

ORDINANCE NO. 3708

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, ONE OR MORE SERIES OF GENERAL OBLIGATION BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$160,000, EACH SERIES OF BONDS TO BE ISSUED AND SOLD AND THE PROCEEDS THEREOF TO BE USED AND APPLIED FOR THE PUBLIC PURPOSE OF FINANCING, REIMBURSING OR REFINANCING COSTS INCURRED IN CONNECTION WITH THE PLANNING AND DESIGN OF A FACILITY AND RELATED IMPROVEMENTS FOR THE STORAGE AND TRANSFER TO THE CITY'S WASTEWATER TREATMENT PLANT FOR SUBSEQUENT TREATMENT OF COMBINED SEWER OVERFLOWS, TOGETHER WITH RELATED COSTS AND COSTS OF ISSUANCE AS PROVIDED HEREIN, SUCH FACILITY AND RELATED IMPROVEMENTS TO BE LOCATED AT OR IN THE VICINITY OF THE MASON RECREATION COMPLEX; DETERMINING THAT ANY SUCH SERIES OF BONDS BE SOLD TO THE MARYLAND WATER QUALITY FINANCING ADMINISTRATION BY PRIVATE SALE, WITHOUT PUBLIC BIDDING; AUTHORIZING THE APPROVAL BY RESOLUTION OF ONE OR MORE LOAN AGREEMENTS WITH THE MARYLAND WATER QUALITY FINANCING ADMINISTRATION; PLEDGING ANY MONEYS THAT THE CITY IS ENTITLED TO RECEIVE FROM THE STATE OF MARYLAND, INCLUDING THE CITY'S SHARE OF THE STATE INCOME TAX, TO SECURE ITS OBLIGATIONS UNDER THE LOAN AGREEMENTS; AUTHORIZING

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THE ADOPTION OF A RESOLUTION OR RESOLUTIONS TO DETERMINE AND PROVIDE FOR VARIOUS MATTERS RELATING TO THE AUTHORIZATION, SALE, SECURITY, ISSUANCE, DELIVERY, PAYMENT AND PREPAYMENT OF AND FOR ANY SERIES OF BONDS CONTEMPLATED HEREBY; AUTHORIZING AND DIRECTING THE PAYMENT OF ANY FEES OR COSTS PROVIDED FOR IN THE LOAN AGREEMENTS WHICH ARE NOT PAYABLE FROM BOND PROCEEDS AND PROVIDING THAT THE CITY'S OBLIGATION TO PAY SUCH AMOUNTS SHALL BE ABSOLUTE AND UNCONDITIONAL AS PROVIDED IN THE LOAN AGREEMENTS; PROVIDING THAT THE CITY SHALL USE AND APPLY PROCEEDS OF ANY SUCH SERIES OF BONDS ONLY AS PERMITTED BY THE LOAN AGREEMENTS, THE CLEAN WATER ACT (AS DEFINED IN THE LOAN AGREEMENTS) AND THE ACT (AS DEFINED IN THE LOAN AGREEMENTS); AUTHORIZING THE ISSUANCE 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 AND TO PAY RELATED COSTS, PROVIDED THAT, THE AGGREGATE PRINCIPAL AMOUNT OF ANY SUCH ISSUE OF REFUNDING BONDS DOES NOT EXCEED ONE HUNDRED THIRTY PERCENT (130%) OF THE AGGREGATE PRINCIPAL AMOUNT OF THE BONDS REFUNDED THEREFROM; AUTHORIZING THE ADOPTION OF A RESOLUTION OR RESOLUTIONS TO MAKE ANY FURTHER DETERMINATIONS DEEMED NECESSARY OR DESIRABLE IN CONNECTION WITH THE ISSUANCE AND SALE OF ANY SUCH SERIES OF REFUNDING BONDS; PROVIDING THAT ANY SUCH REFUNDING BONDS SHALL BE SOLD

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ON A NEGOTIATED BASIS WITHOUT SOLICITATION OF BIDS UNLESS DETERMINED OTHERWISE BY RESOLUTION; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON ANY SERIES OF BONDS OR REFUNDING BONDS (COLLECTIVELY, THE "OBLIGATIONS") WILL BE PAYABLE IN THE FIRST INSTANCE FROM REVENUES RECEIVED BY THE CITY IN CONNECTION WITH THE OPERATION OF THE WASTEWATER SYSTEM SERVING THE CITY AND SURROUNDING AREAS; PROVIDING FOR THE LEVY OF AD VALOREM TAXES UPON ALL REAL AND PERSONAL PROPERTY WITHIN THE CITY'S CORPORATE LIMITS SUBJECT TO ASSESSMENT FOR UNLIMITED MUNICIPAL TAXATION TO PAY THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF OBLIGATIONS IN EACH FISCAL YEAR; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF OBLIGATIONS; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON ANY SUCH SERIES OF OBLIGATIONS ALSO MAY BE PAID FROM ANY OTHER SOURCES OF REVENUE LAWFULLY AVAILABLE TO THE CITY FOR THAT PURPOSE; AUTHORIZING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE ISSUANCE, SALE AND DELIVERY OF ANY SUCH SERIES OF OBLIGATIONS; 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 ANY SUCH SERIES OF OBLIGATIONS.

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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, as replaced, supplemented or amended (the “Enabling Act”), and Sections 81 and 82A of the Charter of the City of Cumberland, as replaced, supplemented or amended (the “Charter”), to borrow money for any proper public purpose in connection with the wastewater system serving the City and surrounding areas and to evidence such borrowing by the issuance and sale of its general obligation bonds.

2. The City has determined to undertake the planning and design of a facility and related improvements, including (without limitation) a tank, a pump station, a flushing system, electrical system and air controls, for the storage and transfer to the City’s wastewater treatment plant for subsequent treatment of combined sewer overflows and, in connection therewith, to borrow money to finance, reimburse or refinance costs incurred in connection with the planning and design phase of such undertaking and related administrative, financial and legal expenses and costs of issuance (collectively, the “Project”), and to evidence this borrowing by the issuance and sale of one or more series of its general obligation bonds. Such facility and related improvements will be located at or in the vicinity of the City-owned Mason Recreation Complex.

3. Title VI of the Federal Water Pollution Control Act (commonly known as the “Clean Water Act”), as amended by the Water Quality Act of 1987 (“Title VI”), authorizes the U.S. Environmental Protection Agency (the “EPA”) to award grants to qualifying states to establish and capitalize state water pollution control revolving funds (“SRFs”) for the purpose of providing loans and other forms of financial assistance to finance, among other things, the

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construction of publicly-owned wastewater treatment facilities, and the implementation of estuary conservation management plans and nonpoint source management programs.

4. As contemplated by Title VI, the General Assembly of Maryland at its 1988 session enacted the Maryland Water Quality Financing Administration Act, codified at Sections 9-1601 through 9-1622, inclusive, of the Environment Article of the Annotated Code of Maryland (as replaced, supplemented or amended, the “MWQFA Act”), establishing the Maryland Water Quality Financing Administration (the “Administration”) and establishing an SRF designated the Maryland Water Quality Revolving Loan Fund (the “SRF Fund”) to be maintained and administered by the Administration.

5. The MWQFA Act authorizes the Administration, among other things, to make a loan from the SRF Fund to a “local government” (as defined in the MWQFA Act) for the purpose of financing or refinancing all or a portion of the cost of a “wastewater facility” project (as defined in the MWQFA Act).

6. The City is a “local government” within the meaning of the MWQFA Act, and the Project is a “wastewater facility” project within the meaning of the MWQFA Act.

7. The MWQFA Act authorizes a local government to issue one or more bonds, notes or other evidences of obligation (each, a “loan obligation” as defined in the MWQFA Act) to evidence its indebtedness under a loan agreement with respect to a loan from the Administration, to sell any such bond, note or other evidence of obligation to the Administration at private sale, without public bidding, and to establish a dedicated source of revenues for repayment of such loan.

8. Pursuant to the authority of the MWQFA Act, the Enabling Act and the Charter, the City has determined to borrow money from the Administration for the public purpose of financing,

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reimbursing or refinancing costs of the Project or such components of the Project as the Administration shall approve.

9. In connection with the issuance and sale of any series of the general obligation bonds contemplated hereby, and pursuant to the MWQFA Act, the City will enter into one or more loan agreements with the Administration.

10. The City, as authorized by the MWQFA Act, may pledge any moneys that the City is entitled to receive from the State of Maryland, including the City's share of the State income tax, to secure its obligations under any loan agreement with the Administration contemplated hereby.

11. Subsequent to the issuance to the Administration of any series of bonds provided for herein, the City may desire to refund or advance refund all or a portion of such series of 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").

12. The City has determined to pledge its full faith and credit and unlimited taxing power to the prompt payment of debt service on any such series of bonds or refunding bonds contemplated hereby.

13. Pursuant to the authority of the Charter, the City shall issue any series of bonds or refunding bonds authorized hereby in accordance with the terms and conditions provided for in a resolution or resolutions to be adopted by the Mayor and City Council pursuant to the Charter and this Ordinance.

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

SECTION 1. (a) The Recitals to this Ordinance are deemed a substantive part of this Ordinance and incorporated by reference herein. Capitalized terms used in this Ordinance and not

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otherwise defined in the Sections of this Ordinance shall have the meanings given to such terms in the Recitals.

(b) References in this Ordinance to any official by title shall be deemed to refer (i) to any official authorized under the Charter or other applicable law to act in such titled official's stead during the absence or disability of such titled official, (ii) to any person who has been elected, appointed or designated to fill such position in an acting capacity under the Charter or other applicable law, and/or (iii) to the extent an identified official commonly uses another title not provided for in the Charter or the City Code, the official, however known, who is charged under the Charter, the Code or other applicable law or authority with the applicable responsibilities, rights or duties referred to herein.

SECTION 2. Pursuant to the authority of the MWQFA Act, the Enabling Act and the Charter, the City hereby determines to borrow money and incur indebtedness for the public purpose of financing, reimbursing or refinancing costs of the Project. The total cost of the Project not otherwise payable from other sources is not expected to exceed One Hundred Sixty Thousand Dollars (\$160,000).

SECTION 3. To evidence the borrowing and indebtedness authorized in Section 2 of this Ordinance, the City, acting pursuant to the authority of the MWQFA Act, the Enabling Act and the Charter, hereby determines to issue and sell from time to time, upon its full faith and credit, one or more series of its general obligation bonds in an aggregate principal amount not to exceed One Hundred Sixty Thousand Dollars (\$160,000) (individually, a "Bond" and, collectively, the "Bonds"). Each such series may consist of one or more bonds and any Bond may be issued in installment form and/or draw-down form.

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SECTION 4. Pursuant to the authority of the MWQFA Act, the Enabling Act and the Charter, the City hereby determines to sell each series of the Bonds to the Administration by private sale, without public bidding, due in part, to the ability to issue any series of the Bonds as draw-down obligations and the beneficial interest rates offered by the Administration.

SECTION 5. The proceeds of each series of the Bonds shall be used and applied by the City exclusively and solely for the public purposes described in Section 2 of this Ordinance, unless, with the approval of the Administration, 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 MWQFA Act.

SECTION 6. As required by the MWQFA Act, the City is hereby authorized to enter into one or more loan agreements with the Administration (each, a “Loan Agreement” and collectively, the “Loan Agreements”) in connection with any series of the Bonds. The final or substantially final form of each Loan Agreement shall be approved by the Mayor and City Council pursuant to the Resolution (as defined in Section 8 hereof) and the execution and delivery of each Loan Agreement shall be authorized by the Mayor and City Council pursuant to the Resolution. The City hereby acknowledges that the provisions of each Loan Agreement may allow for, among other remedies, payments on any series of the Bonds subject to such Loan Agreement to be declared immediately due and payable upon the occurrence of any event of default provided for in such Loan Agreement.

SECTION 7. As authorized by Section 9-1606(d) of the MWQFA Act, the City hereby pledges any moneys that the City is entitled to receive from the State of Maryland, including the City’s share of the State income tax, to secure its obligations under the Loan Agreements. Such pledge shall be evidenced and detailed in each Loan Agreement.

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SECTION 8. Pursuant to the authority of the Enabling Act and this Ordinance, the Mayor and City Council, prior to the issuance, sale and delivery of any series of the Bonds, shall adopt a resolution or resolutions (in each such case, the “Resolution”) specifying, prescribing, determining or providing for the determination of, providing for, approving or providing for the approval of such matters, details, forms (including, without limitation, the complete form of the Bonds of such series), documents or procedures as may be required by the MWQFA Act, 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, the aggregate principal amount of such series of the Bonds; the principal installment or installments of, or the method of determining the principal installment or installments of, 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 such series of the Bonds; provisions relating to the redemption of such series of the Bonds, if applicable; the procedures for the sale of such series of the Bonds by private sale, without public bidding; provisions relating to the principal forgiveness of such series of the Bonds, if applicable; and all other terms and conditions pursuant to which such series of the Bonds will be issued, sold and delivered. Any Resolution may specify, prescribe, determine, provide for and approve the details required by this Section 8 for more than one series of the Bonds.

SECTION 9. The City is hereby authorized and directed to pay any fees or costs provided for in any Loan Agreement which are not payable from Bond proceeds, including, without limitation, any administrative fees and any ongoing fees or costs. The obligation of the City to pay such amounts shall be absolute and unconditional as further provided in any Loan Agreement.

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SECTION 10. Notwithstanding anything to the contrary contained in this Ordinance, the City shall use and apply proceeds of each series of the Bonds only as permitted by the related Loan Agreement, the Clean Water Act (as defined in such Loan Agreement) and the Act (as defined in such Loan Agreement).

SECTION 11. (a) Pursuant to the authority of the Refunding Act, the Enabling Act and the Charter, the City is hereby authorized and empowered to issue and sell from time to time, upon its full faith and credit, one or more series of general obligation bonds (collectively, the “Refunding Bonds”) for the purpose of refunding or advance refunding any of the Bonds issued pursuant to the authority of this Ordinance 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 to be refunded, and paying costs and expenses in connection with the issuance, sale and delivery of such series of the Refunding Bonds, and, to the extent determined by the Mayor and City Council by resolution, interest on such series of the Refunding Bonds, for the public purpose of realizing savings to the City in the aggregate cost of debt service on either a direct comparison or present value basis or in order to accomplish any debt restructuring that is permitted by applicable law; provided that, the aggregate principal amount of any such issue of the Refunding Bonds may 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 or draw-down 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, prescribing, determining, providing for and approving such matters, details, forms, documents or procedures as may be authorized or required by applicable law,

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including the purposes of the Refunding Act to be achieved by such refunding. Unless the Mayor and City Council determines otherwise by resolution providing for any series of the Refunding Bonds, such 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 terms and thereby achieve a beneficial rate or rates and other beneficial terms by undertaking a private (negotiated) sale.

(b) To the extent any series of the Refunding Bonds is sold to the Administration, the Mayor and City Council by resolution may make provision for the documentation and security of such series of the Refunding Bonds in form, content and effect similar as to provided for in this Ordinance with respect to any series of the Bonds, including (without limitation) entry into a new loan agreement or any modification to an existing Loan Agreement, as applicable, provisions for the potential forgiveness of any such series of the Refunding Bonds, the identification of any source of dedicated revenues and provisions for any debt service reserve account with respect to such series of the Refunding Bonds required by the Administration.

SECTION 12. (a) The principal of and interest on each series of the Bonds and the Refunding Bonds authorized hereby (each, a series of the “Obligations”) will be payable in the first instance from revenues received by the City in connection with the operation of the wastewater system serving the City and surrounding areas, including charges for the use of or connection to such system. In the event such moneys are insufficient in any fiscal year to provide for the prompt payment, when due, of the principal of and interest on such series of the Obligations, the City shall levy or cause to be levied, for each and every fiscal year during which 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

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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.

(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 the same are 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 with the registered owner of each Obligation to take any action that may be lawfully 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.

(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 (including, without limitation, with respect to the Bonds, from the proceeds of the 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 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 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.

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(d) Revenues of the wastewater system are intended to be the dedicated source of revenues required by the MWQFA Act with respect to the Bonds.

SECTION 13. 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 any series of the Bonds or the Refunding Bonds authorized hereby and to execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith.

SECTION 14. The title of this Ordinance shall be deemed to be, and is, a fair summary of this Ordinance for publication and all other purposes.

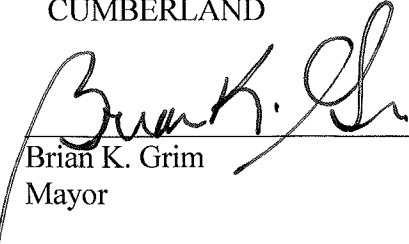
SECTION 15. This Ordinance shall become effective thirty (30) days after its passage pursuant to the provisions of Section 82A of the Charter, subject to the petition-to-referendum provisions of Section 82A(c) of the Charter.

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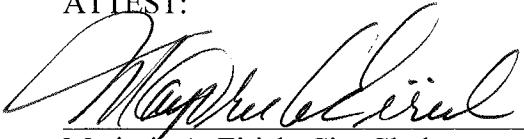
MAYOR AND CITY COUNCIL OF
CUMBERLAND

(SEAL)



Brian K. Grim
Mayor

ATTEST:



Marjorie A. Eirich, City Clerk

Introduced: May 08, 2012

Passed: May 22, 2012

Votes for passage: 5
Votes against passage: 0

Effective: June 21, 2012

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