

Resolution No.: 17-403
Introduced: April 17, 2012
Adopted: April 24, 2012

**COUNTY COUNCIL
FOR MONTGOMERY COUNTY, MARYLAND**

By: County Council

SUBJECT: To authorize Montgomery County, pursuant to and in accordance with Chapter 20 of the Montgomery County Code, Section 24 of Article 31 of the Annotated Code of Maryland (2010 Replacement Volume and 2011 Supplement), Section 5(P)(2) and 5(P)(3) of Article 25A of the Annotated Code of Maryland (2011 Replacement Volume) to issue and sell its parking revenue bonds at one time or from time to time, in one or more series, and not upon the faith and credit of Montgomery County, in an amount sufficient to finance and refinance the costs of a public parking garage to be located in the Bethesda Parking Lot District and to refund certain outstanding parking revenue bonds the proceeds of which financed and refinanced certain projects in the Bethesda Parking Lot District; to provide for the sale of such bonds; and generally providing for and determining various matters in connection with the such bonds.

Background

1. Pursuant to the provisions of Chapter 60 of the Montgomery County Code (“Chapter 60”), Montgomery County, Maryland (the “County”) has established a special taxing district known as the Bethesda Parking Lot District (as further defined in Chapter 60, the “Bethesda PLD”).
2. Sections 5(P)(2) and 5(P)(3) of Article 25A of the Annotated Code of Maryland (2011 Replacement Volume) and Sections 20-47 through 20-54 of Chapter 20 of the Montgomery County Code, as amended (collectively, the “Revenue Bond Act”) authorize the issuance from time to time of revenue bonds or other obligations of the County, payable as to principal, interest and premium, if any, only from the funds or revenues received from or in connection with any project, all or part of which is financed from the proceeds of revenue bonds or other obligations. Such bonds may be sold on a negotiated basis without solicitation of competitive bids if the County determines that the procedure is in the public interest.
3. The County has previously issued its Parking Revenue Bonds (the “Parity Bonds”) under the provisions of the Revenue Bond Act, which Parity Bonds (i) are payable from the revenues of the Bethesda PLD and (ii) are subject to the terms and conditions specified in Order No. B160-92, executed and delivered by the County Executive of Montgomery County (the “County Executive”) on February 28, 1992 and amended by Order No.

B161-92, executed and delivered by the County Executive on April 16, 1992, Order No. B239-02, executed and delivered by the County Executive on June 4, 2002 and Order No. B272-05, executed and delivered by the County Executive on August 31, 2005 (as the same may be further amended from time to time, the "Bond Order").

4. Pursuant to the Revenue Bond Act, the County expects to issue its parking revenue bonds in the aggregate principal amount not to exceed \$46,000,000, a portion of the proceeds in an amount not to exceed \$28,000,000 will be applied to finance and refinance the costs of a parking garage to be located in the Bethesda PLD which will be built as an underground parking garage under land previously used as two County public parking lots containing approximately 940 parking spaces and related facilities owned and operated by the County ("Public Spaces") and an additional approximately 295 with related facilities will be built and financed by a private developer ("Private Spaces" together with the Public Spaces the "Lot 31 Parking Garage") (the "2012 Bethesda PLD Bonds") and the proceeds in an amount not to exceed \$18,000,000 will be applied to refund the Refunded Bonds (as defined below).
5. Pursuant to the Revenue Bond Act and Resolution No. 14-921 adopted by the County Council on June 12, 2001, the County previously issued its \$26,000,000 Parking Revenue Bonds (Bethesda Parking Lot District), Series 2002A (the "Refunded Bonds"), the proceeds of which were applied to finance and refinance the costs of parking structures and related facilities located in the Bethesda PLD.
6. Section 24 of Article 31 of the Annotated Code of Maryland (2010 Replacement Volume and 2011 Supplement) (the "State Refunding Act") provides that any county in the State of Maryland that has the power under any public general or public local law to borrow money and evidence the borrowing by the issuance of its revenue bonds for the purpose of refunding any of its bonds then outstanding, including the payment of any redemption premium and any interest accrued or to accrue to the date of redemption, purchase or maturity of the bonds. Refunding bonds issued under the authority of the State Refunding Act may be issued for public purposes which include realizing savings in the aggregate cost of debt service on either a direct comparison or present value basis. Refunding bonds may be sold on a negotiated basis without solicitation of competitive bids if the County determines that the procedure is in the public interest.
7. By the terms of the State Refunding Act, the power to issue refunding bonds under the State Refunding Act is additional and supplemental to the County's existing borrowing power.
8. Refunding bonds may be issued in one or more series, each series being in whatever principal amount the County determines to be required to achieve the purpose for the issuance of the refunding bonds, which amount may be in excess of the principal amount of the outstanding Refunded Bonds (the "Refunding Bonds" and, together with the 2012 Bethesda PLD Bonds, the "Series 2012 Bonds").

9. The Director of Finance of the County (the “Director of Finance”) has recommended that all or a part of the Refunded Bonds be refunded under the authority of the State Refunding Act in order to realize savings to the County in the aggregate cost of debt service on either a direct comparison or present value basis.
10. The Director of Finance has recommended that, in light of current market conditions, the County Executive of the County have the authority to determine whether the Series 2012 Bonds should be sold on a competitive basis following the solicitation of bids or on a private (negotiated) basis.

Action

The County Council for Montgomery County, Maryland adopts the following resolution:

Section 1. All capitalized terms used herein shall have the meanings given such terms in the Background section of this Resolution

Section 2. The County is hereby authorized to issue, sell and deliver revenue bonds of the County, at one time or from time to time, and in one or more series, under the authority of Sections 5(P)(2) and 5(P)(3) of Article 25A of the Annotated Code of Maryland (2011 Replacement Volume), Sections 20-47 through 20-54 of Chapter 20 of the Montgomery County Code and the State Refunding Act in the aggregate principal amount not to exceed \$46,000,000 for the purpose of (a) financing and refinancing the costs the Public Spaces in a parking garage to be constructed and located within the Bethesda PLD in a principal amount not to exceed \$28,000,000 (the “2012 Bethesda PLD Bonds”) and (b) refunding all or a part of the County’s outstanding Parking Revenue Bonds (Bethesda Parking Lot District), Series 2002A (the “Refunded Bonds”) in a principal amount not to exceed \$18,000,000. Any refunding bonds issued to refund the Refunded Bonds issued in accordance with this Resolution (the “Refunding Bonds” and, together with the 2012 Bethesda PLD Bonds, the “Series 2012 Bonds”) may be issued in such amount as shall be sufficient to pay the redemption price of and accrued interest on the Refunded Bonds on the date on which the Refunded Bonds are to be redeemed. The Series 2012 Bonds may also be issued to (i) fund all or a portion of a required debt service reserve fund with respect to the Series 2012 Bonds and (ii) to pay any and all other costs permitted to be paid from the proceeds of such Series 2012 Bonds under the State Refunding Act and the Revenue Bond Act (as the case may be), including (without limitation) the costs of issuance of such Series 2012 Bonds and applicable underwriting fees.

Section 3. The County hereby determines that Lot 31 Parking Garage is a “project” within the meaning of the Revenue Bond Act and it is in the public interest to construct Lot 31 Parking Garage containing the Public Spaces and related facilities and to participate with the private developer in the development and financing by the private developer of the Private Spaces. Lot 31 Parking Garage will be located on Woodmont Avenue.

Section 4. The Series 2012 Bonds may be sold for a price at, above or below par, plus accrued interest to the date of delivery. Authority is hereby conferred on the County Executive to sell the Series 2012 Bonds through a public sale or through a private (negotiated) sale without solicitation of competitive bids, as the County Executive by executive order, upon consultation

with the Director of Finance and the County's financial advisor, shall determine to be in the best interests of the County. Any sale of Series 2012 Bonds by private negotiation is hereby determined to be in the County's best interest.

Section 5. The County Executive is hereby authorized to cause to be prepared and distributed a preliminary official statement and a final official statement respecting the Series 2012 Bonds. The County Executive may determine, by executive order or otherwise, in his sole and absolute discretion, to issue the Series 2012 Bonds in one or more series from time to time in an aggregate principal amount not to exceed the amount authorized by this Resolution. The Series 2012 Bonds will be designated, dated, bear interest, be in such denominations, be payable at such times and at such places, mature in such amounts and on such dates, be subject to redemption prior to maturity, have such other provisions, be in such forms and be executed and sealed as the County Executive, in his sole and absolute discretion, determines, by executive order or otherwise. The execution and delivery of the Series 2012 Bonds shall be conclusive evidence of the approval of the form of such Series 2012 Bonds on behalf of the County.

Section 6. The County Executive may, by executive order or otherwise, provide for the deposit of any proceeds from the Series 2012 Bonds in trust with a trust company or other banking institution and the investment of such proceeds in such manner as will provide for the payment when due of the principal of and premium (if any) and interest on the Refunded Bonds with the proceeds of such Refunding Bonds, and the acquisition, construction and equipping of the Public Spaces and related facilities as a part of Lot 31 Parking Garage, all in accordance with the provisions of the State Refunding Act.

Section 7. So long as the Series 2012 Bonds or any of them are outstanding and unpaid, the County hereby covenants to levy within the Bethesda PLD the special taxes payable pursuant to Section 60-3 of the Montgomery County Code, as amended, in rate and amount which shall be sufficient in each fiscal year to maintain Net Revenues (as defined in the Bond Order) in such amount as shall be determined by the County Executive by Executive Order or otherwise.

Section 8. The County hereby covenants that the timely payment of the principal of and interest on the Series 2012 Bonds and any Parity Bonds issued to finance projects within or operated by the Bethesda PLD shall be secured equally and ratably by the Net Revenues of the Bethesda PLD without priority by reason of number or time of sale or delivery; and the Net Revenues of the Bethesda PLD are hereby irrevocably pledged to the timely payment of both principal, premium (if any) and interest on the Series 2012 Bonds and Parity Bonds issued to finance projects within or operated by the Bethesda PLD as set forth in the Bond Order or any other orders of the County Executive passed subsequent to the adoption of this Resolution.

Section 9. The County Executive may, by executive order or otherwise, specify, prescribe, determine, provide for, approve, execute and deliver (where applicable) such other matters, details, forms, documents or procedures, including (without limitation) notices of sale, forms of proposal, bond purchase agreements, escrow deposit agreements, escrow letter agreements, trust agreements, and continuing disclosure agreements, as are necessary, proper or expedient to consummate the authorization, sale, security, issuance, delivery or payment of or for the Series 2012 Bonds.

Section 10. The State Refunding Act provides that refunding bonds may be issued thereunder by the County for certain public purposes specified therein, including realizing savings to the County in the aggregate cost of debt service on either a direct comparison or present value basis. The County is hereby authorized to borrow money and incur indebtedness evidenced by the Refunding Bonds to refinance the Refunded Bonds. Such Refunding Bonds may be issued pursuant to this Resolution in an aggregate principal amount that exceeds the principal amount of the Refunded Bonds refinanced thereby in order to fund any reserve fund and to pay any and all costs of issuance of such refunding bonds and applicable underwriting or other fees. The issuance of the Refunding Bonds will effectuate and accomplish the public purpose of realizing savings to the County in the aggregate cost of debt service on a direct comparison or a present value basis. Such refunding bonds issued hereunder in accordance with Section 5(P)(2) of Article 25A of the Annotated Code of Maryland (2011 Replacement Volume) and this Resolution are hereby specifically exempted from the provisions of Sections 10 and 11 of Article 31 of the Annotated Code of Maryland.

Section 11. The County hereby covenants that if it issues the Series 2012 Bonds as tax-exempt obligations it will take, or refrain from taking, any and all actions necessary to comply with the provisions of Section 103 and Sections 141 through 150, inclusive, of the Internal Revenue Code of 1986, as amended (the "Code"), applicable to the Series 2012 Bonds in order to preserve the excludability of the interest on the Series 2012 Bonds from gross income for Federal income tax purposes. Without limiting the generality of the preceding sentence, the County will (a) not use or permit the use of any of the proceeds of the Series 2012 Bonds in such manner as would cause the interest on the Series 2012 Bonds to be includable in gross income for Federal income tax purposes, (b) make periodic determinations of the rebate amount (if any) and timely pay any rebate amount, or installment thereof, to the United States of America, and (c) prepare and timely file Internal Revenue Service Form 8038-G, Information Return for Tax-Exempt Governmental Obligations, or any successor or additional form required by the Internal Revenue Service.

Section 12. In accordance with the provisions of Section 211 of the Charter of the County, the County Executive is hereby authorized to delegate to the Chief Administrative Officer the power and authority to take any and all actions required or permitted to be taken by the County Executive pursuant to this Resolution.

Section 13. The members of the County Council, the County Executive, the Chief Administrative Officer of the County, the County Attorney, the Director of Finance of the County and the Clerk of the Council and their respective designees, for and on behalf of the County, are hereby authorized and empowered to do all things, execute all instruments, and otherwise take all such action as may be necessary, proper or expedient to carry out the authority conferred by this Resolution, including (without limitation) the execution of certificates of the County, including (without limitation) documents, elections, statements and reports pursuant to application provisions of the Code and the Treasury Regulations prescribed thereunder, subject to the limitations set forth in the Revenue Bond Act, the State Refunding Act and this Resolution.

Section 14. This Resolution shall take effect upon approval of the President for the County Council.

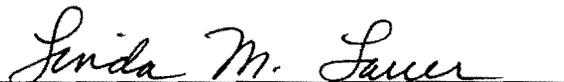


President, County Council for
Montgomery County, Maryland

4/24/12

Date

This is a correct copy of Council action:



Linda M. Lauer, Clerk of the Council