

ORDINANCE NO. 3691

AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF CUMBERLAND ENTITLED AN ORDINANCE SUPPLEMENTING AND AMENDING ORDINANCE NO. 3329, PASSED BY THE MAYOR AND CITY COUNCIL OF CUMBERLAND (THE "MAYOR AND CITY COUNCIL") ON JULY 20, 1999 AND EFFECTIVE ON AUGUST 19, 1999, AS SUPPLEMENTED BY ORDINANCE NO. 3359, PASSED BY THE MAYOR AND CITY COUNCIL ON MARCH 13, 2001 AND EFFECTIVE ON APRIL 12, 2001, TO AUTHORIZE AND EMPOWER MAYOR AND CITY COUNCIL OF CUMBERLAND (THE "CITY") TO ISSUE AND SELL FROM TIME TO TIME, UPON ITS FULL FAITH AND CREDIT, ONE OR MORE SERIES OF ITS GENERAL OBLIGATION BONDS IN ORDER TO REFUND OR ADVANCE REFUND IN WHOLE OR IN PART ANY OF THE BONDS ISSUED PURSUANT TO THE AUTHORITY OF ORDINANCE NO. 3329, AS SUPPLEMENTED BY ORDINANCE NO. 3359 (INCLUDING PAYING COSTS OF ISSUANCE AND INTEREST ON SUCH REFUNDING BONDS), PROVIDED THAT, THE AGGREGATE PRINCIPAL AMOUNT OF ANY SUCH ISSUE OF REFUNDING BONDS SHALL NOT EXCEED ONE HUNDRED THIRTY PERCENT (130%) OF THE AGGREGATE PRINCIPAL AMOUNT OF THE BONDS REFUNDED THEREFROM; PROVIDING THAT ANY SUCH SERIES OF REFUNDING BONDS SHALL BE SOLD ON A NEGOTIATED BASIS WITHOUT SOLICITATION OF BIDS UNLESS THE MAYOR AND CITY COUNCIL DETERMINES OTHERWISE BY RESOLUTION; PROVIDING THAT ALL OF THE DETAILS, MATTERS AND DOCUMENTS PERTAINING TO ANY SUCH REFUNDING BONDS SHALL BE DETERMINED, APPROVED OR PROVIDED FOR

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MAY 24 2011

BY RESOLUTION OF THE MAYOR AND CITY COUNCIL; PLEDGING THE FULL FAITH AND CREDIT AND UNLIMITED TAXING POWER OF THE CITY TO THE PROMPT PAYMENT OF THE PRINCIPAL OF AND INTEREST ON THE REFUNDING BONDS AUTHORIZED HEREBY; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON SUCH REFUNDING BONDS ALSO MAY BE PAID FROM ANY OTHER SOURCES LAWFULLY AVAILABLE FOR SUCH PURPOSE; PROVIDING THAT ANY OF THE REFUNDING BONDS AUTHORIZED HEREBY MAY BE CONSOLIDATED WITH ANY OTHER BONDS AND/OR REFUNDING BONDS AUTHORIZED BY THE MAYOR AND CITY COUNCIL AND ISSUED AS A SINGLE SERIES OF BONDS AND/OR REFUNDING BONDS; AUTHORIZING AND DIRECTING OFFICIALS AND EMPLOYEES OF THE CITY TO TAKE ANY AND ALL ACTION NECESSARY TO COMPLETE AND CLOSE THE SALE AND DELIVERY OF THE REFUNDING BONDS PROVIDED FOR 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 THE REFUNDING BONDS PROVIDED FOR 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, 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

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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.

2. Pursuant to the authority of the Enabling Act, Sections 81 and 82A of the Charter, Ordinance No. 3329, passed by the Mayor and City Council of the City (the “Mayor and City Council”) on July 20, 1999 and effective on August 19, 1999 (“Ordinance No. 3329”), and a Resolution adopted by the Mayor and City Council on August 24, 1999 and effective on August 24, 1999 (the “1999 Bond Resolution”), on August 30, 1999, the City issued and delivered its Public Improvement Bond of 1999, dated August 30, 1999, and issued in the original principal amount of \$2,231,000 (the “1999 Bond”).

3. The 1999 Bond was issued to finance, reimburse or refinance costs of the Project identified in the 1999 Bond Resolution (hereinafter referred to as the “Original Project”).

4. Pursuant to Ordinance No. 3359, passed by the Mayor and City Council on March 13, 2001, and effective on April 12, 2001 (“Ordinance No. 3359”), and a Resolution adopted by the Mayor and City Council on March 13, 2001 and effective on April 12, 2001, the Mayor and City Council supplemented Ordinance No. 3329 and the 1999 Bond Resolution, respectively, in order to provide that proceeds of the 1999 Bond could be applied to a project identified therein as the Additional Project, in addition to or in substitution for one or more components of the Original Project.

5. As originally issued and delivered, the 1999 Bond bears interest at the rate per annum of 5.28% and is scheduled to mature on September 1, 2014 with semi-annual installments of principal due on each March 1 and September 1, beginning March 1, 2000 and ending September 1,

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2014. Pursuant to the authority of Resolution No. R2011-05, the City and SunTrust Bank, the holder of the 1999 Bond, entered into a Modification Agreement dated as of April 1, 2011 and entered into as of April 29, 2011, providing for the modification of certain terms of the 1999 Bond.

6. The City has determined that it wishes to authorize the refunding of the 1999 Bond as permitted by Section 24 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Refunding Act"). However, Ordinance No. 3329, as supplemented by Ordinance No. 3359, does not contain authority for the refunding of the 1999 Bond.

7. By enactment of this Ordinance, the Mayor and City Council desire to supplement and amend Ordinance No. 3329, as supplemented by Ordinance No. 3359, in order to allow for the refunding of the 1999 Bond.

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

SECTION 1. 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.

SECTION 2. From and after the effective date of this Ordinance, Ordinance No. 3329, as supplemented by Ordinance No. 3359, is hereby supplemented and amended by adding a new Section 12A to Ordinance No. 3329 to read as follows:

"SECTION 12A. (a) Pursuant to the authority of the Enabling Act, Section 24 of Article 31 of the Annotated Code of Maryland, as replaced, supplemented or amended (the "Refunding 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 its general obligation bonds

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(collectively, the “Refunding Bonds”) for the purpose of refunding or advance refunding in whole or in part any of the Bonds authorized hereby then outstanding, including paying all or any portion of any prepayment premium and all or any portion of any interest accrued or to accrue to the date of prepayment, purchase or maturity of the Bonds to be refunded, paying or reimbursing all or any portion of costs and expenses incurred in connection with the issuance, sale and delivery of such Refunding Bonds, and, to the extent determined by the Mayor and City Council by resolution, paying interest on such Refunding Bonds, for the public purpose of (A) realizing savings in the aggregate cost of debt service on a direct comparison or present value basis, or (B) debt restructuring that in the aggregate effects such a reduction in the cost of debt service or is determined by the Mayor and City Council to be in the best interests of the City, to be consistent with the City’s long-term financial plan, and to realize a financial objective of the City, as contemplated in the Refunding Act and as to be determined by resolution of the Mayor and City Council; provided that, the aggregate principal amount of any such issue of the Refunding Bonds shall not exceed one hundred thirty percent (130%) of the outstanding aggregate principal amount of the Bonds refunded therefrom. 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, and in accordance with Section 82A(d) of the Charter, the Mayor and City Council shall adopt a resolution or resolutions authorizing such series of the Refunding Bonds

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and specifying, describing, determining or providing for the determination of, providing for, or approving or providing for the approval of, such matters, details, forms, documents or procedures as may be authorized or required by applicable law, as well as the objective of the Refunding Act realized by such refunding. 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 interest rate or rates and/or satisfactory restructuring terms by undertaking a private (negotiated) sale. Any such sale on a negotiated basis is hereby determined to be in the public interest due to the ability to time the market, negotiate terms and thereby serve the public interest by achieving a beneficial interest rate or rates and/or other beneficial terms by undertaking a private (negotiated) sale.

(b) The Mayor and City Council is hereby authorized, by resolution, to make any further approvals or determinations or provide for the making of any further determinations or approvals deemed necessary or desirable in connection with the issuance of any series of the Refunding Bonds authorized hereby, including, without limitation (i) the payment of any commitment fee or similar fee and any legal costs payable in connection with any series of the Refunding Bonds and any compensation payable to the purchaser or purchasers of such series of the Refunding Bonds in the event the City fails to deliver such series of the Refunding Bonds, (ii)

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the obtaining of credit enhancement or liquidity enhancement for any series of the Refunding Bonds (and the approval, execution and delivery of any agreements or documents relating thereto), and (iii) the approval, execution and delivery of any other agreements or documents necessary or desirable 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.

(c)(i) The City shall levy or cause to be levied in all fiscal years in which the Refunding Bonds are outstanding, upon all real and tangible personal property within its corporate limits subject to assessment for unlimited municipal taxation, ad valorem taxes in rate and amount sufficient to provide for the prompt payment of the principal of and interest on the Refunding Bonds in each such fiscal year. If the proceeds from the taxes so levied in any such fiscal year are inadequate for such payment, additional taxes shall be levied in the succeeding fiscal year to make up such deficiency.

(ii) 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 the Refunding Bonds as and when they become due and 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 the Refunding Bonds. The City hereby covenants and agrees with

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the registered owners, from time to time, of the Refunding Bonds to levy and collect the taxes hereinabove described and to take any further action that may be lawfully appropriate from time to time during the period that the Refunding Bonds remain outstanding and unpaid to provide the funds necessary to pay promptly the principal thereof and the interest due thereon.

(iii) The foregoing provisions of this subsection (c) shall not be construed so as to prohibit the City from paying the principal of and interest on the Refunding Bonds from the proceeds of the sale of any other obligations of the City or from any other funds legally available for that purpose. Within any applicable limitations of Maryland or federal law, including (without limitation, the Internal Revenue Code of 1986, as amended, and the regulations issued thereunder), the City may apply to the payment of the principal of or interest on any series of the Refunding Bonds 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 such funds are granted or paid to the City or are otherwise available for the purpose of assisting the City in the types of projects which the Refunding Bonds of such series 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 3. The Mayor, the City Administrator, the Treasurer, the Director of Administrative Services, the Comptroller, 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

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complete and close the sale, issuance and delivery of the Refunding Bonds and to negotiate, approve, execute and deliver all documents, certificates and instruments necessary or appropriate in connection therewith.

SECTION 4. Pursuant to a resolution or resolutions, the Mayor and City Council may determine that any of the Refunding Bonds authorized hereby may be consolidated with any other bonds and/or refunding bonds authorized by the Mayor and City Council and issued as a single series of bonds and/or refunding bonds.

SECTION 5. From and after the effective date of this Ordinance, Ordinance No. 3329, as supplemented by Ordinance No. 3359, shall be deemed supplemented and amended as provided herein, and all other terms and provisions of Ordinance No. 3329, as supplemented by Ordinance No. 3359, shall remain in full force and effect.

SECTION 6. 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 7. 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 10** , 2011

Passed: **May 24** , 2011

Effective: **June 23** , 2011

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