpose of paying the principal of and interest on the Obligations when due, the City shall levy or cause to be levied, for each and every fiscal year during which any series of the Obligations 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 prompt payment, when due, of the principal of and interest on such Obligations in each such fiscal year, provided that, to the extent of any funds received or receivable as described in the first sentence of this Section 10(a) in any fiscal year, the taxes hereby required to be levied may be reduced proportionately. If the proceeds from the taxes so levied in any such fiscal year are inadequate for such payment, additional taxes shall be levied in the succeeding fiscal year to make up such deficiency.

(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 each series of the Obligations as and when they become due and 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 such series of the Obligations. The City hereby covenants and agrees with the registered owners, from time to time, of each series of the Obligations to levy and collect the taxes hereinabove described and to take any further action that may be appropriate from time to time during the period that such series of the Obligations remains outstanding and unpaid to provide the funds necessary to pay promptly the principal thereof and the 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 any series of the Obligations from the proceeds of the sale of any other obligations of the City or from any other funds legally available for that purpose (including, without limitation, with respect to the BANs from the proceeds of the Bonds authorized hereby and, with respect to the Bonds, from the proceeds of the Refunding Bonds authorized hereby). The City may apply to the payment of the principal of or interest on any series of the Obligations any funds received by it from the State of Maryland or the United States of America, or any governmental agency or instrumentality, or from any other source, if such funds are granted or paid to the City for the purpose of assisting the City in the types of projects which the Obligations of such series are issued to finance, reimburse or refinance, 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.

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SECTION 11. BE IT FURTHER ORDAINED that the Mayor, the City Administrator, the Director of Internal Services, the City Clerk and all other appropriate officials and employees of the City are hereby authorized and directed to take any and all action necessary to complete and close the sale and delivery of the Bonds, the BANs or the Refunding Bonds and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith.

SECTION 12. 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 13. 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. 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 \_\_\_\_\_ day of \_\_\_\_\_, 2007, and thereafter, a statement of the substance of this Ordinance having been published as required by law, was finally passed by the Council on the \_\_\_\_\_ day of \_\_\_\_\_, 2007.

ATTEST:

\_\_\_\_\_  
Brenda J. Colegrove  
CITY CLERK

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

Approved by me this \_\_\_\_\_ day of \_\_\_\_\_, 2007.

\_\_\_\_\_  
Barrie P. Tilghman  
MAYOR, City of Salisbury

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