

ORDINANCE NO. 3621

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED AN ORDINANCE TO AUTHORIZE AND EMPOWER MAYOR AND CITY COUNCIL OF CUMBERLAND 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 TEN MILLION DOLLARS (\$10,000,000) PURSUANT TO THE AUTHORITY OF SECTIONS 31 TO 37, INCLUSIVE, OF ARTICLE 23A OF THE ANNOTATED CODE OF MARYLAND AND SECTIONS 81 AND 82A OF THE CHARTER OF THE CITY OF CUMBERLAND, THE BONDS TO BE DESIGNATED "MAYOR AND CITY COUNCIL OF CUMBERLAND PUBLIC IMPROVEMENT BONDS" AND BY YEAR AND/OR SERIES, UNLESS A SUBSEQUENT RESOLUTION OR RESOLUTIONS OF THE MAYOR AND CITY COUNCIL PROVIDES OTHERWISE, THE PROCEEDS OF THE SALE THEREOF TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF FINANCING (INCLUDING BY REIMBURSING PRIOR PROJECT EXPENDITURES) OR REFINANCING COSTS OF THE ACQUISITION, PLANNING, DESIGN, CONSTRUCTION, RECONSTRUCTION, IMPROVEMENT, PAVING AND REPAVING OF NEW AND EXISTING CITY STREETS AND ROADS AND RELATED IMPROVEMENTS, INCLUDING (WITHOUT LIMITATION) SIDEWALK, CURB, GUTTER AND DRAIN WORK, COSTS OF ISSUANCE AND, TO THE EXTENT DETERMINED BY THE MAYOR AND CITY COUNCIL BY RESOLUTION, PAYING INTEREST ON THE BONDS; DETERMINING THAT THE BONDS OF EACH SERIES BE SOLD BY PUBLIC SALE AT COMPETITIVE BID, UNLESS A

SUBSEQUENT RESOLUTION OR RESOLUTIONS OF THE MAYOR AND CITY COUNCIL PROVIDES FOR THE PRIVATE (NEGOTIATED) SALE OF ANY SERIES OF THE BONDS; AUTHORIZING THE ADOPTION OF A RESOLUTION OR RESOLUTIONS OF THE MAYOR AND CITY 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 AND EMPOWERING 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 TEN MILLION DOLLARS (\$10,000,000), PRIOR TO AND IN ANTICIPATION OF ANY SERIES OF BONDS IN ORDER TO FINANCE OR REIMBURSE PROJECT COSTS ON AN INTERIM BASIS, PAY COSTS OF ISSUANCE AND, TO THE EXTENT PROVIDED BY THE MAYOR AND CITY COUNCIL BY RESOLUTION, PAY CAPITALIZED INTEREST; AUTHORIZING AND EMPOWERING THE ISSUANCE AND SALE FROM TIME TO TIME OF ONE OR MORE SERIES OF GENERAL OBLIGATION BONDS 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 SERIES OF REFUNDING BONDS DOES NOT EXCEED ONE HUNDRED THIRTY PERCENT (130%) OF THE AGGREGATE PRINCIPAL AMOUNT OF THE BONDS REFUNDED THEREBY; PROVIDING THAT ANY SUCH SERIES OF BOND ANTICIPATION NOTES OR

REFUNDING BONDS SHALL BE SOLD BY PRIVATE (NEGOTIATED) SALE, UNLESS OTHERWISE DETERMINED BY THE MAYOR AND CITY COUNCIL BY SUBSEQUENT RESOLUTION, AND AUTHORIZING THE MAYOR AND CITY COUNCIL TO DETERMINE CERTAIN MATTERS RELATING TO ANY SUCH BOND ANTICIPATION NOTES OR REFUNDING BONDS BY RESOLUTION; PROVIDING FOR THE LEVY AND COLLECTION OF AD VALOREM TAXES SUFFICIENT FOR, AND PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO, THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON EACH SERIES OF SUCH BONDS, BOND ANTICIPATION NOTES AND REFUNDING BONDS; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON EACH SERIES OF THE BONDS, THE BOND ANTICIPATION NOTES AND THE REFUNDING BONDS AUTHORIZED HEREBY 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, ISSUANCE AND DELIVERY OF THE BONDS, THE BOND ANTICIPATION NOTES OR THE REFUNDING BONDS AUTHORIZED HEREBY; PROVIDING THAT THIS TITLE SHALL BE DEEMED A FAIR SUMMARY OF THIS ORDINANCE FOR ALL PURPOSES; AND OTHERWISE GENERALLY RELATING TO THE ISSUANCE, SALE, DELIVERY AND PAYMENT OF AND FOR THE BONDS, THE BOND ANTICIPATION NOTES AND THE REFUNDING BONDS AUTHORIZED HEREBY.

RECITALS

1. Mayor and City Council of Cumberland, 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 (West 2002, as supplemented or amended) (the “Enabling Act”), and Sections 81 and 82A of the Charter of the City of Cumberland, as published in Municipal Charters of Maryland, Volume 2, 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.

2. The City has determined to undertake certain street and road improvement projects, and, in connection therewith, to borrow money to finance (including by reimbursing prior project expenditures) or refinance acquisition, planning, design, construction, reconstruction, improvement, paving and repaving costs of such undertaking, together with such costs of related improvements, including (without limitation) sidewalk, curb, gutter and drain work, and related costs of issuance, and has determined to borrow money for the public purpose of financing (including by reimbursing prior project expenditures) or refinancing costs of components of such overall project, and to evidence this borrowing by the issuance and sale from time to time of one or more series of its general obligation bonds.

3. The City has determined that, as authorized by the Enabling Act and the Charter, each series of the bonds authorized hereby shall be sold by the solicitation of competitive bids at public sale, unless, following the recommendation of the financial advisor to the City, a subsequent resolution or resolutions of the Mayor and City Council provides for the sale on a negotiated basis without solicitation of bids for any series of the bonds.

4. Prior to issuing any such series of bonds, the City may need to obtain interim financing in order to finance project costs on a timely basis through the issuance of one or more series of its general obligation bond anticipation notes pursuant to the authority of Section 12 of Article 31 of the Annotated Code of Maryland (West 2002, as supplemented or amended) (the “Bond Anticipation Note Enabling Act”) and the Charter.

5. Subsequent to the issuance of any series of bonds authorized by this Ordinance, the City may desire to refund or advance refund all or a portion of such series of bonds through the issuance from time to 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 (West 2002, as supplemented or amended) (the “Refunding Act”).

6. It is intended that any series of bonds, bond anticipation notes or refunding bonds issued pursuant to the authority of this Ordinance and other applicable Maryland law may be issued as one or more bonds or notes and any of such bonds or notes may be issued in the form of a draw-down and/or installment bond or note as provided herein.

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

8. The City has determined to pledge its full faith and credit and unlimited taxing power to the prompt payment of debt service on the bonds, bond anticipation notes and refunding bonds authorized hereby.

BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND:

SECTION 1. Pursuant to the authority of the Enabling Act and the Charter, the City hereby determines to borrow money and incur indebtedness for the public purpose of financing (including

by reimbursing prior project expenditures) or refinancing costs of the acquisition, planning, design, construction, reconstruction, improvement, paving and repaving of new and existing City streets and roads and related improvements, including (without limitation) sidewalk, curb, gutter and drain work, together with the acquisition of necessary property rights, related site and utility improvements, costs of issuance and, to the extent determined by the Mayor and City Council pursuant to the Resolution (as defined in Section 5 below), paying interest on such bonds (collectively, the "Project"). The total cost of that portion of the Project to be financed from proceeds of the bonds authorized by this Ordinance will not exceed Ten Million Dollars (\$10,000,000). In the event the City issues any BANs (as defined in Section 6 below), proceeds of the Bonds (as defined in Section 2) may also be applied to prepay or pay principal, premium and/or interest on the BANs, and any such expenditure shall be considered an expenditure for Project purposes.

SECTION 2. To evidence the borrowing and indebtedness authorized in Section 1 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 Ten Million Dollars (\$10,000,000) (collectively, the "Bonds"). Each series of the Bonds shall be designated "Mayor and City Council of Cumberland Public Improvement Bonds" and by year and/or series or by such other designation or designations as the Mayor and City Council may determine in the Resolution. Any series of the Bonds may be issued as one or more general obligation installment bonds.

SECTION 3. Pursuant to the authority of the Enabling Act and the Charter, the City hereby determines that, inasmuch as the City currently anticipates selling the Bonds as a single series, it is in the best interests of the City to sell each series of the Bonds by solicitation of competitive bids at

public sale after publication of the notice of sale due to the expected size of a single series of the Bonds and the interest rate savings generally achievable through a sale at competitive bid, unless pursuant to the Resolution the Mayor and City Council determine to provide for the sale of any such series of the Bonds on a negotiated basis without solicitation of bids upon the recommendation of the financial advisor to the City that such private sale will be more advantageous to the City due to market conditions, the ability to time the market, and the ability to negotiate with potential purchasers in order to achieve a beneficial interest rate or rates.

SECTION 4. The proceeds of the Bonds shall be used and applied by the City exclusively and solely for the public purposes described in Section 1 of this Ordinance, unless a supplemental ordinance is enacted by the Mayor and City 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 5. Pursuant to the authority of this Ordinance, the Mayor and City Council, prior to the issuance, sale and delivery of each series of the Bonds, shall adopt a resolution or resolutions (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 form of notice of sale of such series of the Bonds or, if such series of Bonds are to be sold by private (negotiated) sale, the bond purchase agreement or any similar agreement with the purchaser or purchasers of such series of the Bonds, if deemed necessary or desirable), documents or procedures as may be required by the Enabling Act, the Charter or this Ordinance or as the Mayor and City Council may deem appropriate for the authorization, sale, security, issuance, delivery, payment or redemption of or for such series of the Bonds. The Resolution shall set forth, approve or provide for the approval of, among other things, as applicable, the aggregate principal amount of the Bonds of such series; the denominations of such series of the Bonds; the maturity or maturities of such series

of the Bonds; the principal installment or installments, or the method of determining the principal installment or installments, payable on such series of the Bonds; 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; the purchase price for such series of the Bonds or the method of determining the purchase price; provisions relating to the redemption of the Bonds of such series; the procedures for the sale of the Bonds of such series by solicitation of competitive bids at public sale (including any advertising or bidding requirements) and the award of such series of the Bonds to the successful bidder, if appropriate, unless the Resolution shall provide for the sale on a negotiated basis without solicitation of bids of the Bonds of such series, in which case the Resolution shall set forth the procedures for the sale of the Bonds of such series by private (negotiated) sale; and all other terms and conditions pursuant to which such series of the Bonds will be issued, sold and delivered. Among other matters, the Mayor and City Council, pursuant to the Resolution, may authorize, approve or otherwise provide for (i) any commitment fee or similar fee and any legal costs payable in connection with any series of the Bonds and any compensation payable to the purchaser or purchasers of such series of the Bonds in the event the City fails to deliver 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 or documents necessary to enhance the marketability of or as security for any series of the Bonds, including (without limitation) any credit enhancement, any ratings, any official statement or similar disclosure document or 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 5 for more than one series of the Bonds.

SECTION 6. Pursuant to the authority of the Bond Anticipation Note Enabling Act and the Charter, the City may issue and sell from time to time, upon its full faith and credit, one or more series of its general obligation bond anticipation notes in an aggregate principal amount not to exceed Ten Million Dollars (\$10,000,000) (collectively, the “BANs”) prior to and in anticipation of the sale of any series of Bonds in order to finance or reimburse costs of the Project (including costs of issuance and, to the extent determined by the Mayor and City Council in a subsequent resolution, capitalized interest) on an interim basis. Any such series of the BANs may consist of one or more notes and any such note may be issued in installment and/or draw-down form. Prior to the issuance, sale and delivery of any series of the BANs, the Mayor and City Council shall adopt a subsequent 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 and approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law. Unless the Mayor and City Council determines otherwise in a subsequent resolution or resolutions providing for any series of the BANs, such series of the BANs shall be sold by private negotiation, without advertisement or publication of notice of sale or solicitation of competitive bids, due to the ability to time the market, negotiate flexible terms and thereby achieve a beneficial rate or rates by undertaking a private (negotiated) sale.

SECTION 7. Pursuant to the authority of the Enabling Act, the Refunding Act and the Charter, the City is hereby authorized and empowered to issue and sell from time to time one or more series of its general obligation bonds (collectively, the “Refunding Bonds”) for the purpose of refunding or advance refunding any of the Bonds authorized hereby then outstanding, including paying any redemption premium and any interest accrued or to accrue to the date of redemption, 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 Mayor and City 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 such series of the Refunding Bonds shall not exceed one hundred thirty percent (130%) of the outstanding aggregate principal amount of the Bonds refunded thereby. Any such series of the Refunding Bonds may consist of one or more bonds and any such bond may be issued in installment form. Prior to the issuance, sale and delivery of any series of the Refunding Bonds, the Mayor and City Council shall adopt a resolution or resolutions authorizing such series of the Refunding Bonds and specifying, describing, determining, providing for and approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law. Unless the Mayor and City Council determines otherwise in a resolution providing for any series of the Refunding Bonds, pursuant to the authority of the Refunding Act, each series of the Refunding Bonds shall be sold on a negotiated basis without solicitation of bids, due to the ability to time the market, negotiate flexible terms and thereby achieve a beneficial rate or rates by undertaking a private (negotiated) sale.

SECTION 8. The Mayor and City 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 commitment fee or similar fee and any legal costs payable in connection with any series of the BANs or the Refunding Bonds and any compensation payable to the purchaser or purchasers of such series of the BANs or the Refunding Bonds in the event the City

fails to deliver such series of the BANs or the Refunding Bonds, (ii) the obtaining of credit enhancement for any series of the BANs or the Refunding Bonds (and the execution and delivery of any agreements or documents relating thereto), and (iii) any other agreements or documents necessary to enhance the marketability of or as security for any series of the Refunding Bonds, including (without limitation) any ratings, any official statement or similar disclosure document or any continuing disclosure undertaking required to satisfy the requirements of Securities and Exchange Commission Rule 15c2-12.

SECTION 9. (a) 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 Bonds, the BANs and the Refunding Bonds (each, a series of the “Obligations”) as and when the same are payable and to the levy and collection of the taxes hereinbelow 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 shall levy or cause to be levied, for each and every fiscal year during which each such 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 payment, when due, of the principal of and interest on such series of the Obligations payable in each such fiscal year and, in the event the proceeds from the collection of the taxes so levied may prove inadequate for such purposes in any fiscal year, additional taxes shall be levied in the subsequent fiscal year to make up any deficiency. The City hereby covenants with the registered owner of each Obligation to take any action that may be appropriate from time to time during the period that such Obligation remains outstanding and unpaid to provide the funds necessary to pay promptly the principal and interest due thereon.

(b) 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 (including, (i) with respect to any BANs, from proceeds of any Bonds authorized hereby and (ii) with respect to any Bonds, from proceeds of any Refunding Bonds authorized hereby) or from any other funds legally available for that purpose. The City may apply to the payment of the principal of or interest on each 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 the funds are granted or paid to the City for the purpose of assisting the City in accomplishing the type of project or projects which such series of the Obligations are issued to finance 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.

SECTION 10. The Mayor, the City Administrator, the Director of Administrative Services, the Comptroller, the Treasurer, 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, issuance and delivery of the Bonds, the BANs and the Refunding Bonds authorized hereby and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith.

SECTION 11. The title of this Ordinance shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

SECTION 12. This Ordinance shall become effective thirty (30) days after its passage pursuant to the provisions of Section 82A of the Charter, subject to the petition-to-referendum provisions of Section 82A(c) of the Charter.

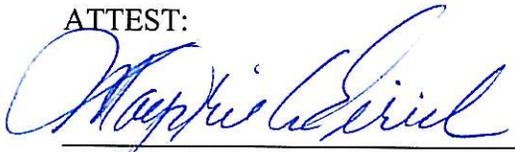
MAYOR AND CITY COUNCIL OF
CUMBERLAND

(SEAL)



Lee N. Fiedler
Mayor and President of the Council

ATTEST:



Marjorie A. Eirich, City Clerk

Introduced: July 8, 2008, 2008

Passed: July 29, 2008

Effective: August 28, 2008

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