

ORDINANCE NO. 3624

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 SIX MILLION DOLLARS (\$6,000,000) PURSUANT TO THE AUTHORITY OF SECTIONS 31 TO 37, INCLUSIVE, OF ARTICLE 23A OF THE ANNOTATED CODE OF MARYLAND, SECTION 24 OF ARTICLE 31 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 PENSION CONTRIBUTION BONDS” AND BY YEAR AND/OR SERIES, UNLESS A SUBSEQUENT RESOLUTION 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 EXPENDITURES) OR REFINANCING COSTS OF (I) THE PREPAYMENT OF ALL OR A PORTION OF THE BALANCE OF THE CITY’S SPECIAL ACCRUED LIABILITY CONTRIBUTION RELATING TO THE PARTICIPATION OF CITY EMPLOYEES IN THE EMPLOYEES’ PENSION SYSTEM AND THE EMPLOYEES’ RETIREMENT SYSTEM OF THE STATE RETIREMENT AND PENSION SYSTEM OF MARYLAND (THE “SRPS”), TOGETHER WITH ANY PREPAYMENT PREMIUMS AND/OR ACCRUED INTEREST, AND/OR (II) MAKING A LUMP SUM PAYMENT OF THE CITY’S

SPECIAL ACCRUED LIABILITY CONTRIBUTION IN CONNECTION WITH TRANSFERRING CITY EMPLOYEES FROM THE LOCAL FIRE AND POLICE SYSTEM TO THE LAW ENFORCEMENT OFFICERS' PENSION SYSTEM OF THE SRPS, TOGETHER WITH COSTS OF ISSUANCE IN EACH SUCH CASE; DETERMINING THAT THE BONDS OF EACH SERIES BE SOLD AT PRIVATE SALE, UNLESS A SUBSEQUENT RESOLUTION OR RESOLUTIONS OF THE MAYOR AND CITY COUNCIL PROVIDES FOR THE SOLICITATION OF COMPETITIVE BIDS AT PUBLIC 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 BONDS TO REFUND ANY OF THE BONDS ISSUED PURSUANT TO THE AUTHORITY OF THIS ORDINANCE (INCLUDING PAYING RELATED COSTS OF ISSUANCE), 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; PROVIDING THAT ANY SUCH SERIES OF REFUNDING BONDS SHALL BE SOLD ON A NEGOTIATED BASIS WITHOUT SOLICITATION OF BIDS, UNLESS OTHERWISE DETERMINED BY THE MAYOR AND CITY COUNCIL BY SUBSEQUENT RESOLUTION, AND PROVIDING THAT

THE MAYOR AND CITY COUNCIL SHALL DETERMINE CERTAIN MATTERS RELATING TO ANY SUCH 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 AND REFUNDING BONDS; PROVIDING THAT THE PRINCIPAL OF AND INTEREST ON EACH SERIES OF THE BONDS 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 AND 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 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. Pursuant to the provisions of Section 24 of Article 31 of the Annotated Code of Maryland (the “Refunding Act”), the City is further authorized to issue bonds for the purpose of refunding any of its bonds or other evidences of obligation then outstanding for the public purpose of realizing debt service savings or debt restructuring.

2. The City (i) currently participates in the Employees’ Pension System and the Employees’ Retirement System (collectively, the “Employees’ Systems”) of the State Retirement and Pension System (the “SRPS”) and has enrolled in the Alternate Contributory Pension Selection of the Employees’ Pension System of the SRPS and (ii) transferred the law enforcement officers of the Cumberland Police Department from the Local Fire and Police System to the Law Enforcement Officers’ Pension System (the “Law Enforcement System”), both part of the SRPS.

3. In connection with its entry into the Employees’ Systems, the City was permitted to amortize its special accrued liability contribution over a period of time with interest at the rate of approximately 8% per annum (the “Employees’ Systems Contribution”) and to make annual payments with respect to such obligation as of each December 31, to and including December 31, 2035, and the SRPS will allow the City to make a lump sum payment to prepay all or a portion of the remaining balance of the Employees’ Systems Contribution.

4. In connection with its entry into the Law Enforcement System, the State will allow the City to make a lump sum payment to such System in order to fund its special accrued liability contribution for participating employees (by whatever name such contribution may be known, the “Law Enforcement System Contribution”).

5. The City has determined to borrow money for the public purpose of (i) prepaying the outstanding balance of the Employees' System Contribution in whole or in part, together with any prepayment premiums and/or accrued interest and/or (ii) making a lump sum payment with respect to the Law Enforcement System Contribution, together with, in either such case, paying costs of issuance (collectively, the "Pension Project"), and to evidence this borrowing by the issuance and sale of its general obligation bonds.

6. The City has determined that, as authorized by the Enabling Act, the Refunding Act and the Charter, as applicable, each series of the bonds authorized hereby shall be sold by private sale unless, following the recommendation of the financial advisor to the City, a subsequent resolution of the Mayor and City Council provides for the solicitation of competitive bids at public sale for any series of the bonds.

7. Subsequent to the issuance of any series of the bonds authorized by this Ordinance, the City may desire to refund or advance refund all or a portion of such series of the bonds through the issuance from time to time of one or more series of its general obligation refunding bonds pursuant to the authority of the Refunding Act.

8. It is intended that any series of the bonds or the refunding bonds issued pursuant to the authority of this Ordinance and other applicable Maryland law may be issued as one or more bonds and any of such bonds may be issued in the form of an installment bond.

9. The City has determined to issue the bonds and the refunding bonds authorized hereby in accordance with terms and conditions provided for in subsequent resolutions to be adopted by the Mayor and City Council pursuant to this Ordinance.

10. 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 and the refunding bonds authorized hereby.

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

SECTION 1. The Recitals to this Ordinance are deemed a substantive part of this Ordinance. Capitalized terms defined in such Recitals and used in any of the Sections of this Ordinance shall have the meanings given to such terms in the Recitals.

SECTION 2. Pursuant to the authority of the Enabling Act, the Refunding Act and the Charter, as applicable, the City hereby determines to borrow money and incur indebtedness for the public purpose of financing (including by reimbursing prior expenditures) or refinancing costs of the Pension Project. The total cost of that portion of the Pension Project to be financed, reimbursed or refinanced from proceeds of the bonds authorized by this Ordinance will not exceed Six Million Dollars (\$6,000,000).

SECTION 3. To evidence the borrowing and indebtedness authorized in Section 2 of this Ordinance, the City, acting pursuant to the authority of the Enabling Act, the Refunding Act and the Charter, as applicable, 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 Six Million Dollars (\$6,000,000) (collectively, the “Bonds”). Each series of the Bonds shall be designated “Mayor and City Council of Cumberland Pension Contribution 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 (as defined in Section 6 below). Any series of the Bonds may be issued as one or more general obligation installment bonds.

SECTION 4. Pursuant to the authority of the Enabling Act, the Refunding Act and the Charter, as applicable, the City hereby determines that each series of the Bonds shall be sold at private sale due to the ability to time the market, negotiate flexible terms, and thereby achieve a beneficial interest rate or rates, unless pursuant to the Resolution the Mayor and City Council determine to provide for the sale of any such series of the Bonds by the solicitation of competitive bids at public sale upon the recommendation of the financial advisor to the City that such public sale will likely be more advantageous and cost-effective to the City.

SECTION 5. The proceeds 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 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, the Refunding Act or the Charter.

SECTION 6. 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 (in each such case, the “Resolution”) specifying, prescribing, determining, providing for and approving 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 Enabling Act, the Refunding 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 at private sale, unless the Resolution shall provide for the sale of such series of the Bonds by solicitation of competitive bids at public sale, in which case the Resolution shall set forth the procedures for the sale of the Bonds of such series at public sale (including any advertising or bidding requirements) and the award of such series of the Bonds to the successful bidder; the components of the Pension Project to which the proceeds of the Bonds of such series shall be applied; 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 or liquidity 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 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 6 for more than one series of the Bonds.

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 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, 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 subsequent resolution or resolutions, to make any further determinations deemed necessary or desirable in connection with the issuance of any series of 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 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) the obtaining of credit enhancement or liquidity enhancement for any series of 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 and the Refunding Bonds authorized hereby (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 lawfully 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, 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 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

Lee N. Fiedler  
Mayor and President of the Council

ATTEST:  
Marjorie A. Eirich, City Clerk

Introduced: August 12, 2008

Passed: August 12, 2008

Effective: September 11, 2008

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