

Resolution No.:	19-40
Introduced:	February 5, 2019
Adopted:	February 12, 2019

**COUNTY COUNCIL  
FOR MONTGOMERY COUNTY, MARYLAND**

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Lead Sponsor: County Council

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**SUBJECT:** To authorize Montgomery County, Maryland pursuant to and in accordance with Chapter 20 of the Montgomery County Code (2004 Edition, as amended) and Sections 10-203 and 19-207, respectively, of the Local Government Article of the Annotated Code of Maryland (2013 Replacement Volume and 2018 Supplement) to issue and sell its refunding revenue bonds in an aggregate principal amount not to exceed \$30,900,000 in order to refund all or part of the County's Revenue Bonds (Department of Liquor Control) 2009 Series A; to provide that the refunding bonds may be sold either at a public competitive sale or at a private sale; to provide that the County Executive and other County Officials shall take all necessary, proper or expedient action to effect the issuance, sale and delivery of the refunding bonds; and generally to provide for and determine various matters in connection with the refunding bonds.

**Background**

1. Pursuant to the provisions of Title 25 of the Alcoholic Beverages Article of the Annotated Code of Maryland (2013 Replacement Volume and 2018 Supplement) there has been established the Montgomery County Department of Liquor Control (the "Department") to operate facilities for the wholesale and retail distribution of alcoholic beverages in Montgomery County, Maryland (the "County").
2. Section 10-203 of the Local Government Article of the Annotated Code of Maryland (2013 Replacement Volume and 2018 Supplement) 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 system, project, or undertaking all or part of which is financed from the proceeds of revenue bonds or other obligations.
3. Pursuant to the Revenue Bond Act and Resolution No. 16-676 adopted by the County Council on July 29, 2008, as amended by Resolution No. 16-863 adopted by the County Council on February 24, 2009, the County previously issued its \$46,765,000 Revenue Bonds (Department of Liquor Control), 2009 Series A (the "Refunded Bonds").

4. Section 19-207 of the Local Government Article of the Annotated Code of Maryland (2013 Replacement Volume and 2018 Supplement) (the “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 may issue 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 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 such issuance of refunding bonds will serve a public purpose as defined in the Refunding Act.
5. By the terms of the Refunding Act, the power to issue refunding bonds under the Refunding Act is additional and supplemental to the County’s existing borrowing power.
6. 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 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.
7. In accordance with Section 20-51 of the Montgomery County Code, the County Executive may determine the manner of the sale of the refunding bonds at either public or private (negotiated) sale, including a direct bank placement.

### **Action**

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

Section 1. All capitalized terms used herein and not otherwise defined herein shall have the meanings given such terms in the Background section of this Resolution.

Section 2. The County, under the authority of the Revenue Bond Act and the Refunding Act, hereby authorizes the issuance, sale and delivery of its Refunding Revenue Bonds (Department of Liquor Control) 2019 Series A, in the principal amount not to exceed \$30,900,000 (the “Series 2019 Bonds”), for the purpose of refunding all or a portion of the outstanding Refunded Bonds.

Section 3. The Series 2019 Bonds shall not constitute a pledge of the full faith and credit and unlimited taxing power of the County.

Section 4. The County hereby covenants that the timely payment of the principal of and interest on the Series 2019 Bonds shall be secured equally and ratably by the Pledged Revenues as defined in the Trust Agreement dated as of May 1, 2009 between the County and U.S. Bank National Association, as trustee, as amended and supplemented (as so

amended and supplemented, the "Trust Indenture") without priority by reason of number or time of sale or delivery; and the Pledged Revenues are hereby irrevocably pledged to the timely payment of both principal, premium (if any) and interest on the Series 2019 Bonds and the other obligations heretofore issued under the Trust Indenture as set forth in executive orders of the County Executive passed subsequent to the adoption of this Resolution.

Section 5. The Series 2019 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 2019 Bonds through a public sale or through a private (negotiated) sale, including a direct bank placement, 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.

Section 6. The Series 2019 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, by executive order or otherwise. The execution and delivery of the Series 2019 Bonds shall be conclusive evidence of the approval of the form of such Series 2019 Bonds on behalf of the County.

Section 7. The County Executive must, by executive order or otherwise approve the form and provisions of, execute and deliver the Series 2019 Bonds, and specify, prescribe, determine, provide for, approve, execute and deliver (where applicable) such other matters, details, forms, documents, or procedures, including (without limitation), bond purchase agreements, notices of sale, forms of proposal, escrow letter agreements, continuing disclosure agreements, and trust agreements and any supplements thereto as are necessary, proper or expedient to consummate the authorization, sale, security, issuance, delivery or payment of or for the Series 2019 Bonds, including (without limitation) prescription of covenants relating to the operation of the Department.

Section 8. The 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 Series 2019 Bonds to refinance the Refunded Bonds. The Series 2019 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 the Series 2019 Bonds and applicable underwriting or other fees. The issuance of the Series 2019 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.

Section 9. The County Executive may, by executive order or otherwise, provide for the deposit of any proceeds from the Series 2019 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 the Series 2019 Bonds and other funds that may be made available for such purpose.

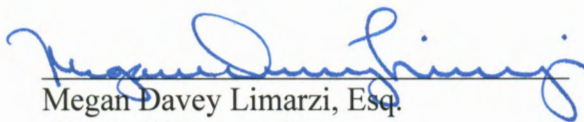
Section 10. The County hereby covenants that it will take, or refrain from taking, any and all actions necessary to comply with the provisions of Section 103 and Sections 141 through 150, inclusive, of the Internal Revenue Code of 1986, as amended (the "Code"), applicable to the Series 2019 Bonds in order to preserve the excludability of the interest on the Series 2019 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 2019 Bonds in such manner as would cause the interest on the Series 2019 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 11. 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 of the County (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 12. The members of the County Council, the County Executive, the Chief Administrative Officer, the County Attorney, the Director of Finance 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 Refunding Act and this Resolution.

Section 13. This Resolution shall take effect upon its adoption.

This is a correct copy of Council action.

  
Megan Davey Limarzi, Esq.  
Clerk of the Council