

ORDINANCE NO. 3738

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED AN ORDINANCE TO AUTHORIZE AND EMPOWER MAYOR AND CITY COUNCIL OF CUMBERLAND (THE "CITY") TO TEMPORARILY USE UP TO \$1,500,000.00 IN THE AGGREGATE OF UNEXPENDED PROCEEDS OF THE CITY'S GENERAL OBLIGATION PUBLIC IMPROVEMENT BONDS, 2008 SERIES TO MEET TEMPORARY CASH REQUIREMENTS OF THE CITY'S GENERAL FUND IN APRIL, MAY AND/OR JUNE 2013, SUBJECT TO THE LIMITATIONS PROVIDED FOR IN THIS ORDINANCE; DELEGATING TO THE MAYOR, THE TREASURER AND THE COMPTROLLER THE AUTHORITY TO DETERMINE THE DETAILS OF SUCH TEMPORARY BORROWING WITHIN THE LIMITATIONS PROVIDED FOR IN THIS ORDINANCE; AND OTHERWISE RELATING GENERALLY TO THE TEMPORARY USE OF SUCH UNEXPENDED BOND PROCEEDS AS DESCRIBED HEREIN.

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 published in Municipal Charters of Maryland, 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.

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2. The City previously determined to undertake certain street and road improvement projects, and, in connection therewith, to borrow money to finance such undertaking and related costs.

3. Pursuant to the authority of the Enabling Act, Sections 81 and 82A of the Charter, Ordinance No. 3621, passed by the Mayor and City Council of the City (the “Mayor and City Council”) on July 29, 2008 and effective on August 28, 2008, and a Resolution adopted by the Mayor and City Council on September 16, 2008 and effective on September 16, 2008, the City on November 25, 2008 issued its Mayor and City Council of Cumberland General Obligation Public Improvement Bonds, 2008 Series in the original aggregate principal amount of \$9,070,000 (the “2008 Bonds”) for the public purpose of financing (including by reimbursing prior project expenditures) 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 and costs of issuance (collectively, the “Project”).

4. Due to unexpected delays, the City has not yet completely expended proceeds of the 2008 Bonds on the Project.

5. Pursuant to Charter Amendment Resolution No. 140, adopted by the Mayor and City Council on May 10, 2011 and effective on June 29, 2011, the Mayor and City Council added Section 82C to the Charter to permit the temporary borrowing of bond or other obligation proceeds. Section 82C of the Charter provides that the Mayor and City Council, by ordinance with a two-thirds vote of the members of the Mayor and City Council, may provide for the temporary use of

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unexpended proceeds of any bonds, notes or other evidences of obligation of the City to meet temporary cash requirements of any fund of the City and the reimbursement of any such temporary borrowing, subject to the limitations provided for in Section 82C of the Charter. Section 82C of the Charter further provides that any ordinance passed in accordance with such Section may delegate to the appropriate City official or officials the authority to determine details of any such temporary borrowing.

6. The Mayor and City Council currently anticipates that moneys on deposit in the City's General Fund will be insufficient to meet the City's obligations payable from such fund in April, May and/or June 2013.

7. The Mayor and City Council desire to authorize the temporary borrowing of unexpended proceeds of the 2008 Bonds to meet temporary cash requirements of the City's General Fund in April through June 2013.

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

SECTION 1. (a) The Recitals hereto constitute an integral part of this Ordinance and are incorporated herein by reference. Capitalized terms used in the Sections of this Ordinance and not defined therein shall have the meanings given to such terms in the Recitals hereto.

(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

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Charter, the City Code or other applicable law or authority with the applicable responsibilities, rights or duties referred to herein.

SECTION 2. Pursuant to the authority of Section 82C of the Charter, the Mayor and City Council hereby authorize the temporary use of up to One Million Five Hundred Thousand Dollars (\$1,500,000.00) in the aggregate of unexpended proceeds of the 2008 Bonds to meet temporary cash requirements of the City's General Fund in April, May and/or June 2013, subject to compliance with the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the U.S. Treasury Regulations promulgated pursuant to the Code (the "Treasury Regulations"), as advised by bond counsel to the City, and provided that (i) any such temporary use of unexpended proceeds of the 2008 Bonds shall be effected only to the extent there are no other moneys of the City available for such purpose within the meaning of the Code and the Treasury Regulations and (ii) any such temporary use of unexpended proceeds of the 2008 Bonds shall be repaid within six (6) months of the date of such use, or earlier, to the extent funds are available for such repayment and such earlier repayment is required by applicable provisions of the Code and the Treasury Regulations.

SECTION 3. The authority to determine the details of the temporary use of unexpended proceeds of the 2008 Bonds within the limitations described in Section 2 above is hereby delegated to the Mayor of the City (the "Mayor"), the Treasurer of the City (the "Treasurer") and the Comptroller of the City (the "Comptroller"). The Mayor, together with the Treasurer and/or the Comptroller, are hereby authorized and directed, on behalf of the City, to approve, execute and deliver any supplement to the Tax and Section 148 Certificate executed and delivered by the City simultaneously with the issuance of the 2008 Bonds (the "Tax Certificate") to provide for the details

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of the temporary use of unexpended proceeds of the 2008 Bonds as provided for in this Ordinance, subject to the limitations provided for in Section 2 above, and the execution and delivery of any such supplement to the Tax Certificate by the Mayor, together with the Treasurer and/or the Comptroller, shall constitute evidence of the approval of the details of such temporary use of unexpended proceeds of the 2008 Bonds by the Mayor, the Treasurer and the Comptroller. As authorized by Section 82C of the Charter, and in connection with the undertakings contemplated by this Ordinance, the Mayor, the Treasurer and/or the Comptroller are hereby authorized and directed to take any action necessary to preserve the tax-exempt status of the 2008 Bonds, including (without limitation) making any elections, designations, determinations or filings required or permitted by the Code and the Treasury Regulations and making any required payments of arbitrage rebate.

SECTION 4. This Ordinance shall become effective upon its passage.

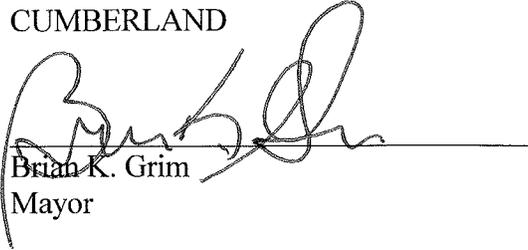
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MAYOR AND CITY COUNCIL OF  
CUMBERLAND

(SEAL)

  
Brian K. Grim  
Mayor

ATTEST:

  
Marjorie A. Eirich, City Clerk

Introduced: March 26, 2013

Passed: April 09, 2013

Votes for passage: 5

Votes against passage: 0

Abstentions: 0

Effective: April 09, 2013

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