CHARTER

OF THE

City of Cumberland

ALLEGANY COUNTY, MARYLAND

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CONTENTS

Incorporation and Boundaries

Section

1. Incorporation; name; right to sue and be sued; seal; purchase and disposition of real estate.
2. Corporate limits.
3. Control of streets, alleys, etc.; extension of public utilities into subdivisions.
4. Extension of public utilities into annexed territory; use of taxes collected within annexed territory; boundaries of annexation districts.
5. Repealed.
6. Extraterritorial authority of city.
7. Property and funds vested in city; authority of city to receive money and property for general or charitable purposes.

Wards

8. Boundaries of wards precincts.

Elections

10. Board of Election Supervisors.
11. Elections.
11A. Limitations on Political Campaign Contributions.

Mayor and Council

12. Qualifications and term of office of mayor and councilmen; oath of office; mayor to serve as president of council.
13. Compensation of mayor and councilmen.
14. Bond of mayor and councilmen; appointment of officers and subordinates in city departments.
15. Forfeiture of office by mayor or councilmen.
16. Resignation of mayor or councilmen; filling of vacancies; mayor pro tempore.
17. Authority of mayor, councilmen and city clerk to administer oaths.
18. Designation of councilmen as commissioners of departments of city government.
19. Right of mayor to vote on questions before council; authority of mayor and council to compel attendance of witnesses and production of records.
20. Mayor executive officer of city; duties generally of mayor; relationship between mayor and councilmen; removal of mayor or councilmen for dereliction of duty; audit of claims against departments; publication of quarterly report by council.
21. Authority of mayor to summon citizens as special police.
22. Acting mayor.

23. Meetings of mayor and city council; quorum; meetings to be open to public.
24. Publication of ordinances in newspapers required; exceptions; when ordinances to take effect; admissibility of codification in evidence.
25. Style of ordinances.
26. Appointment and term of office of city solicitor.
27. Superintendent of Evitts Creek Dam.
28. Duties generally of commissioner of finance; use of facsimile signatures on drafts and checks; duty of persons collecting money for city to pay same to treasurer; city depositories.
29. Duties generally of city clerk.
30. City solicitor generally.

Comptroller

31. Duties generally of city comptroller.
32. Duties generally of treasurer.

Director of Administrative Services

33.

Director of Engineering

34. Position created; qualifications of designee; duties generally.

Director of Public Works

35.

Director of Utilities

35A.

Civil Service — Fire and Police

36.
37.
38.
39. Classification of offices and positions.
40.
41.
42.
43.
44.
45.

46.
47.
48.
49.
50.
51.
52. Repealed.
53. Repealed.
54. Repealed.
55. Repealed.
56. Repealed.
57. Repealed.
58. Repealed.
58A. Repealed.
58B. Repealed.

Pensions – Police and Fire Departments

59. to 64. Repealed by Charter Amendment Resolution No. 37.

Powers

65. Certain officers to attend council meetings.
66. To whom official bonds payable; form and sureties on official bonds.
67. Recordation of bonds of city officers.
68. Creation of offices; appointment, removal and compensation of employees.
69. Substitutes for city officials during sickness, absence, etc.
70. Liability of officials handling city revenues.
71. Removal of officers.
72. Applicability of preceding section.
73. General enumeration of powers of city council.
73A. Repealed.

Crimes and Penalties

74. Search warrants for narcotics.
75. Carrying concealed weapons.
76. Dumping of debris in certain streams.
77. Penalty for violation of preceding section.
78. Enforcement of ordinances; penalties.
79. How fines, etc., recoverable.
80. Repealed.

Assessments and Borrowing Power

81. Authority of city generally.

Water

82. Authority of city generally.
82A. Bonds – Issuance.
82B. Acquisition of real, personal or mixed property; capital leases.

Water Bonds of 1924

83. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes or borrow money to pay bonds.
84. Bonds not subject to limitation on bonded indebtedness.
85. Penalty for violation of subheading.

Water Improvement Bonds of 1929

86. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes or borrow money to pay bonds.
87. Bonds not subject to limitation on bonded indebtedness.
88. Penalty for violation of subheading.

Trustees of Waterworks

89. Authority of city to convey part of waterworks lot to trustees.
90. Trustees named; purpose for holding part of waterworks lot; filling of vacancies in office of trustees.

Water Improvement Bonds of 1931

91. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes or borrow money to pay bonds.
92. Bonds not subject to limitation on bonded indebtedness.
93. Penalty for violation of subheading.

Water Improvement Bonds of 1933

94. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes to pay bonds.
95. Bonds not subject to limitation on bonded indebtedness.
96. Penalty for violation of subheading.

Water Improvement Bonds of 1939

97. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes or borrow money to pay bonds.

98. Bonds not subject to limitation on bonded indebtedness.
99. Penalty for violation of subheading.

Water Improvement Bonds of 1941

100. Charges for water to cover operation of water system and redeem bonds; authority of system to levy taxes or borrow money to pay bonds.
101. Bonds not subject to limitation on bonded indebtedness.
102. Penalty for violation of subheading.

Water Improvement Bonds of 1945

103. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes to pay bonds.
104. Bonds not subject to limitation on bonded indebtedness.
105. Penalty for violation of subheading.

Water Improvement Bonds of 1949

106. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes to pay bonds.
107. Bonds not subject to limitation on bonded indebtedness.
108. Penalty for violation of subheading.

Water Supply

109. Authority of city to improve, etc., water system; authority of city to purchase, lease, etc., land and sources of water.
110. Authority of city to agree with owners of land, sources of water, etc.
111. Authority of city to condemn land, sources of water, etc.
112. Authority of city to purchase water companies.
113. Authority of city to condemn rights of way.
114. Ordinances relative to water system.

Taxes

115. Preparation of tax ledger.
116. Treasurer to fill out tax cards for property transferred; report of same to city comptroller.
117. City comptroller to prepare statement of anticipated revenue; special meeting of mayor and council to fix tax rate; calculation of individual taxes.
118. When tax rate to be established.
119. Rendering of tax bills to taxpayers; when taxes to be paid; manner of collecting unpaid taxes; monthly returns and payments by treasurer; allowance for insolvent or uncollectible taxes.
120. Taxes and water rents constitute lien on property; collection of taxes from rents or sale of property.

121. City may purchase and sell property sold for taxes.
122. At least twenty–five per cent of taxes to be collected quarterly; bond of treasurer; proof of delivery of levy list to treasurer constitutes prima facie evidence of right of city to recover from treasurer.
123. Authority of city to exempt manufacturing companies from taxation.
124. Repealed by Charter Amendment Resolution No. 8.

Franchises

125. Authority of city to grant franchises; notice of grant of franchise to be published in newspapers; maximum term of franchises.

Sewers

126. Authority of city relative to sewers and sewage disposal.

Streets

127. Authority of city to lay out, open, widen, close, etc., streets and alleys; payment of damages; assessment of benefits; notice of work to be published; service of personal notice on property owners; establishment of grade of streets and alleys.
127A. Reversion of title to land when streets closed.
128. Appeals to circuit court from decisions of street commissioners.
129. Authority of city to pave, repave, etc., streets, construct curbs, gutters, sewers, etc., and assess costs against abutting property; city may require payment of assessments prior to issuance of building, etc., permits; limitation on making of improvements.
130. Levy of costs of improvements on abutting property owners; assessments constitute lien; statement of costs and assessments to be filed with clerk of circuit court; duration and revival of lien.
131. Schedule of fees for improvements.
132. Enforcement of liens for improvements.
133. Authority of city to grade, curb and pave sidewalks and gutters.
134. Authority of city to require property owners to grade, curb, pave, etc., sidewalks.
135. Penalty for failure to comply with notice issued pursuant to preceding section.

Off–Street Parking

135A to 135E. Repealed.

Parks

136. Authority of city to hold, use, receive, etc., land for park purposes.
137. Authority of city to condemn land for park purposes.

County Property

138. City jurisdiction over county property within city.

Markets

139. Authority of city to purchase, use, etc., land, buildings and other property for market purposes.
140. Maximum expenditure for markets.

Light and Power

141. Authority of city to sell electricity.

Damages

142. Notice of injuries to be given city within thirty days; city not liable for certain defects without notice.

Public Accountant

143. Appointment by mayor and council.
144. Audit of books of city officers; report of audit to mayor and council.
145. Duty of city officers to deliver books to accountant.
146. Report of accountant deemed prima facie correct; compensation of accountant; regulation of activities of accountant by mayor.

Debt

147. Approval of mayor and council to incur debt.

Appropriations

148. Annual appropriation to be made in August (See note (31)); contingent fund; special contingent fund.
149. City comptroller to advise council of overdrawn appropriations; annual report by city comptroller in January; transfer of money between departments; appropriations from contingent fund.

Contracts

150. Purchase of supplies and equipment.
151. Repealed.

Fiscal Year

152. Fiscal year of city designated; books and papers of city officer remain property of city.

Workmen and Wages

153. Public works contracts; consulting services.
154. Public bidding.
155 to 160. Repealed.

Registration of Voters

161. City to maintain registration of qualified voters.
162. Qualifications of voters.
162A. Duties of city clerk; manner of keeping registration books.
162B. Manner of registration; identification card for voter; recordation of voter's name in registration books; preservation of application forms; when registration books closed.
162C. Temporary certificates of registration.
162D. Correction of records; removal of persons not voting for five years from registration lists; registrations not to be cancelled within sixty days of any election; notice of cancellation of registration; registration of members of armed forces not to be cancelled.
162E. Clerks to deliver registration books to board of supervisors of elections; return of books to clerk after election.

Women

163. Equal rights to office.

Ordinances

164. Codification of ordinances.

Saving Clause

165. Continuation of ordinances, resolutions, etc.; bonds may be required from bonding company; Charter not to impair contracts.
166. Preservation of rights, titles, interests, liens, etc.
167. Repeal of conflicting laws.

Buildings

168. Obstruction of aisles of public buildings prohibited.
169. When doors to public building to remain open.
170. Penalty for violation of two preceding sections; disposition of fines.
171. Duties of judges and police officials under three preceding sections.

Condemnation

172. Authority of city to condemn land for public use.

Flood District

173. Authority to establish Wills Creek Flood District.
174. Preparation of Permanent Flood Prevention Plan.
175. Implementation of Partial Flood Prevention Plan.
176. Right of entry on lands to make surveys and examinations.
177. Powers of city in regard to flood control within city limits and within one mile of city limits.
178. Advertisement for bids for flood control work; grant or denial of contracts.
179. Powers of eminent domain of city.
180. Procedure in carrying out powers of eminent domain.
181. Additional powers of eminent domain.
182. Authority of city to acquire land and hold stock in West Virginia.
183. Right of city to police improvements and prevent trespass thereon by persons, vehicles and animals.
184. Authority of city to prevent dumping, etc., in Wills Creek or Potomac River.
185. Additional general powers of city in regard to flood prevention.
186. Fixing compensation and terms of service of persons appointed by commissioners.
187. Authority to carry out powers granted by subtitle.
188. Construction of “and” and “or”.
189. Repeal of conflicting Acts.
190. Severability of provisions of subtitle.
191. Certain territory included in special assessment district.

Memorial Hospital

192. Board of governors.
193. Selection of land and preparation of plans; contracts for construction; sale of bonds; expenditure of proceeds from bonds.
194. Dedication of hospital.
195. Rules and regulations for operation of hospital; city and county residents to be given preference in admittance.
196. Charges for hospitalization; salaries of employees; rules and regulations governing conduct of physicians, nurses, employees, etc.
197. Fiscal affairs of hospital.
198. Semiannual financial statement to mayor and council.
199. Limitation of liability of board of governors and of city.
200. Acceptance of gifts, bequests, etc.
201. Repeal of conflicting acts.
202.
203.
204. Repealed by Charter Amendment Resolution No. 15.

Zoning

205. Authority to regulate size of buildings and yards, density of population, use of buildings and land, etc.
206. Division of city and area within one mile of city limits into districts; regulations within districts to be uniform.
207. Comprehensive plan; purposes of zoning regulations.
208. Enactment and amendment of regulations; public hearings and notice of hearings required prior to enactment or amendment of regulations.
209. Procedure when neighboring property owners protest change.
210. Planning and zoning commission.
211. Board of adjustment.
212. Proceedings to prevent unlawful construction, use, etc., of buildings or land.
213. Conflicts between zoning regulations and other statutes, ordinances, etc.
214. Exemption of buildings from regulations.

Redevelopment — Urban Renewal

Repealed. See Appendix I.

Fluoridation of Water

226. Repealed.

Annexation of Territory

227. Area to be annexed.
227A. Additional area to be annexed.

City Magistrate

228. Repealed.

On and Off–Street Parking

229. Repealed.
230. Same — Powers, duties and functions generally.
231. Repealed.
232. Same — Preparation of budget; collection of fees; establishment of accounting procedures; issuance of bonds.
233. Severability; powers conferred by subtitle to be in addition to powers conferred by other laws.

Housing Projects

234. Authorization of Mayor and City Council to initiate and to apply for funds.

Law Enforcement Officers' Bill of Rights

235. Generally.

Special Taxing District

236. Generally.
237. Downtown Development Commission.

APPENDIX I
Urban Renewal Authority for Slum Clearance

A1–101. Definitions.
A1–102. Powers.
A1–103. Establishment of Urban Renewal Agency.
A1–104. Initiation of Project.
A1–105. Preparation and Approval of Plan for Urban Renewal Project.
A1–106. Disposal of Property in Urban Renewal Area.
A1–107. Eminent Domain.
A1–108. Encouragement of Private Enterprise.
A1–109. General Obligation Bonds.
A1–110. Revenue Bonds.
A1–111. Separability.
A1–112. Short Title.
A1–113. Authority to Amend or Repeal.

CUMBERLAND

(See note (1))

Incorporation and Boundaries

Section 1. Incorporation; name; right to sue and be sued; seal; purchase and disposition of real estate. (See notes (2), (39), and (43))

(a) The inhabitants of the City of Cumberland, in Allegany County, are a corporation by the name of the Mayor and City Council of Cumberland, and by that name may sue, and be sued, may have and use a common seal, which may be altered at pleasure.

(b) The said Mayor and City Council of Cumberland is authorized to acquire by conveyance, purchase or condemnation, real or leasehold property needed for any public purpose; to erect buildings thereon for the benefit of the municipality; and to sell at public or private sale after twenty days' public notice and to convey to the purchaser or purchasers thereof any real or leasehold property belonging to the municipality when such legislative body determines that the same is no longer needed for any public use.

(c) The said Mayor and City Council of Cumberland is authorized to take by gift, grant, bequest or devise, and to hold real and personal property absolutely or in trust, for parks or gardens, or for the erection of statues, monuments, buildings or structures, or for any public use, upon such terms and conditions as may be prescribed by the grantor or donor, and accepted by the municipality; to provide for the proper administration of the same; and to convey the same when such legislative body determines that it is no longer needed for public purposes, subject to the terms and conditions of the original grant. (1922, ch. 96, § 1; P.L.L. 1930, art. 1A, § 1; Char. Amend. Reso. No. 13, § 1; Char. Amend. Reso. No. 54, §§ 1, 2; Res. No. 136, 3–26–08.)

Section 2. Corporate limits.

DESCRIPTION
CITY LIMIT LINE INCLUDING NEWEST ANNEXATIONS
All Names of Property and Buildings
are from 1929 City Charter Description
(All Bearings refer to True Meridian)

(a) The Corporate Limits of the City of Cumberland shall be as follows: Beginning at a concrete monument standing on the Maryland bank of the North Branch of the Potomac River about 475 feet above the center of Evitts Creek, where same empties into said river, said beginning also standing S. 44° 27′ E., 382.9 feet from the southeasterly corner of a brick building recently built by the Baltimore and Ohio Railroad Company to be used as a filtering and pumping station; thence running due north 19,052.6 feet to a concrete monument standing approximately on the division line between the Joseph H. Lippold and the John C. Schlund properties which are situated along the Bedford Road, said monument standing N. 2° 36′ E., 266.8 feet from the southeasterly corner of the John C. Schlund brick house, facing the Bedford

Road; thence N. 66° 39′ W., 173.75 feet to a concrete monument; thence N. 66° 04′ W., 799.95 feet to a concrete monument; thence N. 29° 47′ 30″ E., 1,176.85 feet to a concrete monument; thence N. 60° 57′ 30″ W., 747.95 feet to a concrete monument; thence S. 47° 47′ 30″ W., 709.50 feet to a concrete monument; thence S. 27° 47′ 30″ W., 811.79 feet to a concrete monument; thence S. 58° 55′ 20″ E., 498.15 feet to a concrete monument; thence S. 31° 05′ W., 380.45 feet to a concrete monument on the 1929 City Limit Line; thence and with the 1929 City Limit Line due west 3,708.1 feet to a concrete monument standing on the property of Conrad A. L. Miller, said monument being about 26 feet in a southwesterly direction from a division fence between the property of Conrad A. L. Miller and George D. Martin, said monument also standing N. 81° 23′ W., 1,198.2 feet from the southwest corner of a rear stone wing of the house owned by said George Martin and standing west of Valley Road; thence and with the 1929 City Limit Line S. 45° 00′ W., 1,975.40 feet; thence leaving the 1929 City Limit Line N. 36° 17′ 23″ E., 349.01 feet to a point; thence N. 67° 15′ 19″ W., 575.71 feet to a point; thence N. 18° 57′ 32″ E., 132.33 feet to a point; thence N. 36° 55′ 51″ E., 606.38 feet to a point; thence N. 33° 42′ 08″ E., 225.29 feet to a point; thence N. 28° 35′ 19″ E., 470.55 feet to a point; thence N. 28° 08′ 14″ E., 657.81 feet to a point; thence N. 65° 03′ 29″ W., 715.03 feet to a point; thence S. 39° 16′ 05″ W., 3,948.13 feet to a point; thence S. 48° 30′ 23″ E., 1,081.85 feet to a point; thence N. 35° 56′ 37″ E., 1,683.56 feet to a point; thence S. 60° 33′ E., 165.13 feet to a point; thence S. 45° 32′ 31″ E., 33.55 feet to a point on the southeasterly side of Piedmont Avenue Extended; thence with the southeasterly side of Piedmont Avenue Extended S. 35° 47′ W., 75.61 feet to a point; thence S. 54° 13′ E., 359.12 to a point on the 1929 City Limit Line; thence with the 1929 City Limit Line S. 45° W., 6,117.24 feet to a point on the westerly side of Haystack Mountain overlooking the "Narrows"; thence N. 50° 46′ W., 2,417.70 feet to a monument; thence S. 42° 14′ W., 3,347.60 feet to a monument; thence S. 28° 14′ W., 2,465.51 feet to a stone monument; thence S. 31° 25′ W., 2,227.40 feet to a monument; thence S. 43° 59′ E., 696.66 feet to a point; thence S. 34° 12′ 47″ W., 339.99 feet to a point; thence S. 44° 30′ 15″ E., 522.19 feet to a point; thence N. 44° 37′ 44″ E., 330.00 feet to a point on the 1929 City Limit Line; thence with the 1929 City Limit Line S. 43° 59′ E., 2,590.72 feet to a concrete monument standing 10 feet in a southeasterly direction from the edge of the concrete pavement on the McMullen Highway, and also standing N. 28° 59′ E., 237 feet from a crow foot cut into the top of the southerly end of a 10 foot by 6 foot culvert which carries the water of a nearby ravine under McMullen Highway at the foot of the hill just west of the "Dingle"; thence S. 12° 41′ W., 523.3 feet to a monument standing on the Maryland bank of the North Branch of the Potomac River, said monument also standing due south 302.8 feet from the crow foot cut in top of the concrete culvert as aforedescribed; thence down and along the meanders of the Maryland bank of the North Branch of the Potomac River, crossing the mouth of Wills Creek to the place of beginning. (1922, ch. 96, § 2; 1929, ch. 522, § 2; P.L.L. 1930, art. 1A, § 2.; Res., 9–10–83.)

(b) *Lots 1 and 2 Woodland Acres Subdivision, Section 1*

All those parcels or tracts of land shown as Lots No. 1 and 2 and portions of the dedicated public rights–of–way known as Seneca Avenue and Richwood Avenue, said tracts or parcels being contiguous with the present corporate limits of the City of Cumberland, and being more particularly described as follows:

Beginning at a point on the Northeast corner of Lot No. 1 as shown on the Amended plat of Woodland Acres Subdivision, Section 1, as recorded on Plat No. _____ among the Land Records of Allegany County, Maryland, thence binding with the northerly boundary of said Lot No. 1

1) South 34 degrees 12 minutes 47 seconds West 177.25 feet to a point on the easterly limits of Seneca Avenue; thence crossing Seneca Avenue

2) South 46 degrees 06 minutes 57 seconds West 50.00 feet to a point on the westerly limits of Seneca Avenue; thence binding with part of said westerly limits of Seneca Avenue;

3) South 45 degrees 33 minutes 35 seconds East 300.00 feet to a point on the northerly limits unimproved Richwood Avenue as shown on a plat of Potomac Heights Addition to Cumberland; thence crossing Seneca Avenue

4) South 44 degrees 26 minutes 25 seconds West 50.00 feet to a point in the easterly limits of Seneca Avenue; thence binding with part of the easterly limits of Seneca Avenue and coincident with part of the westerly boundary of Lot No. 2

5) South 45 degrees 33 minutes 35 seconds East 189.81 feet to a point on the southwest corner of Lot No 2; thence binding with the southerly boundary of Lot No. 2, said line adjoins an unimproved and platted twelve (12) foot alley in Potomac Heights Addition to Cumberland

6) North 44 degrees 37 minutes 44 seconds East 164.82 feet to a point in the existing City Limit line.

Containing a total of 1.73 acres of lot acreage and 0.34 acre of dedicated public right–of–way for Seneca Avenue and 0.23 acre of dedicated public right–of–way for Richwood Avenue. (Res. 7–11–87.) (See Note (2a))

(c) *Lots 3 and 4 Woodland Acres Subdivision, Section 1*

All those parcels of land shown as Lots No 3 and 4 being contiguous with the present corporate limits of the City of Cumberland, and being more particularly described as follows:

Beginning at the intersection of the westerly right of way limits of Seneca Avenue and the westerly right of way limits of Richwood Avenue unimproved as of July, 1987, at a 5/8 inch iron bar with cap set; thence running with said limits of Seneca Avenue and binding on the existing City Limit line

1) North 45 degrees 33 minutes 35 seconds West 300.00 feet to a 5/8 inch iron bar w/cap set; thence leaving said limits of Seneca Avenue at a right angle

2) South 44 degrees 26 minutes 25 seconds West 200.00 feet to a concrete monument set; thence

3) South 45 degrees 33 minutes 35 seconds East 300.00 feet to a concrete monument set; thence binding on the westerly right of way limits of Richwood Avenue unimproved

4) North 44 degrees 26 minutes 25 seconds East 200.00 feet to the point of beginning

Containing 1.38 acres more or less. (Res. 10–31–87.) (See Note (2a))

(d) *1988 Annexation*.

BEGINNING at a point near Bedford Road; said point being the present northeast City Monument and is further described as a concrete monument standing at the end of the first line of the 1929 City Limit line as described in Section 2 of the Charter of the City of Cumberland, Maryland; said monument is also due North 360.09′ from an "x" marked on top of a concrete wall standing along the westerly side of Bedford Road; thence leaving said City Monument, and with the northerly right–of–way of a 25′ alley, said right–of–way line also being the property line of the Central Assembly of God Church property S. 65° 21′ 20″ E. 406.30′ to a concrete monument said concrete monument standing along the westerly right–of–way of Bedford Road; thence running with the westerly right–of–way of Bedford Road, said lines also being the property lines of the aforementioned Central Assembly of God Church property, with a curve to the left with a radius of 2,251.98′ and a chord of:

N. 58° 09′ 23″ E. 437.54′ to a point

N. 52° 30′ 13″ E. 19.68′ to a point

N. 52° 05′ 23″ E. 19.70′ to a point

N. 51° 38′ 42″ E. 19.74′ to a point

N. 51° 19′ 02″ E. 19.77′ to a point

N. 51° 00′ 42″ E. 19.83′ to a point

N. 50° 45′ 52″ E. 18.83′ to a point

N. 50° 33′ 52″ E. 19.89′ to a point

N. 50° 25′ 52″ E. 19.91′ to a point

N. 50° 18′ 22″ E. 19.95′ to a point

N. 50° 17′ 02″ E. 19.99′ to a point

N. 50° 15′ 32″ E. 73.99′ to a point

S. 39° 44′ 15″ E. 25.00′ to a point

N. 50° 15′ 32″ E. 18.08′ to a point

N. 49° 59′ 52″ E. 119.31′ to a point

said point standing on the westerly right–of–way of Bedford Road and also standing on the property line dividing the aforementioned Central Assembly of God church and the Allegany County Commissioners properties; thence continuing with the right–of–way of Bedford Road, said lines also being the property lines of the aforementioned Allegany County Commissioners property,

N. 30° 04′ 38″ E. 99.97′ to a point

thence with a curve to the left with a radius of 1,869.86′ and a chord of

N. 36° 51′ 03″ E. 439.54′ to a point

Thence

N. 10° 03′ 31″ E. 77.10′ to a point

N. 30° 45′ 53″ E. 181.05′ to a point

N. 23° 18′ 39″ E. 389.39′ to a concrete monument

said concrete monument standing on the westerly right–of–way of Bedford Road and also standing on the property line dividing the property of the Allegany County Commissioners and the property of Biederlack G.M.B.H. and Co.; thence leaving the right–of–way of Bedford Road and running with said property line,

N. 67° 43′ 01″ W. 200.08′ to a point.

said point standing on the aforementioned property line and also being on the easterly right–of–way of Center Drive (as shown on a plat of the Commerce Center, which is on file at the Allegany County Department of Public Works); thence continuing with said property line and crossing aforementioned Center Drive,

N. 67° 43′ 01″ W. 70.00′ to a point

said point standing on the aforementioned property line and also being on the westerly right–of–way of Center Drive; thence leaving aforementioned property line and running with said westerly right–of–way of Center Drive,

S. 25° 47′ 09″ W. 461.00′ to a point

thence leaving said right–of–way and running with the southerly side of Lot No. 1 (shown on the aforementioned Commerce Center plat),

N. 67° 32′ 54″ W. 482.66′ to a concrete monument

said concrete monument stands on a property line that divides that aforementioned Allegany County Commissioners and the Central Assembly of God Church properties; thence running with said property line, said line also being the westerly side of aforementioned Lot No. 1,

N. 27° 58′ 51″ E. 461.00′ to a point

said point being the northernmost point of the Allegany County Commissioners property; and running thence with same line extended, said extended line being the property line dividing the aforementioned Central Assembly of God Church and the Biederlack G.M.B.H. and Co. properties,

N. 27° 58′ 51″ E. 978.28′ to a point

thence along a property line dividing the Central Assembly of God Church, and the properties now or formerly owned by: Ernest B. Barnes, Norwood B. Barnes, Ronald R. Geiger, Dorothy A. Sell, and Robert J. Mace;

N. 44° 00′ 18″ W. 966.30′ to a point

N. 71° 23′ 31″ W. 82.51′ to a point

S. 29° 14′ 46″ W. 2,024.31′ to a concrete monument

said concrete monument stands at the end of the third line of the Botany Woods Annexation as described in Section 227A of the Charter of the City of Cumberland, Maryland; thence with the first three lines of the Botany Woods Annexation reversed (said three lines also being existing City Limit lines, as shown on the same attached plat), and with the bearings corrected to the same north as this annexation description,

S. 29° 14′ 46″ W. 1,176.86′ to a concrete monument

S. 65° 36′ 18″ E. 799.91′ to a concrete monument

S. 66° 11′ 19″ E. 173.74′ to the point of beginning

said point of beginning being the aforementioned northeast City Monument. This annexation contains 95.81 acres, more or less. (Annexation Resolution, 9–3–88.)

(e) *First 1990 Annexation*.

BEGINNING at a monument on the present corporate limits of the City of Cumberland, said monument being at the end of the first line of the area annexed to the City of Cumberland in 1964 as described in Section 227 of the City Charter, said monument is also in the division line between the properties of the Cumberland Real Estate Corporation and the Sunset View Real Estate and Development Company; thence leaving said Corporate Limit Line with the division line South 31 degrees 25 minutes 00 seconds West 588.43 feet (all bearings in this description have been adjusted to the same North as the 1929 Corporate Limit Line) to a point on the Easterly side of the Braddock Water Tank Lot (owned by the City of Cumberland); thence with the property lines of the Tank Lot for the next three courses and distances, North 45 degrees 05 minutes 00 seconds West 60.77 feet to an iron pin, South 44 degrees 55 minutes 00 seconds West 300.00 feet to an iron pin, South 45 degrees 05 minutes 00 seconds East 106.74 feet to a point; thence with the division line between the properties of the Cumberland Real Estate Corproation **[**Corporation**]** and the Sunset View Real Estate and Development Company for the next three courses and distances South 56 degrees 51 minutes 00 seconds West 1597.91 feet to a cross marked in a small ledge of rock at the brow of the hill, South 13 degrees 21 minutes 00 seconds West 290.10 feet, North 76 degrees 39 minutes 00 seconds West 488.90 feet to a point; thence across the property of the Cumberland Real Estate Corporation South 12 degrees 00 minutes 36 seconds West 391.07 feet to a point in the right–of–way of through highway of U.S. Route 40/48; thence through and across the right–of–way of through highway for the next three courses and distances South 71 degrees 14 minutes 14 seconds East 627.04 feet, North 87 degrees 50 minutes 31 seconds East 627.04 feet, North 85 degrees 36 minutes 32 seconds East 893.88 feet to a point; thence across the aforementioned right–of–way of through highway and with the division line between the properties of Clayton's Addition and the Cumberland Real Estate Corporation North 6 degrees 03 minutes 05 seconds West 317.97 feet to a point on the Southern right–of–way of Braddock Road; thence with the southern right–of–way of Braddock Road for the next two courses and distances North 84 degrees 01 minutes 00 seconds East 632.90 feet to a point, thence by a curve to the left with a radius of 1132.22 feet and a chord of North 78 degrees 40 minutes 56 seconds East 210.52 feet to a point; thence across the right–of–way of Braddock Road North 22 degrees 27 minutes 00 seconds West 60.27 feet to an iron pin at the Northwest corner of the intersection of Braddock Road (also referred to as the Old National Pike) and Longwood Avenue; thence running with the Westerly right–of–way line of Longwood Avenue North 22 degrees 27 minutes 00 seconds West 160.80 feet to a iron pin at the Southwest corner of Lot No. 24 in Potomac Heights Addition; thence with the Westerly line of Potomac Heights Addition North 41 degrees 16 minutes 00 seconds West 312.83 feet to a point on the Southerly side of Richwood Avenue, said point also being the Northwest corner of Lot No. 38 in Potomac Heights Addition; thence running with the Southerly right–of–way of Richwood Avenue North 44 degrees 44 minutes 00 seconds East 110.45 feet to a point, said point also being the Northwest corner of Lot No. 39; thence across said right–of–way North 45 degrees 16 minutes 00 seconds West 40.00 feet to a concrete monument on the Northerly right–of–way of Richwood Avenue, said monument also being the Southwest corner of Lot No. 4 in Woodland Acres Subdivision, Section 1, and is a monument on the Existing Corporate Limit Lines; thence running with the Existing Corporate Limit Lines and the boundaries of Woodland Acres Subdivision, Section 1, for the next four courses and distances North 45 degrees 16 minutes 00 seconds West 300.00 feet to a concrete monument at the Northwest corner of Lot No.

3, thence with the Northerly side of said lot North 44 degrees 44 minutes 00 seconds East 200.00 feet to an iron pin at the Northeast corner of Lot No. 3 on the Westerly right–of–way of Seneca Avenue, thence across Seneca Avenue North 46 degrees 24 minutes 32 seconds East 50.00 feet to a concrete monument at the Northwest corner of Lot No. 1 on the Easterly right–of–way of Seneca Avenue, thence with the Northerly side of said lot North 34 degrees 30 minutes 22 seconds East 177.25 feet to an iron pin at the Northeast corner of Lot No. 1, said iron pin also being the Northwest corner of Lot No. 1 in the Dr. Melvin R. Gonzaga Subdivision; thence running with the northerly side of Lots Nos. 1, 2, and 3 of the Dr. Melvin R. Gonzaga Subdivision North 34 degrees 30 minutes 22 seconds East 339.99 feet to an iron pin at the Northeast corner of Lot No. 3, said iron pin also being on the Southerly side of Lot No. 61 in Woodland Subdivision Section "A"; thence across Woodland Subdivision Section "A" North 43 degrees 59 minutes 00 seconds West 693.34 feet to the point of beginning, containing 72.05 acres, more or less. (First Annexation Resolution, 7–3–90.)

(f) *Second 1990 Annexation.*

BEGINNING at a point on the present corporate limits of the City of Cumberland; said point being on the third line of the Corporate Limits as surveyed in 1929 (and as described in Section 2 of the City Charter) where said third line intersects the easterly side of Lot 149 of Dilfer Farms Addition; said point of beginning also being South 45 degrees 00 minutes West 192.49 feet from the end of the last line of the Sandy Springs Hollow Annexation; thence running with the easterly side of lots 149, 159, and 160 of the aforementioned addition North 54 degrees 13 minutes 128.38 feet to a point being the northeasterly corner of Lot 160; thence with the northerly side of Lot 160 and crossing Tanpley Avenue South 35 degrees 47 minutes West 190.00 feet to a point on the westerly side of Tanpley Avenue South 54 degrees 13 minutes 97.55 feet to a point where it is intersected by the present Corporate Limits Line; thence reversing a portion of the existing Corporate Limits Line North 45 degrees 00 minutes East 192.49 feet to the point of beginning, containing 0.49 acres, more or less. (Second Annexation Resolution, 7–21–90.)

<u>Section 3. Control of streets, alleys, etc.; extension of public utilities into subdivisions.</u> (See note (3))

The Mayor and City Council of Cumberland shall have control and supervision over all streets, lanes, alleys and highways or part thereof within the limits of the City of Cumberland as defined by this Act, which are now used by the general public as streets, lanes, alleys and highways, excepting, nevertheless, that where any land has been or may hereafter be subdivided for building purposes and the streets, lanes, alleys or highways, located in and through said land have not been dedicated for general public use, said streets, lanes, alleys and highways shall be and remain private highways so far as general public traffic thereon is concerned, and the mayor and city council of Cumberland shall not by condemnation or otherwise, without the consent of the majority of the property owners located along any of said streets, lanes, alleys and highways, open said streets, lanes, alleys or highways to general public use. There shall be erected on all such private streets, lanes, alleys or highways, in some conspicuous place thereon a notice which shall read "Private Highway" or words of like tenor and effect. The mayor and city council of Cumberland shall furnish to the property owners within such subdivisions the usual public

utilities and may enter upon said private streets, lanes, alleys and highways for the purpose of maintaining electric lights, water pipes, sewers, etc., and for the purpose of collecting garbage, enforcing its health regulations and affording general police and fire protection, but shall not have control or supervision over the grading and paving of said private streets, lanes, alleys and highways, nor the regulation nor permission for traffic thereon. (1922, ch. 96, § 3; 1929, ch. 552, § 3; P.L.L. 1930, art. 1A, § 3.)

Section 4. Extension of public utilities into annexed territory; use of taxes collected within annexed territory; boundaries of annexation districts.

The mayor and city council of Cumberland shall extend its systems of light, water, sewer service and other public conveniences throughout and over the streets, lanes, alleys and highways now being or which shall be hereafter opened throughout the lands which lie within the limits as defined by this Act and its previous limits as the same shall be required for the convenience of the inhabitants of said territory. The mayor and city council shall assess the property contained in said territory and collect taxes from the owners thereof, provided, however, that all taxes for general purposes collected until January 1, 1940, from the property lying within the districts as hereinafter defined shall be placed in a separate fund and expended by the mayor and city council upon the sewers, lights, collection of garbage and streets of the districts from which said taxes are obtained, but said mayor and city council shall not expend in any one year any sum upon the streets, lights, collection of garbage or sewers of any of said districts in excess of the amount of taxes derived from that district. Said districts shall be known as Annexation Districts Nos. 1, 2, 3 and 4, respectively, and for the purpose of collecting taxes therein for general city purposes, and the expenditure of the same, are hereby defined as follows:

ANNEXATION DISTRICT NO. 1

Beginning for the same where the third line of the proposed new city limit boundaries intersects the centre line of Wills Creek and running thence with part of said third line, in a southwesterly direction, to the end thereof, thence with the fourth line of said proposed limits in a southeasterly direction to the end thereof, thence with the fifth line of said new city limit boundaries to the end thereof, which stands on the Maryland Bank of the North Branch of the Potomac River, and with said bank in an easterly direction to intersect the old city limit lines, which now constitutes the westerly boundary of the city, and with same in a northeasterly and northerly directions to the centre line of Wills Creek, and thence with the centre line of Wills Creek in a northwesterly direction to the beginning.

ANNEXATION DISTRICT NO. 2

Beginning for the same where the third line of proposed new city limit boundaries intersects the centre line of Wills Creek and running thence with part of said third line reversed in a northeasterly direction to the beginning thereof, thence with the second line reversed of the proposed new city limit boundaries due east to the beginning thereof, thence with part of the first line reversed of the proposed new city limit boundaries, due south to the centre line of the Bedford Road, thence with the said centre line to intersect the old city limit lines which now constitute the northerly boundary of the city, and with same in westerly and southerly directions

to the centre line of Wills Creek and thence with said centre line of Wills Creek in a northwesterly direction to the place of beginning.

ANNEXATION DISTRICT NO. 3

Beginning for the same where the first line of the proposed new city limit boundaries intersects the centre line of the Bedford Road, and running thence with part of said first line reversed due south to intersect the centre line of the Williams Road, thence with the centre line of Williams Road in northwesterly and westerly directions to intersect the old city limit lines which now constitute the easterly boundaries of the city, thence with said old city limit lines in northwesterly and westerly directions to intersect the centre line of the Bedford Road, and thence with the centre line of the Bedford Road in northeasterly direction to the beginning.

ANNEXATION DISTRICT NO. 4

Beginning for the same at the beginning of the proposed new city boundaries and running thence with part of the first line of said new boundaries due north to intersect the centre line of the Williams Road, thence with said centre line of Williams Road in a northwesterly and westerly directions to the old city limit lines which now constitute the easterly boundaries of the city, thence with the said old city limit lines in a southerly direction to and with the old city limit lines which follow the berm side of the C. & O. Canal and with same reversed to intersect the first line of the Brace Survey and with part of said first line reversed to the beginning of said Brace Survey, which stands on the Maryland Bank of the North Branch of the Potomac River and thence down and along with the meanders of said Maryland Bank of the North Branch of Potomac River to the place of beginning. (1922, ch. 96, § 4; 1929, ch. 552, § 4; P.L.L. 1930, art. 1A, § 4.)

Section 5. Repealed. (Res. No. 128, 1–7–04.)

Section 6. Extraterritorial authority of city.

The said mayor and city council shall have jurisdiction for one mile beyond the city limits, as now located or as they may hereafter be located; for the removal and abatement of nuisances; for the licensing, regulating or prohibiting of circuses, carnivals and all similar amusements; for the licensing, regulating or prohibiting restaurants, soda fountains, soft drink parlors, and all similar places where food or drink is disposed of; for the licensing, regulating or prohibiting poolrooms, dance halls, moving picture theatres, and all similar places of public amusement; to carry out and enforce all sanitary regulations, and for the apprehension of disorderly persons, vagrants and their associates, and for the suppression of bawdy houses, disorderly houses and houses of ill–fame. (1922, ch. 96, § 6; P.L.L. 1930, art. 1A, § 6.)

Section 7. Property and funds vested in city; authority of city to receive money and property for general or charitable purposes.

The property and funds of every kind belonging to or in possession of said city are vested in said corporation, and said corporation may receive in trust and control for the purpose thereof

all money or other property which may have been or shall be bestowed on such corporation by will, deed, gift, or conveyance in trust for the general corporation purposes or in aid of the indigent poor, or for the general purposes of education or for charitable purposes of any description within the city. (1922, ch. 96, § 7; P.L.L. 1930, art. 1A, § 7.)

Wards

Section 8. Boundaries of wards and precincts.

Boundaries of Wards and Precincts for the purpose of City Elections shall be identical to those Allegany County Election District and Precinct boundaries, or portions thereof, which are located within the corporate limits of the City of Cumberland, or as the same may from time to time be amended. An official copy of the description of all City Wards and Precincts shall be kept on permanent file in the office of the City Clerk of the City of Cumberland, and in the offices of the City Engineering Department. Such designation of Ward and Precinct boundaries shall become official when approved by Order of the Mayor and City Council, and the signature of the Mayor, the City Clerk, and the Director of Public Works shall be affixed thereto. (Ch. Am. Res. No. 71, 7–26–77.)

Elections

Section 10. Board of Election Supervisors.

(a) There is hereby created a Board of Election Supervisors which said Board shall be governed by the provisions hereof and shall have duties and responsibilities as hereinafter set forth.

(b) *Appointment.* The Board of Election Supervisors shall be composed of five (5) members who shall be appointed by the Mayor and City Council. The initial members of the Board shall be appointed in accordance with the following:

(1) Two (2) members for a term expiring on the first Monday of August, 1986.

(2) Three (3) members of a term expiring on the first Monday of August, 1988.

Subsequent to the expiration of the initial term of members appointed under (a) above, all members appointed shall serve for a term of four (4) years. In the event of a vacancy on the Board of Election Supervisors, the Mayor and City Council shall fill said vacancy by appointment, which said appointment will be for the remainder of the unexpired term.

Members of the Board of Election Supervisors shall be eligible and qualified voters of the City; and no member of the Board may hold any elective office in federal, state, or local government, nor be a candidate for same during his term of office.

(c) Board of Election Supervisors shall meet as often as is necessary to carry out the duties and responsibilities imposed upon them hereunder. The Board shall elect one of its members as chairman who shall serve as such at the pleasure of the Board. At any meeting of the Board, three (3) members thereof shall constitute a quorum. The Board shall adopt rules and regulations governing its meetings, a copy of which said rules and regulations shall be forwarded to the Mayor and City Council of Cumberland, and shall be published in a newspaper of general circulation in Allegany County at least one time not later than February 15th of each election year.

Each member of the Board shall be compensated in an amount as from time to time may be established by order of the Mayor and City Council.

(d) *Duties and Responsibilities*. The Board of Election Supervisors shall be charged with performance and shall perform the following duties and responsibilities:

(1) Review all provisions of this Charter and the Code of Laws of the City of Cumberland and the General Election Laws of the State of Maryland, and recommend to the Mayor and City Council any and all measures which it deems appropriate to provide for the improved conduct of elections within the City of Cumberland.

(2) Hear and decide appeals as hereinafter provided.

(3) Appoint and/or remove election judges and clerks with or without cause.

(4) Certify the results of elections.

(5) Conduct recounts of votes cast at elections whenever there is doubt as to the accuracy of the count.

(6) Perform such other duties as may be assigned to it by this Charter, Ordinances and Resolutions, and by the direction of the Mayor and City Council.

(e) *Budget*. Annually, the Board of Elections shall submit its proposed budget for the next fiscal year to the City Administrator not less than thirty days prior to the time the City Administrator is required to submit the proposed annual budget of the City as a whole to the Mayor and City Council. The Board's budget shall propose the number of judges and clerks to be provided for each election scheduled and their rates of compensation and shall provide funds to compensate all employees proposed, and to meet such other expenses as may be proposed. The City Administrator shall transmit to the Mayor and City Council the proposed budget of the Board of Elections without change, along with and as part of the proposed City budget, and the Mayor and City Council may amend and adopt this budget and appropriate funds in the same manner as required for other departmental and agency budgets of the City. Expenditures of the

Board shall be in accordance with appropriations and shall be authorized and approved in the same manner as other City expenditures.

(f) *Appeals*. An appeal pursuant to this section may be taken by any voter registered to vote in City elections in accordance with the following provision:

(1) *Grounds for Appeal*.

a. An alleged error made by the City Clerk relating to the addition or deletion of names to the registration list or the filing of nomination papers; or

b. For a violation of the terms and provisions of this Charter or the Rules and Regulations of the Board of Election Supervisors relating to elections conducted with the City.

(2) *Time for Appeal*.

Any appeal with respect to the aforegoing must be filed within seven (7) calendar days of the date of the alleged error by the City Clerk or seven (7) calendar days from the date on which the Board of Election Supervisors certifies the results of the election to the City Clerk.

(3) *Conduct of Appeal.*

a. The Board shall investigate the matters alleged in the appeal and shall on the basis of such investigation affirm or deny said appeal.

b. In the event that the Board believes a hearing is required, the Board shall be authorized to call and conduct such hearing. Said hearing to be held within a period of seven (7) calendar days from the date of the notice by the Board to the appellant of its determination to conduct a hearing.

1. The Board shall be authorized to promulgate rules and regulations governing any hearing, provided that the burden of proof shall be on the appellant.

2. The Board shall be authorized to administer oaths.

3. A full and complete record of any hearing shall be maintained, including, but not limited to, a recording of said hearing.

c. The Board of Election Supervisors shall within seven (7) days of the date of the hearing affirm or deny the appeal.

d. In the event that the Board of Election Supervisors determines that any appeal is warranted and that there has been either an error by the City Clerk or a violation of

the Charter or rules and regulations relating to elections within the City, the Board shall be authorized to take the following actions:

1. Direct the City Clerk to correct any error made by said Clerk with respect to registration lists or nomination papers.

2. Levy against any individual or individuals violating the provisions of the Charter or rules and regulations of the Board of Election Supervisors in such amounts as may be authorized by the Mayor and City Council by Order.

3. In the event that the Board determines, in its sole and absolute discretion, that the violations of the Charter and/or rules and regulations of the Board, or that the error by the City Clerk would have changed the outcome of the election, the Board shall order a new election to be held.

e. In the event that the Board of Election Supervisors determines that a new election is to be held, the Mayor and City Council shall conduct such election as follows:

1. In the case of any election for Mayor or Council, within a period of thirty (30) days from the date of determination by the Board.

2. In the case of any Charter Amendment or other question, either at a special election called by the Mayor and City Council or at the next regularly scheduled City election, as determined by the Mayor and City Council at is **[**its**]** sole and absolute discretion.

f. A determination by the Board that a new election is to be held shall, with respect to the elected position or the question or Charter Amendment presented, void the result of said election with respect thereto.

g. *Appeal to Circuit Court*.

A person aggrieved by the decision of the Board of Election Supervisors may appeal the decision of said Board to the Circuit Court for Allegany County, Maryland. Such appeal to be filed within fourteen (14) calendar days of the date of the decision by the Board.

1. The Circuit Court shall hear and decide the cause without a jury and as expeditiously as the court can schedule the matter.

2. Upon agreement of both parties or sua sponte, the Chief Administrative Judge of the Circuit Court may assign the case to a three–judge panel.

3. The decision of the Board of Election Supervisors shall be affirmed unless the same is arbitrary, capricious or illegal.

4. Where the Circuit Court determines that the decision was arbitrary, capricious or illegal, the Court may remand the matter to the Board of Election Supervisors or where the Court determines that the act or omission involved materially affected the rights of the interested parties or the purity of the election process, and might have changed the outcome of the election held, the Court shall declare null and void the election and order a new election to be held. Said election to be held based upon the decision of the Mayor and City Council as set forth above.

h. Decision of the Circuit Court shall be final and no appeals shall arise therefrom.

(g) *Failure of Board to Act*. A failure of any member without good and sufficient reason to attend three (3) consecutive meetings of the Board, or a majority of five (5) consecutive meetings, shall be prima facie evidence of cause for removal by the Mayor and City Council. Should the Board of Elections fail to perform its duties, as required by this Charter or other lawful enactment of the Mayor and City Council, the Mayor and City Council shall declare itself to be and shall act as the Board of Elections in order to take all actions necessary to assure the successful conduct of City Elections, and shall continue to function as the Board until such time as the Mayor and City Council declares the Board able to perform its duties. The times prescribed within which the Board of Elections must take required actions shall not apply if the Mayor and City Council must act as the Board of Elections.

(h) *Conduct of Elections*.

(1) Upon recommendation of the Board of Election Supervisors, the Mayor and City Council shall determine the number of precincts and their boundaries and make all needed rules and regulations, not inconsistent with this Charter, for the conduct of elections, for the prevention of frauds in elections, and for the recount of ballots in case of doubt or fraud. Not later than the first day of March preceding each regular Mayor and City Council election, and within seven days after a resolution has been adopted setting the time for a Special Election, the Board of Elections shall designate a suitable place or places for voting and suitable procedures for the casting and counting of ballots. Upon the Board's designation, the City Clerk shall arrange to provide the necessary polling places and voting equipment.

Upon recommendation of the Board of Elections Supervisors, the Mayor and City Council, by resolution, shall authorize the number of clerks and judges of elections in each precinct and shall provide for their compensation. The Board of Election Supervisors shall appoint as many competent persons as may be authorized to act as clerks or judges of election. Said judges or clerks, before entering upon their duties as such, shall swear or affirm and subscribe thereto to faithfully, honestly, and without prejudice or partiality perform each and every duty required of them, and such documents shall be filed with the City Clerk.

(2) *Ballots.* Not later than the first day of March preceding each regular Mayor and City Council election and within seven days after a resolution has been adopted setting the time for a Special Election, the Board of Elections shall prescribe the method for casting and recording votes and the form of all ballots used, including absentee ballots. It may

provide for the use of paper ballots, voting machines or any other method which assures the casting of secret ballots and an accurate tally of the ballots cast. The term ballot or voting equipment as used in this Charter shall refer to any method or form prescribed by the Board for the casting of votes.

The names of candidates nominated for the Mayor and City Council in accordance with the provisions of this Charter, except such as may have withdrawn, died or become ineligible, shall be printed on the official ballots exactly as such names appear on the registration list, except that should any candidate have a name which is sufficiently similar to the name of any other candidate, such that the voter might mistake one name for the other, the Board in its sole discretion may permit any such candidate to add one parenthetical word and/or the address of his domicile to his listing on the ballot so as to more clearly identify the candidate to the voter. (Res. No. 126, 3–20–02.)

(3) *Electioneering*. The same distance limit regulations that prevail in State elections relative to electioneering at polling places shall govern these elections.

(4) *Vote Count*. Upon the closing of the polls, the ballots shall be counted in accordance with procedures established in advance by order of the Mayor and City Council and such other procedures as may be established in advance by the Board of Election Supervisors. The Board shall receive the count of votes at each precinct if appropriate, given the number of the voting equipment or otherwise at such location as may be established and shall determine the total vote cast for each candidate or question and shall certify the results of the election to the City Clerk, who shall record the results in the Minutes of the Mayor and City Council. The Board shall conduct recounts of votes cast whenever it determines that there is a doubt as to the accuracy of the count, or when so requested by the Mayor and City Council, or when duly petitioned in accordance with procedures established by ordinance. The validity or invalidity of ballots cast shall be determined by the Board on the same basis as is prescribed for elections of the State of Maryland.

(5) *Witnessing Vote Count.* Every regularly nominated candidate shall have the right to be present during the entire count, with facilities for examining all operations closely and for keeping all the voting equipment or paper ballots or their containers in view when the counting is not in progress. He shall have the right to designate in writing alternates to act in his place when he may be absent. Subject to approval and appropriate arrangements being made by the Board of Election Supervisors, representatives of the press and, so far as may be consistent with good order and with convenience in counting the general public shall also be given every facility for witnessing the count. (1922, ch. 96, § 10; P.L.L. 1930, art. 1A, § 10; 1951, ch. 447, § 1; Char. Amend. Reso. No. 6, § 2; Char. Amend. Reso. No. 41, §§ 1, 2; Reso. No. 62, §§ 1, 2, 1–29–74; Ch. Am. Res. No. 85, § 1, 4–8–82; Ch. Am. Res. No. 92, § 2, 1–5–84; Ch. Am. Res. No. 98, §§ 1, 2, and 3, 2–7–90; Res. No. 126, 3–20–02.)

Section 11. Elections.

(a) Candidates to be voted for at all general municipal elections at which a Mayor and City Councilmen are to be elected, under the provisions of this article, shall be nominated by a

primary election, and no other name shall be placed on the general ballot except those selected in the manner hereinafter prescribed; provided, however, that in the event that no more than three (3) persons file statements of candidacy for the office of Mayor, no primary election for the office of Mayor need be held, and the name or names of the candidate or candidates for that office shall be placed on the ballot for the general election provided further, that in the event that no more than six (6) persons file statements of candidacy for the office of Councilman, no primary election for the office of Councilman need be held, and the name or names of the candidate or candidates for that office shall be placed on the ballot for the general election. The primary election for such nomination shall be held in the year in which the Governor is elected, on the second Tuesday after the first Monday in September and in the year in which the president of the United States is elected, on the first Tuesday in March. The polls shall be opened and closed at the same hours and with the same clerks as are required for the general municipal election. Any person desiring to become a candidate for a Mayor or City Council shall, not later than 4:00 p.m. on the Monday that is ten (10) weeks or seventy (70) days before the day on which the primary election will be held, file, or there shall be filed for him, with the City Clerk a statement of such candidacy in substantially the following form:

Candidate for Nomination for _____.
State of Maryland, Allegany County:

I, _____, being first duly sworn, say that I reside at _____ Street, City of Cumberland; that I am a qualified voter therein; that I am qualified to hold office; that I have resided within the City for at least one (1) year preceding the election; that I am a candidate for nomination to the office of _____ to be voted upon at the primary election to be held on the _____day of _____, 19**[**20**]**_____ and I hereby request that my name be printed upon the official primary ballot for a nomination by such primary election for such office.

Signed_____

Subscribed and sworn to (or affirmed) before me _____ on this _____day of _____, 19**[**20**]**_____.

Signed_____

(Ch. Amd. Res. No. 93, 11–20–85; Ch. Amd. Res. No. 104, 12–15–93; Ch. Amd. Res. No. 120, 10–20–99; Res. No. 123, 3–6–02.)

(b) The City Clerk upon request shall provide an application blank to any person, containing the form for the statement of candidacy. Any such statement of candidacy filed with the City Clerk shall be accompanied by a filing fee of Twenty–Five Dollars ($25.00) if the candidate is filing for the City Council, or of Forty Dollars ($40.00) if the candidate is filing for the office of Mayor; and the City Clerk shall not accept any statement of candidacy unless it is so accompanied by the proper filing fees. (Res. No. 123, 3–6–02.)

(c) Any person who has filed a statement of candidacy for any election may withdraw the same by making such request, in writing, to the City Clerk no later than the deadline for filing statements of candidacy, and no withdrawal shall thereafter be permitted.

The City Clerk upon the close of the business day of the last day for receiving statements of candidacy, shall immediately forward to the Board of Election Supervisors all statements of candidacy received. Upon receipt from the Board of Election Supervisors of the report of the order of candidates as set forth above, the Clerk shall cause to be published for three successive days, in all the daily newspapers in said City, the names of the persons as they are to appear upon the ballot in the primary elections, and said list shall contain the names of candidates for Mayor and also the names of the candidates for Council, and said names shall appear on the ballot under the specific office for which said candidates are aspiring.

(d) The Board of Election Supervisors shall direct the placing of ballot boxes or such other voting equipment as might be prescribed at the various voting precincts throughout the City of Cumberland for use in any election held. And said Board of Election Supervisors shall also see that said ballot boxes or other voting equipment are properly marked, showing the candidates to be voted upon and/or any issues presented for referendum. The judges who shall serve in both the primary and general election shall be the same individuals, unless substitutes become necessary, and they shall be selected by the Board of Election Supervisors; and said Board of Election Supervisors shall make a proper canvass of all the ballots if appropriate at the various voting places throughout the City of Cumberland or at such other previously designated location within forty–eight hours after the closing of the polls after any primary, special or general election and shall, by a report signed by the members of said Board of Election Supervisors, certify to the City Clerk the results of said election and declare the nomination or election of candidates, or the result of a referendum, as the case may be, and said City Clerk shall, after receipt of the same, cause said results to be published in the next issue of the daily newspapers published in the City of Cumberland, Maryland, and also report the results of said election at the next meeting of the Mayor and City Council of Cumberland.

(e) Subject to the provisions hereinafter set forth in the general election, the two candidates receiving the highest number of votes for Mayor in the primary election shall be the candidates, and the only candidates for that office whose names shall be placed upon the ballots, and the four candidates receiving the highest number of votes for Councilmen, in the primary election, or all such candidates if less than four shall be the candidates and the only candidates whose names shall be placed upon the ballots for Councilmen at such municipal general election.

At each regular election subsequent to the regular election to be held in May of 1982, the candidate receiving the highest number of votes for Mayor shall be the successful candidate for that office, and subject to the provisions hereinafter set forth, the two candidates receiving the highest number of votes for Councilmen shall be the successful candidates for the City Council.

(f) Special elections called for the purpose of filling vacancies on the City Council shall be held in accordance with the provisions of this section with regard to the filing of candidates, publication and all other material elements of such election. No primary election

need to be held and the candidate or candidates, as the case may be, receiving the highest number of votes shall be the successful candidates for the office sought.

(g) The Mayor and City Council shall provide for the absentee ballot for all elections authorized herein and shall, by ordinance, establish such procedures as may be required to implement the same. (Ch. Am. Res. No. 92, § 3, 1–5–84.)

(h) In any primary or regular election, write–in votes shall not be allowed nor shall such vote be counted. (Ch. Amd. Res. No. 93, 11–20–85.)

Section 11A. Limitations on Political Campaign Contributions.

A. *Limit of Contributions*. It is unlawful for any individual, association, unincorporated association, corporation or any other entity, either directly or indirectly, to contribute any money or thing of value greater than Five Hundred Dollars ($500.00) to any candidate in any four (4) year election cycle, which amount shall not exceed Two Hundred Fifty Dollars ($250.00) for a period beginning the day following a general election and running until the day after a primary election and Two Hundred Fifty Dollars ($250.00) from the day after a primary election until the day after a general election.

B. A candidate for nomination or election to the office of Mayor or City Councilmen shall file a report of contributions and expenditures with the Board of Election Supervisors. Reports are required by all candidates for such offices whether or not the candidate's name appears on the primary ballot, or the candidate withdraws subsequent to filing his certificate of candidacy, or the candidate is unsuccessful in the election. Each report shall contain all contributions received and expenditures made in furtherance of the candidates candidate's nomination or election by the candidate himself, or, with knowledge of the candidate, by any other person or group of persons, which shall be complete, except as otherwise provided in this section.

Initial reports filed shall contain all contributions so received and expenditures so made since the date of the last preceding election to fill the office for which he is a candidate. Subsequent reports shall contain all contributions so received and expenditures so made since the end of the period for which the last preceding report is filed. Even if no contributions or expenditures have been made since the end of the period for which the last preceding report was filed, a statement to that affect must be filed with the Board of Election Supervisors. The initial and subsequent reports shall be consecutively filed as follows:

1. No later than seven (7) days following any primary election; and

2. No later than seven (7) days following any general election.

C. It is the responsibility of the candidate to file all reports in full and accurate detail.

D. Any report shall be considered timely if it is mailed on or before the filing deadline, regardless of when it is actually received, if the United States Postal Service has

provided verification of that fact by fixing a mark so indicating on either the envelope or any receipt therefore.

E. For purposes of this section, the failure to provide all of the information required by the forms prescribed by the Board of Election Supervisors is a failure to file. The form for the report or statement of campaign and election contributions and expenditures shall be as prescribed by the Board of Election Supervisors.

F. There is a late filing fee for each report or statement of expenditures and contributions which is not filed within the time prescribed hereby. The fee is Twenty–five Dollars ($25.00) per day for the first ten (10) days that a report is overdue and Ten Dollars ($10.00) per day for the next twenty (20) days that a report is overdue. Failure to file a report within thirty (30) days, a deadline set in this section, is hereby deemed a misdemeanor and any person found guilty of such misdemeanor shall be determined to be ineligible to hold office of either Mayor or Councilmen for a period of five (5) years from and after the date of the commission of said offense. (Res. No. 125, 3–20–02.) (See Note (41))

Mayor and Council

Section 12. Qualifications and term of office of mayor and councilmen; oath of office; mayor to serve as president of council. (See note (5))

(a) It shall be the duty of the Board of Election Supervisors to order an election to be held in the City of Cumberland in each even–numbered year on the first Tuesday after the first Monday in November commencing with the election to be held in May of 2002, at which elections the qualified voters of the City shall select a Mayor and/or two Councilmen, subject to the hereinafter set forth provisions.

1. The term of the Mayor, who was elected on the third Tuesday of May in 2000 shall be extended until the first Monday in January, 2003.

2. The terms of the two City Council members who were elected on the third Tuesday in May, 1998 by the qualified voters of the City shall be extended until the first Monday in January, 2003.

3. The terms of the two City Council members who were elected on the third Tuesday in May, 2000, by the qualified voters of the City shall be extended until the first Monday in January, 2005.

(b) The Mayor shall be not less than twenty–five (25) years of age at the time of his election and shall be a citizen of the United States, and for one (1) year immediately preceding his election, a resident of the City of Cumberland.

(c) Each of the said four Councilmen shall be not less than twenty–one years of age at the time of his election and each shall be a citizen of the United States, and for one (1) year immediately preceding his election, a resident of the City of Cumberland.

(d) The Mayor shall, upon taking the prescribed oath of office before the Clerk of the Circuit Court for Allegany County, Maryland, hold office for a period of four years from the first Monday in January next succeeding his election and until his successor shall have been duly elected and qualified. Provided, however, that if the first Monday in January next succeeding the election of the Mayor be a public holiday, the term of office of the Mayor shall commence on the first regular business day following the first Monday in January.

(e) At each regular municipal election, two Councilmen shall be elected and upon taking the prescribed oath of office before the Clerk of the Circuit Court for Allegany County, the two candidates receiving the highest and next highest number of votes in said regular election shall hold office for a period of four years from the first Monday in January next succeeding their election and until their successors have been duly elected and qualified. Provided, however, that if the first Monday in January next succeeding their election be a public holiday, the terms of office of the said Councilmen shall commence on the first regular business day following the first Monday in January.

(f) In the event that any incumbent councilman or councilmen determine to become candidates for the office of Mayor in any election, either special or general, during their term of office, said councilman shall at the time of filing Statement of Candidacy submit to the Mayor and City Council his resignation, which said resignation shall become effective upon the first Monday in January next succeeding the election or first regular business day following said first Monday in January in the event of a holiday. In the event that said councilman withdraws his Statement of Candidacy in accordance with the provisions hereinabove set forth, the same shall be deemed to be a withdrawal of his resignation as councilman and said resignation shall be void and of no further effect.

In the event of the aforegoing, at the primary election voters shall be directed to vote for three candidates in the event of three vacancies occurring on the council, or four candidates in the event that there shall be four vacancies. In those instances where three vacancies would exist on the council, the six candidates receiving the highest number of votes in the primary for Council shall be placed on the ballot for the general election. In those instances where four vacancies would exist in the Council, the eight candidates receiving the highest number of votes shall be placed on the ballot in the general election. At the general election in the case of three vacancies on the Council, the candidates receiving the highest and second highest number of votes shall be elected for a term of four years, all in accordance with the provisions hereof; and the candidate receiving the third highest number of votes shall be elected to fill the unexpired term of the councilman resigning.

At the general election, in the case of four vacancies on the Council, the candidates receiving the highest and second highest number of votes shall be elected for a term of four years, and the candidates receiving the third and fourth highest number of votes shall be elected to fill the unexpired terms of the resigning councilmen.

No person may be a candidate for more than one office.

(g) The Mayor and each of said Councilman Councilmen shall qualify as required by this Charter and the Constitution of the State within twenty days after the official announcement of his election or appointment, as the case may be, and in case of failure to do so, his office shall become vacant.

(h) The Mayor shall serve as President of the Council. (1922, ch. 96, § 12; 1929, ch. 552; P.L.L. 1930, art. 1A, § 12; 1947, ch. 215; 1951, ch. 576, § 1; 1953, ch. 524, § 1; Char. Amend. Reso. No. 48, § 1; Char. Amend. Reso. No. 59, § 1; Ch. Am. Res. No. 85, § 3, 4–8–82; Ch. Am. Res. No. 90, 9–8–83; Ch. Am. Res. No. 92, § 4, 1–5–84; Ch. Am. Res. No. 121, 10–20–99; Res. No. 124, 3–6–02.)

Section 13. Compensation of mayor and councilmen. (See note (7))

(a) Each Councilman shall receive as compensation for his services in the performance of his duties for the fiscal year 1978–79, the sum of Three Thousand Dollars ($3,000.00); for the fiscal year 1979–80, the sum of Thirty–six Hundred Dollars ($3,600.00); for the fiscal year 1980–81, the sum of Forty–two Hundred Dollars ($4,200.00); and for the fiscal year 1981–82 and each year thereafter, the sum of Forty–eight Hundred Dollars ($4,800.00.)

(b) The Mayor shall receive as compensation for his services in the performance of his duties for the fiscal year 1978–79, the sum of Six Thousand Dollars ($6,000.00); for the fiscal year 1979–80, the sum of Six Thousand Four Hundred Dollars ($6,400.00); for the fiscal year 1980–81, the sum of Six Thousand Eight Hundred Dollars ($6,800.00); and for the fiscal year 1981–82 and each year thereafter, the sum of Seven Thousand Two Hundred Dollars ($7,200.00). (1922, ch. 96, § 13; P.L.L. 1930, art. 1A, § 13; 1953, ch. 624, § 1; Char. Amend. Reso. No. 48, § 2; Ch. Am. Res. No. 73, 8–9–78.)

Section 14. Bond of mayor and councilmen; appointment of officers and subordinates in city departments.

The Mayor and each councilman before entering upon the duties of his office shall give bond, payable to the State of Maryland for the use of the Mayor and City Council of Cumberland, in the sum of five thousand dollars ($5,000), conditioned for the faithful performance of his duty, with two or more good and sufficient sureties, to be approved by the clerk of the circuit court for Allegany County, and shall, in addition to taking the oath prescribed by the Constitution of the State of Maryland and laws thereof, also take the oath that he is not under direct or indirect obligation to appoint or elect any person to any office, position or employment under said government.

The said Mayor and City Council shall, by a majority vote of all the members thereof, have the power to appoint all officers and subordinates in all the departments of the city. (1922, ch. 96, § 14; P.L.L. 1930, art. 1A, § 14.)

Section 15. Forfeiture of office by mayor or councilmen.

The mayor and each member of the city council shall during the whole term for which they are elected be possessed of all qualifications rendering them eligible to be elected, and if any one of them during the time for which he was elected shall fail to retain all the qualifications necessary to render him eligible to election, he shall forfeit such office, and such forfeiture shall be declared by the said city council, and the vacancy caused thereby shall be immediately filled as herein provided; and if the said city council shall neglect or refuse to declare such vacancy and to fill the same, then any taxpaying citizen of said city, being a legal voter therein, may file a petition in the circuit court for Allegany County against such officer, and the said court, or the judge thereof, if on vacation, shall pass an order requiring such officer to show cause why his office should not be vacated, and the vacancy filled as herein provided, and such order shall be made returnable not more than twenty days after its passage, and a copy thereof shall be served on such officer; and if he shall fail to answer the same, said court or the judge thereof, if in on vacation, shall hear and determine such matter ex parte; and if such officer shall answer the same, then the said court, or the judge thereof, if in on vacation, shall hear at once and determine the issue raised by such petition and answer, and shall declare the office of the said respondent vacant, and order the election of his successor as herein provided, or shall dismiss the petition, as the proof may justify, and may award costs as may appear equitable and right. (1922, ch. 96, § 15; P.L.L. 1930, art. 1A, § 15.)

Section 16. Resignation of mayor or councilmen; filling of vacancies; mayor pro tempore.

(a) Resignation by the Mayor or any Councilman elected under this article shall be made in writing to the Mayor and City Council for their action thereupon. In case of the removal of the Mayor or any Councilman from the territorial limits of said City, such removal shall ipso facto be deemed to create a vacancy in his office.

(b) In case of vacancy in the office of Mayor, by reason of resignation, removal from the City, illness, disability, or any other cause, the Mayor and City Council may appoint one of their number to act as Mayor pro tempore until such vacancy is filled as provided in this section, and such Mayor pro tempore shall have and exercise all the powers and duties while he so acts, and his acts shall have the same force and validity as in the case of a Mayor or Councilman regularly elected and qualified. The Council shall, within sixty (60) days of the occurrence of such vacancy, elect one of its members to the office of Mayor for the unexpired term.

(c) In case of a vacancy on the Council, by reason of resignation, removal from the City, illness, disability, or any other cause, the Council shall, within sixty (60) days of the occurrence of such vacancy, elect some qualified person to fill said vacancy for the unexpired term.

(d) Any vacancies on the Council, or in the office of Mayor, shall be filled by the favorable votes of a majority of the remaining members of the Council.

(e) In the event vacancies shall result in a Council of less than three (3) members, a majority of the remaining members shall elect qualified persons to fill such vacancies until such

time as a special election is held, as hereinafter set forth. For the purposes of this section, the Mayor shall expressly be considered a member of the Council, which shall be deemed to consist of five (5) members.

(f) If one of such vacancies shall be in the office of Mayor, the remaining members shall elect one of their number to fill such office, as provided in subsection (b) of this section. If said remaining members are unable to agree as to who shall assume said office, then the candidate who received the next highest number of votes for the office of Mayor in the preceding general election, provided he has retained the necessary qualifications, shall assume said office until the holding of a special election.

(g) In the event a special election is required, as provided in subsection (e), said election shall be held within ninety (90) days of the occurrence of the vacancy which has resulted in a Council of less than three (3) members. Provided, however, that no election need be held if the date thereof would be less than one (1) calendar year from the next regular general municipal election. In such case, those persons temporarily appointed under the provisions of subsection (e) shall serve until successors are duly elected and qualified at the next general election.

(h) Any special election called in accordance with the provisions of this section shall be conducted in accordance with the provisions of Section 10 of this Charter. (1922, ch. 96, § 16; P.L.L. 1930, art. 1A, § 16; Char. Amend. Reso. No. 42, § 2, 12–24–83.)

Section 17. Authority of mayor, councilmen and city clerk to administer oaths.

Each member of the mayor and city council and the city clerk shall, and they are hereby authorized to, administer oaths in the municipal affairs and government of the city. (1922, ch. 96, § 17; P.L.L. 1930, art. 1A, § 17.)

Section 18. Designation of councilmen as commissioners of departments of city government.

(1) The Mayor and City Council shall be responsible for all the departments and agencies of the City, and to that end, shall have the authority to adopt such ordinances and to make and enforce such rules and regulations as they may see fit and proper for and concerning the organization, management, and operation of the City.

(2) The Mayor and City Council shall appoint a City Administrator who shall be the head of the administrative branch of the City government. Said City Administrator shall be appointed by the Mayor and City Council solely on the basis of executive and administrative qualifications in the field of municipal government with special reference to actual experience in, or knowledge of, the operations of municipal government.

(3) The City Administrator need not be a resident of the City of Cumberland or the State of Maryland prior to his appointment to office, but shall become a resident of the City of Cumberland and remain a resident as a condition of his continuing employment.

(4) The City Administrator shall be paid such salary as the Mayor and City Council shall from time to time determine.

(5) The City Administrator may be removed from office for cause by the Mayor and City Council by a three–fifths vote thereof.

(6) The City Administrator shall be responsible to the Mayor and City Council for the proper administration of all affairs of the City, and to that end shall have the authority to do, and shall be required to do, the following:

(a) Appoint and, when necessary for the good of the City, suspend or remove all officers and employees of the City except as otherwise provided by this Charter, and except as said City Administrator may authorize the head of a department or agency to appoint, suspend, or remove subordinates in such departments or agencies.

(b) Prepare an annual budget for submission to, and approval by, the Mayor and City Council and be responsible for its administration after adoption.

(c) Perform such other duties as may be prescribed by ordinance or as may be required by the Mayor and City Council not inconsistent with the provisions of this Charter.

(7) During any temporary absence or disability, said City Administrator may designate, by letter filed with the City Clerk, a qualified administrative officer of the City to perform the duties of the office. In the event the City Administrator fails to make such designations, the Mayor and City Council may, by Order, appoint a qualified administrative officer of the City to perform the duties of the office until the return or cessation of disability of the City Administrator. (Ch. Am. Res. No. 79, 12–31–80.)

Section 19. Right of mayor to vote on questions before council; authority of mayor and council to compel attendance of witnesses and production of records.

The mayor, as president of said city council, shall have the right to vote, as a member thereof, on all questions which may arise. The said mayor and city council shall have the power to summon and compel the attendance of witnesses, and the production of books and papers before them whenever it may be necessary for the more effective discharge of their duties. (1922, ch. 96, § 19; P.L.L. 1930, art. 1A, § 19.)

Section 20. Mayor executive officer of city; duties generally of mayor; relationship between mayor and councilmen; removal of mayor or councilmen for dereliction of duty; audit of claims against departments; publication of quarterly report by council. (See note (6))

The Mayor shall be the executive officer of the City, and it shall be his duty to see that all the laws and ordinances thereof are duly enforced; and the Mayor and City Council as a body may pass any orders they may see proper in regard to any department of the City government, and such orders shall be final and binding. If the Mayor or any Councilman shall fail to perform any duty imposed upon him by law, or by ordinance, or by order of the Mayor and City Council

lawfully passed, the Mayor or Councilmen so failing or refusing to perform such duty may be expelled by a vote of three–fifths of all the members of the Mayor and City Council, the Mayor to be considered a member of said Council, and the vacancy thus occasioned shall be filled as herein provided for; before any action shall be taken against the Mayor or any member of the City Council upon charges of dereliction of duty, the City Council shall first cause to be served upon the said Mayor or Councilman a written statement of the charges against him, and a day shall be set by said Mayor and City Council at which such charges shall be heard, the same to be prosecuted by the City Solicitor, with the right to the accused to be represented by counsel, and if the charges are sustained and an order of dismissal passed by a three–fifths vote as aforesaid, the said Mayor or Councilman so dismissed may, within ten days thereafter, take an appeal to the Circuit Court for Allegany County, which is hereby given jurisdiction of the same, and the said charges de novo, and pass such order in the premises as the said Court may deem proper, and the action of the said Court shall be final; and pending such appeal, the said Mayor or Councilman shall be suspended without pay; provided, however, that if the said charges shall not be sustained by said Court, then the said Mayor or Councilman charged as aforesaid shall be entitled to full pay from the time of the order of dismissal passed by the said Mayor and City Council.

Said Council shall require a statement to be published in January, April, July and October of each year in two newspapers of said City, showing a full, clear and complete statement of all taxes and other revenues collected and expended during the preceding quarter, indicating the respective sources from which the moneys are derived, and also indicating the disposition thereof, and it shall be the duty of every department to make a report in writing at the first meeting of the Mayor and City Council each and every month of the conditions in said department during the preceding month. (1922, ch. 96, § 20; P.L.L. 1930, art. 1A, § 20; Char. Amend. Reso. No. 86, 8–5–82.)

Section 21. Authority of mayor to summon citizens as special police.

Whenever the mayor shall deem it necessary, in order to enforce the laws of the city, or to avert danger or protect life or property, in the case of a riot or any outbreak or calamity or public disturbance, or when he has any reason to fear any serious violation of the law or order or outbreak, or any other danger to said city or the inhabitants thereof, he shall summon into service, as a special police force, all or as many of the citizens as in his judgment and discretion may be necessary and proper; and said summons may be by proclamation or order, addressed to the citizens generally, or those of any ward of the city or subdivision thereof, or such summons may be by personal notification; such special police, while in service, shall be subject to the orders of the mayor, shall perform such duties as he may require, and shall have the same powers while on duty as the regular police force of said city; and any person so summoned and failing to obey or appearing and failing to perform any duty that may be required by this article, shall be fined in any sum not exceeding one hundred dollars ($100). (1922, ch. 96, § 21; P.L.L. 1930, art. 1A, § 21.)

Section 22. Acting mayor.

In case the mayor is unable to perform the duties of his office by reason of temporary or continued absence or sickness, the said city council shall appoint, by ballot, by a majority vote of

all members thereof, one of their number to act in his stead, whose official designation shall be "acting mayor," and the councilman so appointed shall be vested with all powers, and shall perform all the duties of mayor during such absence or sickness, and shall receive the salary of the said mayor during such vacancy; provided that if such disability continue ten days or longer during such absence in excess of ten days the mayor shall receive no salary; provided, further, that the councilman receiving compensation as acting mayor shall not receive his salary as councilman for the same time he receives compensation as acting mayor. (1922, ch. 96, § 22; P.L.L. 1930, art. 1A, § 22.)

Section 23. Meetings of mayor and city council; quorum; meetings to be open to public.

A. The said mayor and city council shall meet at least bi–weekly in regular meeting at such time as shall be fixed by said council at the City Hall to consider and take under advisement and act upon such business as may come before them. A majority of said mayor and city council shall constitute a quorum for the transaction of all business, but no action of said mayor and city council shall be effective unless upon a vote of a majority of such quorum. All legislative sessions of said mayor and city council, whether regular or called, shall be open to the public.

B. The Mayor and City Council may be Resolution, when necessary, change the time and place of the regular meeting. The Resolution shall set forth the circumstances necessitating such change. Notification of such change shall be provided to the media at least twenty–four (24) hours prior to the meeting to be held pursuant to the change. (1922, ch. 96, § 23; P.L.L. 1930, art. 1A, § 23; Char. Amend. Reso. No. 91, 9–8–83; Res. No. 127, 11–12–03.)

Section 24. Publication of ordinances in newspapers required; exceptions; when ordinances to take effect; admissibility of codification in evidence.

The mayor and city council of said city shall be vested with the power and charged with the duty of making all laws and ordinances not inconsistent with the Constitution and laws of the state, touching every object, matter and subject within the local government instituted by this article.

Every ordinance imposing any penalty, fine, imprisonment or forfeiture for a violation of its provisions shall, after the passage thereof, be published in every issue of each of two newspapers published in said city for three (3) days successively (excluding Sundays), providing the amendments and corrections made in digesting and revision for publication in book form need not be so published. Ordinances passed by the mayor and city council and requiring publication shall take effect and be in force from and after the date of their passage, unless it shall therein otherwise expressly be provided. All ordinances of the city, when printed and published, and bearing on the title page thereof the words "Ordained and published by the Mayor and City Council of Cumberland," or words of like import, shall be prima facie evidence of their authority, and shall be admitted and received in all courts and places, without further proof. (1922, ch. 96, § 24; P.L.L. 1930, art. 1A, § 24.)

Section 25. Style of ordinances.

The style of all ordinances shall be, "Be it ordained by the Mayor and City Council of Cumberland," but such caption may be omitted when said ordinances are published in book form, or are revised and digested under the order of the mayor and city council. (1922, ch. 96, § 25; P.L.L. 1930, art. 1A, § 25.)

Section 26. Appointment and term of office of city solicitor.

The mayor and city council, at its first meeting after qualification, or as soon thereafter as possible, shall select a city solicitor who shall hold his office for four years and until the election and qualification of his successor, unless removed by the said mayor and city council under the authority vested in it by this section. (1922, ch. 96, § 26; P.L.L. 1930, art. 1A, § 26; Char. Amend. Reso. No. 17, § 2; Char. Amend. Reso. No. 24, § 1; Char. Amend. Reso. No. 109, 10–11–95.)

Section 27. Superintendent of Evitts Creek Dam.

The said mayor and city council shall also have the power and authority in conjunction with the board of directors of the Evitts Creek Water Company to contract with a competent man to hold the position of superintendent at the Evitts Creek Dam, and to provide for his duties by appropriate ordinances. (1922, ch. 96, § 27; P.L.L. 1930, art. 1A, § 27.)

Section 28. Duties generally of commissioner of finance; use of facsimile signatures on drafts and checks; duty of persons collecting money for city to pay same to treasurer; city depositories.

In addition to the duties hereinbefore prescribed for the City Administrator, he shall also be the Treasurer of said City, and as such Treasurer shall give bond in such amount and in such form as may be required by the said Mayor and City Council, in a sum not less than twenty thousand dollars ($20,000.00) with a surety company authorized to do business in the State of Maryland as surety, to be approved by the Mayor and City Council, said bond to be conditioned for the faithful discharge of his duties. It shall be his duty to receive and keep, as herein provided, all money belonging to the said City, and to pay out the same only on drafts drawn by the Comptroller, signed by him, and countersigned by the said City Administrator and the Mayor, under the seal of the said Mayor and City Council, and not otherwise. He may cause such signatures to be affixed to such drafts or checks by hand or by the use of such automatic device as may be expedient, and such signatures may, in his discretion, be applied as facsimile signatures, by plates or stamps, which shall be the property of said City and shall remain in the custody of the City Comptroller. The various depositories of said City shall honor such drafts, checks or other orders containing the signatures of said Comptroller, City Administrator and Mayor, when duly presented in the usual course of business. All moneys belonging to said City and received by the collector, either from taxes, water rents, licenses or collections, or from any other sources whatsoever, shall be by him deposited with the said Treasurer daily, and all other officers shall pay once in each month not later than the last day thereof, for all moneys received; the Treasurer shall give duplicate receipts in all cases, one to the party paying the said money into the treasury, and one for the Comptroller; all persons charged with the collection of any

money under this article or ordinance passed in pursuance thereof shall promptly pay the same over to the Treasurer, under such penalty as may be prescribed by ordinance, and shall forthwith hand the Treasurer's receipt to the Comptroller, who shall countersign the original receipt. Said Treasurer shall render a full and complete statement of his receipts and payments to the Mayor and City Council at the first meeting in each month, and whensoever at other times he may be required by any members of said City Council to do so. The Mayor and City Council shall have the right to require of the Treasurer a new bond whenever in their opinion the existing bond is insufficient; and whenever such new bond is required, he shall perform no official act until said bond shall be given and approved in the manner aforesaid. The said Treasurer shall make daily deposits of such sums of money as shall be received by him from all sources of revenue whatsoever, to his credit as Treasurer of said City in one or more banks situated in said City, to be selected by said Mayor and City Council. The Mayor and City Council, in the selection of such depository bank or banks, shall take into consideration the reputation and solvency thereof, and said Treasurer shall do and perform such other acts as said Mayor and City Council may require of him. (1922, ch. 96, § 28; P.L.L. 1930, art. 1A, § 28; Char. Amend. Reso. No. 40, § 1; Char. Amend. Reso. No. 86, 8–5–82.)

Section 29. Duties generally of city clerk.

It shall be the duty of the City Clerk to keep the minutes and records of all proceedings of the Mayor and City Council. In addition, the City Clerk shall perform such other duties as may be required from time to time by the Mayor and City Council.

The Mayor and City Council may appoint one or more Assistant City Clerks for the purpose of carrying out the duties of the City Clerk in the absence of the City Clerk, or for the purpose of carrying out such duties of the City Clerk as may be delegated by the City Clerk, with the consent of the Mayor and City Council, to an Assistant City Clerk. (1922, ch. 96, § 29; P.L.L. 1930, art. 1A, § 29; Char. Amend. Reso. No. 74, 3–28–79.)

Section 30. City solicitor generally.

(a) Pursuant to the authority granted in section 26 of the Charter of the City of Cumberland, the mayor and city council of Cumberland shall appoint a city solicitor who shall have general supervision over all the legal business of the mayor and city council of Cumberland. Said mayor and city council shall also have the authority to appoint such deputy or assistant city solicitors as from time to time may be required.

(b) The city solicitor shall be not less than twenty–five (25) years of age, one year a resident of the City of Cumberland and three years of member in good standing of the bar. Deputy or assistant city solicitors shall be twenty–five years of age, a resident of the City of Cumberland and a member in good standing of the bar.

(c) It shall be the duty of the city solicitor to represent the said mayor and city council in all cases brought for or against the city in the courts of the United States, the State of Maryland or any other state, or the circuit court for Allegany County. He shall prepare all ordinances and examine, supervise, prepare and approve as to form and legal sufficiency, all

contracts, deeds and all other legal papers, documents and forms of the mayor and city council and he shall attend to all legal business of the said mayor and city council. When requested by said city council, or any member thereof, he shall, in writing, give legal advice on all questions that may be referred to him, and shall also, in writing, advise the officers of the city as and when he may be called upon for such advice.

(d) The deputy or assistant city solicitors shall perform such duties as, from time to time, may be assigned them by the city solicitor.

(e) The city solicitor and deputy or assistant city solicitors shall be paid such salary as the mayor and city council shall, from time to time, direct. The city solicitor and each deputy or assistant city solicitor shall give bond for the faithful performance of their duties in the sum of five thousand dollars ($5,000.00), to be approved by the mayor and city council. (Char. Amend. Reso. No. 35, § 2; Char. Amend. Reso. No. 86, 8–5–82.)

Comptroller

(See note (7))

Section 31. Duties generally of city comptroller.

It shall be the duty of the Comptroller to examine in detail all bills, accounts and claims against the said City, and if found correct, sign his name in approval thereof, but if found incorrect, he shall return them to the party presenting the same for correction. He shall be general accountant for the said City, and shall keep in books regular accounts of all real, personal and mixed property of the said City, of all receipts and disbursements of money, and under proper heads, separately, each source of receipt and the cause of each disbursement, and shall also keep an account with each person, including the officers, who have money transactions with the said City, crediting the amounts allowed by proper authority, and specifying the particular transactions to which the said entries apply. It shall also be his duty at least once a month to examine the books or accounts of all officers of said City, charged with the receipt and disbursement of money, and if they be found incorrect, to at once make a report in writing of the same to the City Administrator and Mayor and City Council. It shall also be his duty to examine all accounts against said City, after appropriation has been duly made to pay the same by the Mayor and City Council; and he shall render such services from time to time as the City Administrator shall direct. He shall give bond for the faithful performance of his duty in the sum of Five Thousand Dollars ($5,000.00), to be approved by the Mayor and City Council. (1922, ch. 96, § 31; P.L.L. 1930, art. 1A, § 31; Char. Amend. Reso. No. 86, 8–5–82.)

Treasurer

Section 32. Duties generally of treasurer.

In addition to the duties hereinafter prescribed for the treasurer in sections 116 to 120 of this article, it shall also be the duty of said treasurer to collect all taxes levied in pursuance of the

provisions of this article, including water rent, with such assistance as may be required from the city solicitor, and in the collection of the same in the event of nonpayment he shall proceed in accordance with the provisions of the law of the state governing the collection of taxes, and shall have the right to employ such remedies to enforce such collections as are provided by the ordinances of the said mayor and city council and the laws of the state for the collection of the taxes levied for state and county purposes.

The said mayor and city council shall allow said treasurer for any insolvent or uncollectible taxes twice in each year at an interval of six months, but not thereafter, and at the sessions, when allowances are considered, the mayor and city council may act as and have the power of a board of equalization.

The said treasurer shall give bond in such amount as the mayor and city council may provide, in a sum of not less than twenty thousand dollars ($20,000), to be approved by said mayor and city council; and the mayor and city council shall have the right to require a new bond whenever in their opinion the existing bond is insufficient, and whenever such bond is required he shall perform no official act until said bond shall be given and approved in the manner aforesaid. He shall daily account for all moneys by him collected and shall report to said mayor and city council at the first meeting of that body in every month a full statement of all moneys so collected and paid over to him, and shall perform all such other duties in such manner and according to such rules and regulations as the said mayor and city council shall prescribe. (Char. Amend. Reso. No. 27, § 1.)

Director of Administrative Services

Section 33.

a. There is hereby created the position of Director of Administrative Services.

b. The Director of Administrative Services shall have full responsibility for all work performed by the Department of Administrative Services and shall be responsible for the direction of the operation of said department. The Department of Administrative Services shall include, but shall not be limited to, Finance, Community Development, Economic Development, Historic Preservation, Management Information Services and Parks and Recreation Programming, and such other divisions within said department as the Mayor and City Council may, from time to time, designate.

c. The Director of the Department of Administrative Services shall perform such other duties and shall have such other responsibilities as the Mayor and City Council may, from time to time, designate. (Res. No. 130, 2–4–04.) (See Note (42))

Director of Engineering

Section 34. Position created; qualifications of designee; duties generally.

(a) There is hereby created the position of Director of Engineering. The person designated to fill such position shall be a civil engineer, and shall meet the requirements of that office as designated by the Mayor and City Council and the Civil Service Commission.

(b) It shall be his duty to ascertain the established monuments of said city, and from them to extend surveys thereof, and establish others, and to locate, establish and survey all streets and alleys within the territorial limits of said city when so called on or required to do so. He shall maintain the grade of all streets and alleys in said city and exercise general supervision and superintendence over all work undertaken on the streets, alleys and public squares thereof, make estimates and plans and give instructions as to grading or otherwise improving the same, and with respect to the construction of sidewalks, so as to secure and preserve proper proportions and uniformity in the height and width thereof; and also to superintend the construction of all culverts, bridges, drains, water works and other improvements projected by the said mayor and city council; and he shall see that all parties contracting with the said mayor and city council to do any work as aforesaid shall faithfully perform their contract, and in event of their failure so to do it shall be his duty to report the same to the mayor and City Council. He shall also have and exercise general supervision over the construction of all railways which may at any time be constructed through the streets of said city, requiring them to conform to the established grade so as not to impede the use and passage of said streets.

(c) It shall be his duty, when it shall be decided necessary by the mayor and city council for the proper execution of any engineering work, to employ such professional or technical advisers and experts as he may deem requisite, subject to the approval of said mayor and city council.

(d) The Director of Engineering shall perform such other duties and functions and shall have such other responsibilities as the Mayor and Council may, from time to time, designate. (Char. Amend. Reso. No. 55, §§ 2, 3; Char. Amend. Reso. No. 75, 3–28–79; Char. Amend. Reso. No. 110, 10–11–95.)

Director of Public Works

Section 35.

(a) There is hereby created the position of Director of Public Works.

(b) The Director of Public Works shall have full responsibility for all work performed by the operating departments of the City and shall be responsible for the direction of the operation of said departments. Operating departments of the City shall include, but shall not be limited to, Engineering, Streets, Flood Control, Utilities, Parks, Equipment and Building

Maintenance, and such other departments as the Mayor and City Council may, from time to time, designate as operating departments.

(c) The Director of Public Works shall perform such other duties and have such other responsibilities as the Mayor and City Council may, from time to time, designate. (The former § 35, dealing with Water and Light, was repealed by Char. Amend. Reso. No. 100, 4–8–92; Char. Amend. Reso. No. 111, 10–11–95, Res. No. 131, 2–4–04.)

Director of Utilities

Section 35A.

(a) There is hereby created the position of Director of Utilities.

(b) The Director of Utilities shall have full responsibility for all work performed by the Department of Utilities and shall be responsible for the direction of the operation of said department. The Department of Utilities shall include, but shall not be limited to Environmental Technician, Water Supply and Distribution, Waste Water Treatment Plant, Sanitary Sewers, Storm Sewers and Flood Maintenance, and such other divisions within said department as the Mayor and City Council may, from time to time, so designate.

(c) The Director of Utilities shall perform such other duties and have such other responsibilities as the Mayor and City Council may, from time to time, designate. (Char. Amend. Reso. No. 113, 10–25–95.)

Civil Service — Fire and Police

Section 36.

(a) The Mayor and City Council shall appoint five Civil Service Commissioners, each of whom, except as hereinafter provided, shall serve for a term of three years, beginning on the 1st day of Oct., in the year in which they are appointed, provided, however, that the present members of said Commission shall continue to serve to September 30, 1987, or until such time as their successors are duly appointed and qualified. The Mayor and City Council shall make initial appointments to the Civil Service Commission as follows:

One appointment for a one–year term; two appointments for two–year terms; and two appointments for three–year terms. Thereafter all terms shall be for a period of three (3) years.

(b) Members of the Commission must be citizens of Maryland and residents of the City of Cumberland for more than three years next preceding their appointment. Each member of the Commission shall receive such sum by way of compensation for his services as the Mayor and City Council may from time to time designate. Three of said members shall constitute a quorum for the purpose of transacting business.

The City Council may remove any of said Commissioners during his term of office for cause, and shall fill any vacancy that may occur on said Commission for any reason for the balance of the unexpired term.

The Mayor and City Council of Cumberland shall provide such staffing to the Civil Service Commission as it deems appropriate.

The Civil Service Commission shall keep a record of all meetings and proceedings.

(c) Before entering upon the duties of their office, each of said Commissioners shall take or subscribe an oath which shall be filed and kept in the Office of the City Clerk, to support the Constitution of the United States and the State of Maryland, and the Charter and Laws of the City of Cumberland, and to obey the laws and to aim to secure and maintain an honest and efficient force, free from partisan distinction or control and to perform the duties of his office to the best of his ability.

(d) Such Commission shall, as often as the Commission shall deem necessary, under such rules and regulations as it may prescribe, hold examinations for the purpose of determining the qualifications of all applicants for all positions, which examinations shall be practical in their character and shall relate to such matters as will fairly test the fitness of the person examined to discharge the duties of the position to which that person seeks to be appointed. Such Commission shall, as soon as possible after each such examination, certify to the appointing authority the name of all persons for each department, who, according to its records, have passed the examination given with a score of 70 or higher for the position they seek to fill, and all vacancies and positions under Civil Service which shall occur before the holding of the next examination, shall be filled from said list so certified; provided, however, if the list for any cause shall be less than three (3) for any division or Department, then the City Administrator may temporarily fill a vacancy until the next examination of the Commission. The employee shall only hold office by virtue of such appointment until a Civil Service list can be made up by the Civil Service Commission as provided by this section.

(e) All cases of suspensions or discharges of a Civil Service employee, excepting a sworn member of the Police Department of the City of Cumberland, shall be reported to the Commission within three (3) days after said suspension or discharge has taken place; the report shall contain full details of the circumstances. Within five (5) days of the date of receipt of the report, it shall be within the power of the Commission to call a hearing in the case, except in the case of sworn members of the Police Department of the City of Cumberland, and, if the details brought out so justify, the suspension or discharge may be voided or the punishment may be changed.

(f) Any employee of the City of Cumberland shall be subject to such disciplinary action as deemed appropriate by the City Administrator, including, but not limited to, suspension or discharge, for neglect of duty, disobedience of orders, misconduct or a violation of any rule and regulation of the Department, the City or of the Civil Service Commission. Further, that the Department Head may preemptorily suspend any subordinate then under his direction for neglect

of duty, disobedience of orders, or misconduct, but shall, within twenty–four hours thereafter, report such suspension with the reason thereof, to the City Administrator, who shall thereupon affirm or revoke such suspension according to the merits under the facts of the case.

(g) Every employee, except a sworn member of the Police Department, discharged or suspended may, within five days of any such suspension or discharge, appeal therefrom to the Civil Service Commission, and such Commission shall fully hear and determine the appeal upon the merits of the case, and, if it be determined that any such suspension or discharge was unwarranted, the appellant shall be reinstated, otherwise it shall be affirmed. Any such appeal may be taken by serving upon the City Administrator a notice in writing, within said time, specifying the ruling appealed from, which notice shall be signed by the person taking the appeal. A true copy of such notice of appeal shall be filed with the Chairman of the Civil Service Commission. within **[**Within**]** five days from the service of such notice of appeal, the City Administrator shall file with the Civil Service Commission Chairman written specifications of the charges or grounds upon which the suspension or discharge appealed from was based. Within five days after such specifications are filed as aforesaid, the Commission shall fix the time and place for hearing the appeal and notify the appellant in writing of the time and place so fixed, which notice shall contain a copy of the specifications so filed. The time for hearing such appeal shall not be fixed earlier than five days, nor later than twenty days from filing such specifications. The Commission shall have the power to enforce the attendance of witnesses or production of books and papers and to administer oaths in the same manner and with like effect and under same penalties as in the case of judges exercising criminal or civil jurisdiction under the statutes of Maryland. The hearing of such appeal shall be public, and appellant may be represented by counsel.

(h) Such Commission shall make annual reports to the City Council and it may require a special report from such Commission at any time. Such Commission may prescribe such rules and regulations for the proper conduct of its business as shall be found advisable.

(i) No person, while on the said Commission, shall engage in any municipal election or political campaign, or solicit or give any contribution to aid in the campaign or election of any candidate for a municipal office in the City of Cumberland. (Res. No. 94, 10–7–87; Char. Amend. Reso. No. 103, 3–10–93; Char. Amend. Reso. No. 106, 12–15–93.)

Section 37.

(a) The Mayor and City Council shall have full power and authority to establish and maintain a Police Department and Fire Department and create such ratings therein among the personnel thereof, and employ such number of personnel in said Departments as it may from time to time provide for by ordinance.

(b) In addition to the requirements of Section 36(d), the Civil Service Commission shall conduct examinations of all persons hereafter appointed to the Police Department of **[**or**]** Fire Department, after they have served their probationary period, and shall recommend to the City Administrator, as to their fitness for appointment to a permanent position as a policeman or

fireman, as the case may be. The said examinations shall be more rigid in character than the original examinations of the applicants.

(c) The Mayor and City Council shall organize the Police Department of said City on the basis of the three–platoon system, with the hours of each of said platoons to be prescribed by the Mayor and City Council, and said Mayor and City Council shall have the power to prescribe such rules and regulations for the shifting of said platoons as it may deem necessary; the assignments to shifts and duties of the Captains, Lieutenants, Sergeants, Detectives, and Corporals in the Police Department shall be made by the Chief of Police. The Mayor and City Council shall have the power to call the members of the Police Department for longer hours in the cases of emergency or unusual conditions or circumstances.

Each member of the Police Department shall be required to work a regular tour of duty in accordance with a three–platoon system. Provision shall be made that each member shall be granted two days off in each work week, to be designated by the Chief of Police.

(d) The Chief of Police shall attend upon the Court which may be designated by law for the trial of offenses arising under this section, under any ordinance, rule or regulation enacted by the Mayor or City Council pursuant to the City Charter, and shall promptly and faithfully execute all writs and processes issuing from said Court. He shall be the Chief Police Officer of the said City, and shall have like power with the sheriff of the County to execute the writ of search warrant. He shall be active in quelling riots, disorders and disturbances of the peace within the limits of said City, and shall take into custody all persons so offending against the public peace; and it shall be his duty to arrest all persons who shall obstruct or interfere with him in the execution of the duties of his office or who shall be guilty of disorderly conduct or any disturbances whatever. He shall give such bond for the faithful performance of his duty, and perform such other duties and possess such other powers, rights and authority, in addition to those herein provided, as the said Mayor and City Council may require and confer upon him, not inconsistent with the Constitution and the laws of this State, and the provisions of this section. In the case of absence, sickness or inability to act as the Chief of Police, the City Administrator shall have the power, and it shall be his duty to designate some other member of said Police Department as Acting Chief of Police during the period of such absence, sickness or inability of said Chief of Police.

(e) The Mayor and City Council shall have power to organize the Fire Department of the City of Cumberland on the basis of a two–platoon system, with the hours of duty of each of said platoons to be prescribed by the Mayor and City Council, who shall have the power to prescribe the rules and regulations for the shifting of said platoons.

(f) The Chief of the Fire Department shall be charged with the duty of superintending and directing the extinguishment of fires, and preservation and safekeeping of all fire engines, hose and other apparatus used in connection therewith; and it is hereby made his duty to keep away from the vicinity of any fire, all idle and suspicious and disorderly persons, and to compel all officers of the City and all other persons to aid in the extinguishment of fire and the preservation of property exposed to danger thereafter and in preventing goods from being stolen

and generally to carry out and enforce such regulations for the prevention and extinguishment of fire as may be by said Mayor and City Council, deemed expedient.

(g) The provisions of Article 27, Section 727, et seq., (The Law–Enforcement Officers' Bill of Rights) as the same now exists or as may hereafter be amended shall govern all disciplinary proceedings involving sworn members of the Police Department. (Res. No. 94, 10–7–87; Char. Amend. Reso. No. 112, 10–11–95.)

Section 38.

(a) In addition to the duties otherwise imposed upon it, the Civil Service Commission shall make rules to carry out the purposes of this subtitle, and to provide for appointments and employments in all positions in the classified service hereinafter mentioned, based on merit, efficiency, character and industry, and the Commission may, from time to time, make changes in the original rules or additions thereto. All such rules, changes therein and additions thereto, shall forthwith be printed for distribution by said Commission to all persons who may apply therefor.

The Commission shall have power to investigate all matters touching the execution of the provisions of this subtitle of this Charter and of the rules and regulations adopted by it in conformity therewith. In the course of such investigations, each Commission shall have power to administer oaths and summon and examine witnesses as to matters relevant to such investigations.

Whenever the Commission shall find by means of such investigations that any administrative head of the City Government, including any Commission or Board, or any person having the power of appointment or removal in the classified City Service of Cumberland, has abused such power by making appointments or removals for any reason other than the good of the public service, it shall so report to the Mayor and City Council, who shall thereupon have power to remove forthwith without further hearing such administrative head or person found guilty of such violation by the said Commission. The Commission shall make an annual report to the Mayor. (Res. No. 94, 10–7–87.)

Section 39. Classification of offices and positions.

The Commissioners shall classify all the municipal offices and positions in the City of Cumberland except the positions of City Clerk, Chief of Police, Deputy Chief of Police, Chief of Fire Department, Director of Public Works, Director of Administrative Services, City Solicitor and City Administrator. The offices and positions so classified and as from time to time reclassified by the Commission shall constitute the Classified City Service of Cumberland, and no appointment to any of such offices or positions shall be made except under and according to the rules herein mentioned after the promulgation thereof. (Res. No. 94, 10–7–87, Res. No. 129, 1–21–04, Res. No. 135, 2–28–07.)

Section 40.

The Commission shall in its rules provide among other things:

(a) For examinations and such other tests as may in its judgment be necessary to determine the fitness of applicants for positions in the Classified City Service.

(b) For the rejection of candidates who fail to comply with requirements for the position.

(c) For the preparation of lists of candidates eligible for employment, which lists shall be arranged in the order of the relative standing of applicants as determined by the Commission.

(d) For the certification, as occasion may require, to the City Administrator of the persons eligible for employment under the rules of the Commission. (Res. No. 94, 10–7–87.)

Section 41.

When a vacancy occurs or a new position is created in the Classified Service, the City Administrator shall fill such position provisionally by the appointment of one of the persons certified to him by the Commission as above provided, which appointee shall be on probation for a period of six months. At or before the expiration of the period of probation, the Head of the Department or office in which such candidate is employed may, in the exercise of his discretion, remove the said probationer. Unless so removed during the probationary period, his appointment shall be deemed complete. Where an emergency arises or the services to be rendered are only for a temporary period, not to exceed sixty days, the City Administrator may, with the approval of the Commission, make a temporary appointment to remain in force not exceeding sixty days, and only until a regular appointment under the provisions of this subtitle can be made. (Res. No. 94, 10–7–87.)

Section 42.

The Commission shall provide, in its rules, for keeping a record of efficiency for each employee in the Classified City Service, as well as rules for transfers and reinstatements to or within said service.

Promotions in said service shall be on the basis of merit which shall be ascertained by competitive examinations, the employee's conduct and capacity in his current position, and by the employee's length of service to the City. (Res. No. 94, 10–7–87.)

Section 43.

No person shall be discharged from the Classified City Service or be reduced in pay or position or suspended by the City Administrator for or on account of his political or religious opinions or affiliations, or for refusing to contribute to any political fund or refusing to render any political service; but nothing in this subtitle shall forbid the removal, dismissal, reduction or suspension of any such officer or employee for any cause other than those hereinbefore enumerated and which, in the opinion of the City Administrator, may interfere with the efficient

discharge of his duties. The Commission may in all cases, and upon the written request of any subordinate removed after the termination of the probationary period shall, investigate, and if it shall find that the intent and spirit of the provisions of this Charter have been violated in the said discharge, reduction or suspension, it shall report its finding to the Mayor and City Council, and such finding so reported shall be sufficient cause for the removal by said Mayor and City Council of the officer guilty of such violation.

Each person discharged for the purpose of reducing the force and without fault upon his part shall receive a certificate so stating and all persons so discharged shall be placed on the eligible list in the order of the length of their service and shall have preference over others on the eligible list. (Res. No. 94, 10–7–87.)

Section 44.

It shall be the duty of the City Administrator, or his designate, to report to the Commission forthwith upon the appointment or employment of any person in the Classified City Service the name of such appointee or employee, the title and character of his office or employment, the date of commencement of service by virtue thereof, and to report, from time to time, and upon the date of official action in or knowledge of each case, and separation of a person from the service, or other change therein and such other information as the Civil Service Commission may require in order to keep the roster hereinafter mentioned. The Commission shall keep in its office an official roster of the Classified City Service of the City of Cumberland, and shall enter thereon the name of every person who has been appointed, employed, promoted, reduced, transferred or reinstated in any position in said service. This roster shall be open to public inspection at all reasonable hours, and shall show in connection with each name the date of appointment, current position, promotion, reduction, transfer or reinstatement and the compensation of the position, its title, the nature of the duties thereof and the date of any termination of such office or employment. (Res. No. 94, 10–7–87.)

Section 45.

It shall be unlawful, after notice from the Civil Service Commission for the Treasurer or any other Fiscal Officer of the City to draw, sign or issue or authorize the drawing, signing or issuing of any warrant for the payment of any salary or compensation to any officer, clerk, employee or other person in the Classified City Service, whose name does not appear upon the roster provided for in the next preceding section as having been appointed and employed in conformity with the provisions of this subtitle and the rules adopted thereunder. (Res. No. 94, 10–7–87.)

Section 46.

All persons holding positions in the City Service on July 1, 1987, shall, when such positions are placed under the provisions of this subtitle, be entitled to retain their position until discharged, reduced, promoted or transferred in accordance with the provisions of this subtitle. (Res. No. 94, 10–7–87.)

Section 47.

All City employees other than those represented by a collective bargaining unit as certified by the Mayor and City Council shall receive such sick leave, vacation leave, and holidays as the Mayor and City Council may from time to time determine by Order. Any sick leave, vacation leave or holiday presently inuring to the benefit of any employee as of July 1, 1987, shall continue unless subsequently changed by Order of the Mayor and City Council in the manner as aforesaid. (Res. No. 94, 10–7–87.)

Section 48.

No person in the Classified City Service shall for any reason be under any obligation to contribute to the candidacy of any person for any office. (Res. No. 94, 10–7–87.)

Section 49.

Any violation of any of the provisions of this subtitle relating to the Civil Service Commission, or any willful use of any corrupt means in connection with any examination, appointment, promotion, reduction, transfer or reinstatement shall be deemed a misdemeanor and, upon conviction in a court of competent jurisdiction, shall be punished by a fine of not more than Five Hundred Dollars, or by imprisonment for a time not exceeding twelve months, or by both such fine and imprisonment. (Res. No. 94, 10–7–87.)

Section 50.

Any employee of the City and/or the Mayor and City Council of Cumberland shall have the right of appeal to the Circuit Court of Allegany County from any decision rendered by the Civil Service Commission. (Res. No. 94, 10–7–87.)

Section 51.

Any permanent employee of the City of Cumberland not otherwise represented by a collective bargaining unit as certified by the Mayor and City Council, who is injured in the performance of his duty, shall receive compensation for such time as he may be prevented from performing such duties because of the injuries so received, agreeable to the Workmen's Compensation Laws of this State. The City shall, for a maximum period of fifty–two (52) weeks, supplement such payments received under the Workmen's Compensation Laws so that the injured person shall continue to receive aggregate payments equaling his average weekly base wage as determined by the Workmen's Compensation Commission. The City shall have a right ot **[**to**]** subrogation as to all payments made by it to the injured person. (Res. No. 94, 10–7–87.)

Section 52.

Repealed. (Char. Amend. Reso. No. 114, 10–25–95.)

Section 53. Repealed.

Section 54. Repealed.

Section 55. Repealed.

Section 56. Repealed.

Section 57. Repealed.

Section 58. Repealed.

Section 58A. Repealed.

Section 58B. Repealed.

Pensions – Police and Fire Departments

Sections 59 to 64.

(Repealed by Charter Amendment Resolution No. 37.)

Powers

(See note (8))

Section 65. Certain officers to attend council meetings.

The city solicitor shall attend all regular meetings of the mayor and city council and any special meetings of the mayor and city council at which his presence may be requested by said mayor and city council; provided, however, that the city solicitor may be excused from attending any regular or special meeting by said mayor and city council.

Those individuals serving as directors of the various departments of the city shall attend any regular or special meeting of the mayor and city council at which their presence may be requested by said mayor and city council.

Any of the officers herein included shall have the privilege of participating in the discussion of matters relating to their respective departments at such regular or special meetings, but shall have no vote. (Char. Amend. Reso. No. 32, § 2; Char. Amend. Reso. No. 108, 10–11–95.)

Section 66. To whom official bonds payable; form and sureties on official bonds.

All official bonds required under this article, except the bonds of the members of the mayor and city council, shall be made payable to the Mayor and City Council of Cumberland,

and shall be in such form and with such sureties as the mayor and city council may prescribe. (1922, ch. 96, § 40; P.L.L. 1930, art. 1A, § 40.)

Section 67. Recordation of bonds of city officers.

All bonds executed to the said Mayor and City Council of Cumberland for the faithful discharge of the duties of the several officers required by law or ordinance to give bond shall be recorded in the office of the clerk of the circuit court for Allegany County, and a certified copy thereof under seal shall be evidence to prove the execution of such bond in any of the courts of this state. (1922, ch. 96, § 41; P.L.L. 1930, art. 1A, § 41.)

Section 68. Creation of offices; appointment, removal and compensation of employees.

The mayor and city council shall have authority from time to time to create and fill and discontinue all offices and employments other than herein prescribed, according to their judgment of the needs and requirements of the city, and in their discretion, by a majority vote of all the members of the city council, to remove for or without cause the incumbent of any such office or employment, and may, and by order or otherwise, prescribe, limit or change the compensation of such officers or employees. (1922, ch. 96, § 42; P.L.L. 1930, art. 1A, § 42.)

Section 69. Substitutes for city officials during sickness, absence, etc.

In case of sickness, or absence, or inability from any cause on the part of any official to perform his duties, the mayor and city council may provide for the performance of such duties by a temporary substitute for such officer, or otherwise, as they may deem best, and the acts performed by such substitutes or otherwise, as the said mayor and city council may direct, shall be deemed as valid for all intents and purposes as though performed by the said official himself. (1922, ch. 96, § 43; P.L.L. 1930, art. 1A, § 43.)

Section 70. Liability of officials handling city revenues.

All the officials of said city, charged with disbursing, safekeeping or performing any act touching the taxes or other revenues of said city now due, or that may hereafter become due, shall be liable for any and all branches (See note (9)) of duty touching the same, as are the state and county officials, in regard to like services and acts, and may be proceeded against, criminally and civilly, in the same way. (1922, ch. 96, § 44; P.L.L. 1930, art. 1A, § 44.)

Section 71. Removal of officers.

The mayor and city council shall have the power to remove any officer for incompetency, inefficiency, corruption, malconduct, malfeasance or nonfeasance in office, or such other causes as may be prescribed by ordinance, after due notice in writing, and opportunity to be heard in his defense, under the rules and regulations hereinafter set forth. Whenever charges are preferred in writing under oath, and filed with the mayor, by any person, against such officer, for any or all of the offenses named or provided for as above, it shall be his duty to have the accused duly served with a copy of such charges, and shall set a day to inquire into the truth of such charges, and

shall notify the accused and any other members of said city council, and the witnesses for and against the accused, to be present, and the said mayor and city council shall constitute a court to try and determine said case, and are hereby invested with exclusive jurisdiction to hear and determine said charges, and may continue the investigation from day to day, upon proper showing, to enable the accused or prosecutor to get material evidence before said city council. The accused shall have the right to be heard in person or by counsel, and the said mayor and city council shall likewise be represented by counsel, if they desire it. Upon the conclusion of the investigation and argument of the cause a vote shall be taken on each charge and specification, and if a majority of all the members of the said mayor and city council vote to sustain either of the charges against the accused, said mayor and city council shall enter, or cause to be entered, its judgment, in which shall be recorded the vote of each member of the city council upon the several charges and specifications, and an order shall be entered removing the accused from his office, and declaring the same vacant, but if the vote is otherwise, the accused shall be declared "not guilty" and judgment entered accordingly. (1922, ch. 96, § 45; P.L.L. 1930, art. 1A, § 45.)

Section 72. Applicability of preceding section.

The preceding section shall not apply to any officers of the City of Cumberland who are subject to civil service rules as set out in section 53 of this article, except the chief of the fire department and the chief of police, both of whom shall be subject to the provisions of the preceding section. (1922, ch. 96, § 46; P.L.L. 1930, art. 1A, § 46.)

Section 73. General enumeration of powers of city council. (See note (10))

The city council shall have power to pass all such ordinances not contrary to the Constitution and laws of this state, as it may deem necessary,

For the good government of the city.

For the protection and preservation of the city's property, rights and privileges.

For the preservation of peace and good order and securing persons and property from violence, danger or destruction.

For the protection of the health, comfort and convenience of the citizens of Cumberland and visitors thereto or sojourners therein.

For the appointment of a board of health and defining and regulating its powers and duties.

For the erection and maintenance of houses of correction and for the confinement of criminals, hospitals or pest houses within or without the limits of the city, and for the regulation and government of the same.

For the providing **[**of**]** proper and suitable lights upon the public streets.

For establishing and maintaining a fire department.

For erecting and maintaining bridges.

For establishing, maintaining and regulating an adequate police force.

And it shall have power to pass all ordinances,

To regulate or prohibit the use of hand organs or instruments of any annoying character, or other music itinerant performers in the streets, alleys or public places of such city.

To regulate the location and management of starch factories, glue factories, renderies, tallow chandlers, bone factories, soap factories, hide house, tanneries, slaughter houses, breweries, distilleries, livery stables, foundries and all other establishments of which the business or trade may become noxious or injurious to public comfort and health; to prohibit the erection of such buildings or the continuance of such noxious injurious occupations therein, whenever the public health or comfort requires it.

To prevent or regulate the use or sale of firearms, fireworks, bonfires or other things or practices tending to endanger persons or property.

To regulate and prohibit the running at large of cattle, horses, swine, fowls, sheep, goats, dogs or other animals, to authorize the impounding, keeping, sale and redemption of such animals when found in violation of the ordinance in such cases provided.

To prevent the deposit of any unwholesome substance, either on private or public property; to compel its removal to designated points, and to require slops, garbage, ashes and other waste or unwholesome material to be removed to designated points, or to require the occupants of premises to place them conveniently for removal. For the purpose of this paragraph jurisdiction is given such city two miles from the corporate limits.

To compel the occupants of any premises, building or outhouses situated in said city when the same have become filthy or unwholesome, to abate or cleanse the same, and to authorize the same to be done by the proper officers, and assess the expense thereof against such property.

To regulate or prevent the storage of gunpowder, tar, pitch, resin, coal oil, benzine, turpentine, hemp, cotton, nitroglycerine, dynamite, giant powder, petroleum, gasoline or gas, or any product thereof, or any other explosives or combustible material, or any material which may seem to be dangerous.

To regulate or prohibit the interment of bodies and to authorize the removal of bodies now or hereafter buried, or of cemeteries, to some other proper place.

To establish quarantine regulations.

To authorize the removal or confinement of persons having infectious or pestilential diseases.

To regulate or prohibit the ringing of bells, crying of goods, or sounding of steam whistles.

To pass all ordinances or orders, and to expend such sums of money as may be necessary within the limitation herein provided for the protection, maintenance and preservation of the water supply of the city and the prevention of the pollution thereof.

To direct the location and regulate the management of all public markets and market places, whether established by the city or by private individuals; to prevent the offenses of regrating and forestalling.

To regulate and require the inspection and condemnation, if unwholesome, and to regulate the sale of meats, poultry, fish, butter, oleomargarine, cheese, lard, vegetables, and all other food or provisions.

To regulate the selling, weighing or measuring of hay, wood, coal, coke and all other articles sold by weight or measure, and to provide for their inspection and sealing.

To authorize and require the inspection and licensing of steam boilers and elevators, and to prohibit their use when unsafe or dangerous or without license.

To define fire limits in such city and the character of buildings which are forbidden to be erected within such limits, and to prohibit the erection of buildings in such city without a license first obtained therefor, and to regulate the construction of buildings to prevent the spread of fire.

To authorize and require the inspection of buildings and structures erected, or to be erected, or in process of erection; to authorize the license therefor to be revoked and the condemnation thereof in whole or in part when dangerous or insecure in the opinion of the building committee, or such party as the said council may appoint to inspect the same, and to authorize the same to be taken down within a specified time by the owner thereof, or in default thereof to authorize the same to be taken down at the said owner's expense, or in case of an emergency, to authorize the same to be taken down by the street superintendent or such party as the council may appoint without delaying for the owner to do so. This power to include authority to tear down buildings or parts of buildings rendered dangerous by fire or other catastrophe.

To regulate the location, size, character and cost of all buildings to be erected, and to provide such regulations by ordinance.

To compel persons about to undertake dangerous improvements to execute bond of **[**or**]** sufficient sureties, conditioned that the owner of **[**or**]** contractor will pay all damages which may be sustained by any person or property from such work.

To make all regulations which may be deemed expedient for the promotion of health or suppression of disease.

To regulate the construction of chimneys, smokestacks, hearths, ovens, the erection of stoves and stovepipes, boilers and apparatus used in buildings or other places, and cause the same to be removed or made secure, when considered dangerous; to compel owners and occupants of houses and buildings to make scuttles on the roof thereof with stairs or ladders leading to the same and to compel the erection of fire escapes.

To authorize and require the inspection of gas pipes, water pipes, plumbing, drainage, sewage and electric lines or wires on private property or elsewhere; to compel them to be repaired or made secure by the owner or occupant, and on failure of such owner or occupant to do so to authorize or require the gas or electric current to be shut off from the same until such repairs are made.

To regulate and prohibit the keeping of any lumber yard and the placing or piling of any lumber, wood, or other combustible material within the fire limits.

To suppress, restrain and regulate bawdy houses, disorderly houses and houses of ill–fame and to prohibit the youth of said city from being on the streets, lanes or alleys at unreasonable hours of the night.

To restrain and prohibit gaming.

To punish and suppress tramps and vagrants by imposing fines or both fine and imprisonment at hard labor, and to abate by appropriate ordinances all nuisances in said city which are so defined by common law, whether the same are herein specifically named or not.

To prevent immoderate or careless riding or driving.

To regulate the use of streets and alleys by vehicles, and designate the kind of conveyances and vehicles which may not use designated streets, which have been improved, together with hours for the use of such streets by certain specified classes of vehicles.

To prevent the encumbering of streets, alleys, squares, sidewalks and crossings with vehicles, horses or any substance or material interfering with the free use of the same.

To regulate the speed of horses, wheeled vehicles, cars, locomotives and all other vehicles.

To regulate and protect all bridges, culverts, tunnels, viaducts, aqueducts, sewers, canals and hydrants wholly or partly in said city, and to prohibit digging in such streets, alleys or public places, or in any way injuring, disturbing or making holes in the surface thereof.

To regulate the use of sidewalks and all structures in, under or above the same, and to require the owner or occupant of premises to keep the sidewalks in front of the same free from snow and other obstructions, and prescribe hours for cleaning the same.

To regulate and prevent the throwing or depositing of sweepings, dust, ashes, offal, dirt, garbage, paper, handbills, dirty liquids or any other material into any street, alley or public place.

To regulate and prevent the use of streets, sidewalks and public places for signs, sign posts, awnings, awning posts, poles, horse troughs, steps, railings, entrances, racks, posting handbills and advertisements, and display of goods, wares and merchandise.

To regulate and prohibit the exhibition or carrying of banners, placards, advertisements or handbills on the streets, alleys or public places.

To regulate all traffic within the limits of said city, including trains at grade crossings, and to prohibit interference with or injury to traffic signs and all other city property.

To require the owners or occupants of buildings to remove the snow and ice from cornices and other projections on said buildings.

To regulate and prevent the flying of flags, banners or signs across the streets or from houses.

To regulate the numbering of houses and lots and compel owners to renumber the same, or in default thereof, to authorize and require the same to be done by the street superintendent or such other party as the council may appoint, at the owner's expense, such expense to constitute a lien upon the property and enforceable as provided in the ordinance.

To regulate the making of private connection with sewer, gas and water pipes, and to compel the owners of property to bring such connections inside the curb of streets before permanent improvements thereof, and in default of the owners making such connections, to authorize the city to do so at the owner's expense and to make such expense a lien upon the property.

To remove all nuisances and obstructions from the streets, lanes and alleys and from any lots adjoining thereto, or any other places within the limits of the city.

To cause the streets, lanes and alleys to be sidewalked, paved, graded, repaired, repaved, regraded, drained or sewered, or to close streets or parts of streets, lanes or alleys.

To regulate, license, tax, restrain or prohibit theatres, moving picture houses, theatrical and all other exhibitions, shows or entertainments for which money is demanded or received; provided, that lectures on scientific, historic, benevolent, artistic, religious or literary subjects and apparatus for the elucidation of the same and specimens of fine art shall not be deemed to be within the provision.

To license, tax, regulate and prohibit runners at railroad stations and others for stages, cars, public houses or other things or persons.

To regulate the sale of all kinds of property at auction in the streets, stores, shops or elsewhere in the city, and to license auctioneers and all vendors of property on the streets or squares or other public places in said city.

To license, tax, regulate, suppress and prohibit hawkers and itinerant dealers, peddlers, pawnbrokers and all other persons selling any articles on the streets of said city, and to revoke such license at pleasure.

To license, tax and regulate public hackmen, taxicabmen, draymen, omnibus drivers, carters, cabmen, porters, expressmen, bill posters, and all other persons pursuing like occupations and to prescribe their compensation.

To license, tax and regulate all inns, taverns, dance halls, pool rooms, soda fountains, pool tables, bowling alleys, places where soft drinks are disposed of, livery or sale stables, hotels, restaurants, lunch rooms, or other places used or kept for public entertainment, and in the discretion of said mayor and city council to refuse to grant any such license and to revoke any such license when granted.

To license, tax and regulate and prohibit the selling or giving away of any spirituous, vinous or malt liquors, and to license all places where such liquors or either of them are lawfully disposed of, whether given away or sold, and all such places shall pay a license fee of one hundred dollars per year to said city.

To license, tax and regulate secondhand and junk stores, and to forbid their purchasing or receiving from minors any article whatever without consent of their parents or guardians.

To license, tax, regulate and prohibit the keeping or harboring of dogs.

To license, tax and regulate wheeled vehicles; provided, that the funds derived from all such licenses shall be applied only to the maintenance and repair of streets and alleys.

To license, tax and regulate branch stores or establishments and all other concerns established in said city for temporary business only.

To license, tax and regulate ice cream wagons, butcher wagons, cigar and tobacco stands, gasoline stations, popcorn machines, and all similar occupations.

To license and tax fire insurance companies; provided, that all fire insurance companies doing business in the City of Cumberland, shall pay a license fee of not less than fifty dollars, nor more than one hundred dollars per annum.

To license, tax and regulate, restrain and prohibit the erection or maintenance of bill boards, within said city, the placing of signs, bills and posters of every kind and description on any building, fence, post, billboard, pole or other place or device within said city.

To regulate, tax, restrain, or prohibit all public gatherings of every sort; and to regulate, license, tax, restrain, or prohibit all medicine shows, street vendors, and all demonstrators of every sort.

To regulate, license, tax, restrain, or prohibit all sales advertised as removal sales, fire sales, closing out sales, reduction of stock sales, damaged goods sales, salvage sales, inventory sales, auction sales, and all other sales similar in character to any of the foregoing.

To regulate, license, tax, restrain, or prohibit the sale of magazines or periodicals of every description by solicitors or agents; and to regulate, license, tax, restrain or prohibit the enlarging of pictures, the selling of soaps and perfumes, or any and all other merchandise by solicitors, agents, or peddlers. (1922, ch. 96, § 47; P.L.L. 1930, art. 1A, § 47.)

Section 73A.

(Repealed by Char. Amend. Reso. No. 101, 4–8–92.)

Crimes and Penalties

Section 74. Search warrants for narcotics.

The police officers of said mayor and city council shall have power to secure a search warrant for the searching of any premises within the limits of said city and one mile in any direction beyond the limits of said city upon the oath and information of any person that he or she has reasonable ground to believe that cocaine, morphine, heroin or other narcotic is kept or stored on said premises for the purpose of being sold, and to pass ordinances for the punishment for unlawful sales of the same. (1922, ch. 96, § 48; P.L.L. 1930, art. 1A, § 48.)

Section 75. Carrying concealed weapons.

It shall be unlawful for any person, not an officer to carry any concealed weapon within the limits of the City of Cumberland, and upon conviction thereof, such person shall be fined not less than twenty–five dollars ($25.00) nor more than fifty dollars ($50.00), and the concealed weapons shall thereupon become the property of the said Mayor and City Council of Cumberland. (1922, ch. 96, § 49; P.L.L. 1930, art. 1A, § 49.)

Section 76. Dumping of debris in certain streams.

It shall be unlawful for any person within the limits of the City of Cumberland and for a distance of a half mile beyond the limits of the City of Cumberland to dump, empty, or place any

ashes, refuse or debris of any sort in the streams of water commonly known as Wills Creek, Evitts Creek, Potomac River, or any tributaries thereof. (Char. Amend. Reso. No. 33, § 1.)

Section 77. Penalty for violation of preceding section.

Any person violating the provisions of the preceding section shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than five dollars ($5.00) nor more than twenty–five dollars ($25.00) for each offense. (1922, ch. 96, § 51; P.L.L. 1930, art. 1A, § 51.)

Section 78. Enforcement of ordinances; penalties.

(a) To ensure the observance of the ordinances and resolutions of the City, the Mayor and City Council shall have the power to enforce any said ordinance and resolution by providing that any violation thereof shall be a misdemeanor, and to affix thereto penalties in the form of fines and/or imprisonment in such amounts or terms not to exceed the maximums permitted by appropriate provisions of State law and/or such other or additional penalties as may be from time to time so authorized.

(b) The Mayor and City Council may provide that violations of any municipal ordinance shall be a municipal infraction, unless the violation is declared to be a felony or misdemeanor by law or ordinance, and to affix thereto a fine in the manner and in such amount as is authorized under the provisions of the Annotated Code of Maryland or this Charter and as deemed appropriate by the Mayor and City Council. Each day a violation continues shall constitute a separate offense. For purposes of this Charter, a municipal infraction is a civil offense. (1922, ch. 96, § 52; P.L.L. 1930, art. 1A, § 52; Res. No. 87, 11–30–82.)

Section 79. How fines, etc., recoverable.

Subject to the appropriate provisions of the Annotated Code of Maryland governing the collection and distribution of fines, penalties and forfeitures, all fines, penalties and forfeitures imposed for the violation of any section of this Charter or for the violation of any ordinance or resolution of the City declared to be a misdemeanor shall be recoverable in the name of the Mayor and City Council before the District Court, or such other court of competent jurisdiction, as debts, and shall be paid to the Mayor and City Council, for the use of the City of Cumberland. All fines, penalties or forfeitures collected by the District Court for the violation of any ordinance of the City declared to be a municipal infraction shall be remitted to the Mayor and City Council for the use of the City of Cumberland. (1922, ch. 96, § 53; P.L.L. 1930, art. 1A, § 53; Char. Amend. Reso. No. 24, § 2; Char. Amend. Reso. No. 53, § 1; Res. No. 87, 11–30–82.)

Section 80.

(Repealed by Charter Amendment Resolution No. 53, § 2.)

Assessments and Borrowing Power

Section 81. Authority of city generally.

(a) *Assessments*. The Mayor and City Council of Cumberland shall cause to be assessed annually as of the date of finality all property, real, personal or otherwise within said city, and all securities or other intangible property liable to state and county taxes, and for any assessments said mayor and city council shall accept any valuation theretofore placed thereon by the state and county assessment, or by the state tax commission assessment, upon the said respective classes of property within said city.

(b) *Levy; indebtedness*. Said Mayor and City Council of Cumberland shall have power to levy and collect a tax on the assessable property of said city for the general purposes of said corporation, not exceeding in any one year two dollars and fifty cents ($2.50) on each one hundred dollars worth of said assessable property; and in addition, to levy and collect such a tax on the assessable property of said city as may be necessary to pay the interest on all the outstanding city bonds, and to provide a fund for the redemption and payment thereof at maturity. (Char. Amend. Res. No. 95, 9–7–88; Char. Amend. Res. No. 97, 5–3189.)

(b–1) *Relief from taxation*. Said mayor and city council shall have the authority to adopt, by appropriate ordinances, a plan whereby those taxpayers who are held to be under hardship by reason of limited income, age or other reasons, may be granted relief from such taxation.

(c) *Borrowing*. The said Mayor and City Council of Cumberland shall have and are hereby given express power and authority to borrow from time to time, if and as needed for its immediate and usual corporate purposes, such sum or sums of money as may be necessary for such purposes, and to pledge the faith and credit of the city therefor; provided, however, that such sum or sums of money hereby authorized to be borrowed shall not exceed in the aggregate the total uncollected estimated receipts for the current fiscal year; and, provided, further, that any sum or sums of money so borrowed, in pursuance of the authority hereby given, shall be repaid out of the taxes levied, collected or due for the current fiscal year in which such sum or sums of money were borrowed, and/or from any other corporate income (other than water department income) due in such current fiscal year; and, provided further, that in the event the receipts from taxes levied, collected or due for the current fiscal year in which such sum or sums of money were borrowed shall be insufficient to pay such sum or sums so borrowed with all interest due thereon, the said Mayor and City Council of Cumberland are authorized and directed to levy a tax against all of the assessable property in the City of Cumberland sufficient to pay such sum or sums of money and collected with the next year's taxes.

(d) *Emergency borrowing*. The said Mayor and City Council of Cumberland shall have the further power and authority, in case of an emergency, to borrow such sum of money as may be necessary for the immediate relief and the protection of the inhabitants of the City of Cumberland during such emergency, not to exceed in the aggregate, however, the sum of fifty thousand dollars; provided, however, that if said mayor and city council shall decide that an emergency does exist, it shall pass a resolution or ordinance so stating, and thereafter it shall file

a petition in the circuit court for Allegany County, setting forth the existence of such emergency, its nature, the estimated amount of money needed for its relief and the proposed means of repayment. Upon the filing of such petition, it shall be the duty of any judge of said court, to whom such petition shall be presented, to forthwith pass an order directing that at least five days' notice of the filing of such petition, and of its substance, object and purpose, be immediately given by publication thereof in one or more daily newspapers published in the City of Cumberland, and fixing a time to be set forth in said notice for a hearing thereon in said court as soon thereafter as may be, at which hearing any citizen who is a taxpayer may appear and be heard. The proceedings in reference thereto at such hearing shall be informal; and, if after such hearing, the court shall pass an order authorizing the borrowing of such sum or sums of money as the court may deem adequate and proper to meet the emergency, thereupon the said mayor and city council shall be authorized to borrow the same and to pledge the credit of the city to the amount specified by the court in its order. There shall be no appeal from the finding of the circuit court. (See note (11))

(e) *Bond issues*. The Mayor and City Council of Cumberland, in addition to the powers to borrow money as hereinbefore set forth, shall also have the power to borrow, from time to time, such sums of money as they may deem necessary for the general welfare of the city and its general corporate purposes in accordance with the procedures set forth in Section 82A of the Charter. (Char. Amend. Res. No. 95, 9–7–88.)

(f) *Existing notes*. The above limitation of indebtedness shall not include or affect in any way certain outstanding notes of the Mayor and City Council of Cumberland in the aggregate amount of $43,500.00, for which have been pledged sewer and paving liens aggregating approximately $62,300.00; however, any collections made on said pledged liens, or the interest thereon, shall be applied to said notes until same are paid in full.

(g) *Penalties.* If the mayor or any member of the city council or any city employee shall violate any of the provisions of this section, he or they shall, upon trial and conviction, be sentenced to pay a fine of not exceeding one thousand ($1,000.00) dollars or be sentenced to confinement in the Allegany County Jail for not more than six months, or be both fined and imprisoned in the discretion of the court. (1922, ch. 96, § 55; P.L.L. 1930, art. 1A, § 55; 1933, ch. 42; 1933 Sp. Sess., ch. 28; 1949, ch. 533; 1951, ch. 421, § 1; 1953, ch. 348, § 1; Char. Amend. Reso. No. 4, § 2; Char. Amend. Reso. No. 47, § 1; Char. Amend. Reso. No. 70, § 1; Char. Amend. Reso. No. 78, 6–18–80; Char. Amend. Reso. No. 89, 6–30–83.)

Water

(See note (12))

Section 82. Authority of city generally.

(a) *Rates.* The Mayor and City Council of Cumberland shall operate the water system of the City of Cumberland, and shall charge and collect for the water supplied to the residents of Cumberland and the vicinity a sum sufficient to pay the operating expenses of said water system, to pay the interest on and the redemption of all bonds now outstanding against the city and all

other indebtedness of said city issued for or incurred for the building, extension, operation or maintenance of its water system, including that part of said system in Pennsylvania held in the name of The Evitts Creek Water Company; the receipts of the water system shall be kept in a separate fund and under a separate accounting system; and it shall be the duty of the mayor and city council to establish from time to time such rates for its water system as will pay all its operating expense and all its annual interest, and meet all its sinking fund or serial bond requirements; and in case of any deficit in the operations of the water department, then the water rentals shall be increased in order to prevent any future deficit, and to liquidate the past deficit.

In addition to the above powers, the mayor and city council may sell excess water at such price as it shall deem proper, without regard to its capital, interest requirements, or maintenance costs, to the end that said excess water shall not be wasted and that the Mayor and City Council of Cumberland shall derive some return therefrom; provided that no water shall be sold as excess water for less than the actual amount of filtration and treatment costs thereof.

Excess water shall only be such amount of water which shall be in storage in the impounding dams above the pumping level as shall be in excess of an amount equal to two hundred times the average amount of water then being delivered to the regular water takers for their daily consumption, and when the water in storage shall not be in excess thereof, no water shall be sold as excess water.

No excess water shall be sold to any person, firm or corporation for other than manufacturing or industrial purposes or when the use of which would diminish the amount of water then being furnished to said person, firm or corporation under the regular established rates of said city, or in case of sale of excess water to a nonuser of water under said established rates, said excess water shall not be sold in amount of less than four hundred thousand gallons per day, all of which must be used for manufacturing or industrial purposes, except in case of shut down, strike, act of God, or other emergency, and in like case the city may discontinue the supply of said excess water so long as any such emergency may exist, and provided further that in the sale of excess water the mayor and city council shall reserve the right to apportion said excess water among the eligible applicants who may apply for the same and may stipulate such other conditions as may seem reasonable and proper for the protection of the interests of the city.

It shall be the duty of the city public accountant (appointed under section 143 of this Charter) to file a special written statement with the mayor and city council at the time of his annual report advising whether the operations of the water department during the past fiscal year have been conducted at a profit or at a loss, and the amount thereof.

(b) *Ordinary borrowing power*. Said Mayor and City Council of Cumberland shall have the power and authority in the operations of the water department of the City of Cumberland (which shall include the operations of the Evitts Creek Water Company) to borrow such sum or sums as may be necessary for such operation, for interest, and to meet sinking fund or serial bond requirements, and to pledge the faith and credit of the city therefore (See note (13)); provided, however, that such sum or sums of money hereby authorized to be borrowed shall not exceed in the aggregate the total of the estimated water rentals accrued or accruing for the current fiscal year; and provided further that any sum or sums so borrowed in pursuance of

the authority so given shall be repaid out of the water rentals charged for said fiscal year and thereafter collected; and provided further that in the event the receipts from water rentals charged for said fiscal year and thereafter collected shall be insufficient to pay such sum or sums so borrowed, with all interest due thereon, the said Mayor and City council of Cumberland are authorized and directed to levy a tax against all of the assessable property in the City of Cumberland sufficient to pay such sum or sums of money so borrowed and all interest thereon, as and when the same shall be due and payable; and, provided also, that if water rentals charged for the current fiscal year in which such sum or sums of money were borrowed shall be paid after the payment of the sum or sums so borrowed, the receipts therefrom shall be applied to the general funds of the said Mayor and City Council of Cumberland.

(c) *Emergency borrowing power*. The said Mayor and City Council of Cumberland shall have the further power and authority, in case of an emergency, to borrow such additional sum or sums of money, as may be necessary for the continued operation of or the protection of the water department of the City of Cumberland (which shall be construed to include the operations of the Evitts Creek Water Company) not to exceed in the aggregate the sum of fifty thousand dollars; provided, however, that if the said mayor and city council shall decide that an emergency does exist, it shall pass a resolution or ordinance so stating, and thereafter it shall file a petition in the circuit court for Allegany County, setting forth the existence of such emergency, its nature, the estimated amount of money needed for its relief and the proposed means of repayment. Upon the filing of such petition, it shall be the duty of any judge of said court, to whom such petition shall be presented, to forthwith pass an order directing that at least five days' notice of the filing of such petition, and of its substance, object and purpose, be immediately given by publication thereof in one or more daily newspapers published in the City of Cumberland, and fixing a time to be set forth in said notice for a hearing thereon in said court as soon thereafter as may be, at which hearing any citizen who is a taxpayer or water consumer may appear and be heard. The proceedings in reference thereto at such hearing shall be informal and, if, after such hearing, the court shall pass an order authorizing the borrowing of such sum or sums of money as the court may deem adequate and proper to meet the emergency, thereupon the said mayor and city council shall be authorized to borrow the same and to pledge the credit of the city to the amount specified by the court in its order. There shall be no appeal from the finding of the circuit court.

(d) *Water department bond issues*. The Mayor and City Council of Cumberland, in addition to the power to borrow money as set forth in section 81, and any amendments thereto, or as hereinbefore set forth in this section, shall also have the power to borrow from time to time, pledging the credit of the city therefor, such sums of money as they may deem necessary for the operation, preservation or extension of the water system of said city, including the vicinity of Cumberland in accordance with the procedures set forth in the Section 82A of this charter. (Char. Amend. Res. No. 95, 9–7–88.)

(e) *Water system indebtedness*. The bonds heretofore or hereafter issued for water improvements shall be issued in addition to and exclusive of the ten per cent bonded indebtedness on the assessed valuation of the City of Cumberland authorized by section 81 of this article.

(f) *Penalties*. If the mayor or any member of the city council or any city employee shall violate any of the provisions of this section, he or they shall, upon trial and conviction, be sentenced to pay a fine of not exceeding one thousand ($1,000.00) dollars or be sentenced to confinement in the Allegany County Jail for not more than six months, or be both fined and imprisoned in the discretion of the court. (1922, ch. 96, § 56; P.L.L. 1930, art. 1A, § 56; 1933, ch. 42; 1933 Sp. Sess., ch. 28; Char. Amend. Reso. No. 2, § 2.)

Section 82A. Bonds – Issuance.

(a) The Mayor and City Council of Cumberland (the "City") may borrow money for any proper public purpose and may evidence such borrowing by the issuance and sale of its general obligation bonds in the manner herein prescribed.

(b) (1) General obligation bonds of the City shall be authorized by an ordinance which shall contain the following:

(i) A statement of the aggregate principal amount of bonds authorized to be sold;

(ii) A statement of the purpose or purposes for which the proceeds of the bonds are to be expended;

(iii) A statement of the taxes or other revenues from which the principal of and interest on the bonds will be paid; and

(iv) a requirement that, prior to issuance of any of the bonds authorized, the Mayor and City Council shall adopt a resolution in accordance with subsection (d) of this section.

(2) A complete copy of an ordinance authorizing general obligation bonds of the City shall be posted in a public place or places within the City for the 30 days following its passage, and the text of the ordinance, or a fair summary thereof, shall be published at least once within 10 days of its passage in a newspaper of general circulation in the City.

(3) An ordinance authorizing general obligation bonds of the City shall become effective 30 days after its passage, unless a later date is specified in the ordinance.

(c) (1) Except as provided in subsection (c)(2) of this section, an ordinance authorizing general obligation bonds of the City may be petitioned to a referendum of the voters of the City. The petition must be submitted to the City Clerk within 30 days after the passage of the ordinance, must be signed by at least 20 of the registered voters of the City, and must request that the ordinance be submitted on referendum to the voters of the City. Each person signing the referendum petition must indicate both his or her name and his or her residence address. Upon receiving the petition, the City Clerk shall verify that each person who signed it is a registered voter of the City. If the petition complies with the foregoing requirements, the Mayor and City Council shall by resolution specify the date for the election at which the question will be

submitted to the voters, which may be at either the next regular State primary or general election or municipal election or, in the discretion of the Mayor and City Council, at a special election to be held on such date as they may specify. The election shall be held in accordance with such requirements as to notice and conduct as may be specified from time to time by the provisions of public general law governing referendums on proposed charter amendments of municipal corporations, such provisions being now codified as Sections 15 and 16A of the Maryland Code. If a majority of those who vote on the question cast their votes in favor of the ordinance, the Mayor shall so proclaim within 10 days after receiving a certification of the vote from the Board of Elections, and the ordinance shall thereupon become effective; if less than a majority of those who vote on the question shall cast their votes in favor of the ordinance, the Mayor shall likewise so proclaim, and the ordinance shall be null and void.

(2) An ordinance authorizing the sale of general obligation bonds of the City may not be petitioned to referendum, even though the full faith and credit and taxing power of the City are pledged to payment of the principal of and interest on the bonds, if the Mayor and City Council in the ordinance finds and declares that half or more of the funds required to pay such principal and interest are expected to be realized from the levying of special assessments, or from the levying of a tax upon property lying within a special taxing district, or from the revenues of a revenue–producing project or projects of the City.

(d) (1) Prior to issuing any general obligation bonds of the City, the Mayor and City Council shall adopt a resolution containing:

(i) The designation, date of issue, denomination or denominations, form or forms and tenor of the bonds;

(ii) the rate or rates of interest payable on the bonds, or the method of determining the same;

(iii) The date or dates and amount or amounts of maturity, which need not be in equal par amounts or in consecutive annual installments, provided only that no bond of any issue shall mature later that **[**than**]** 40 years from the date of its issue;

(iv) The manner of selling the bonds, which may be either at public or private sale, for such price or prices as may be determined to be for the best interests of the City;

(v) If the Mayor and City Council determines that the bonds are to be offered by solicitation of competitive bids at public sale, the terms and conditions of the public sale, including a form of notice of sale;

(vi) The manner of executing and sealing the bonds, which may be by facsimile;

(vii) If the Mayor and City council determines that any of the bonds are to be made redeemable before maturity, the price or prices and terms and conditions of redemption;

(viii) The place or places of payment of the principal of and interest on the bonds, which may be at any bank or trust company within or without the State of Maryland;

(ix) Provisions specifying the source or sources of funds for payment of the principal of and interest on the bonds, which provisions shall constitute a covenant binding the City to provide the funds from such source or sources as and when needed to pay the principal of and interest on the bonds; and

(x) Such other provisions regarding the terms, conditions, issuance, sale, and delivery of the bonds as the Council may include.

(2) A resolution adopted pursuant to this subsection (d) of this section may not be petitioned to referendum and shall become effective immediately upon its adoption. (Char. Amend. Res. No. 95, 9–7–88.)

Section 82B. Acquisition of real, personal or mixed property; capital leases.

(a) The Mayor and City Council of Cumberland (the "City") may acquire fee simple title to or any other interest in real, personal or mixed property for any public purpose by purchase, gift, bequest, devise, lease, lease-purchase, installment purchase or otherwise.

(b) The City, in the exercise of its borrowing powers, may finance or refinance the acquisition of any real, personal or mixed property for any public purpose by entering into capital leases. For purposes of this Section 82B, "capital lease" means any multi-year lease, conditional sale, conditional purchase, installment sale, installment purchase, lease-purchase, or similar agreement (by whatever name known), defined as a capital lease in accordance with generally accepted accounting principles; provided that, the City's obligation to make periodic payments denominated into principal and interest components under a capital lease shall be contingent on the availability of appropriated or other legally available funds for such purpose during each year or fiscal year that such capital lease is outstanding.

(c) In connection with entering into any capital lease, the City may pledge and assign the real, personal or mixed property to be acquired in whole or in part pursuant to the capital lease to secure its obligation to make payments under the capital lease.

(d) In connection with entering into any capital lease, the City may enter into escrow agreements, trust agreements, financing agreements, investment agreements or similar agreements and any other agreements, documents, certificates or instruments deemed necessary or desirable to consummate the transactions contemplated by the capital lease.

(e) The City may approve, authorize or provide for the acquisition of any real, personal or mixed property or any capital lease for any public purpose pursuant to this Section 82B by ordinance and/or resolution; any such ordinance or resolution may delegate to an appropriate official or officials the authority to negotiate, approve, execute and deliver of behalf of the City any necessary or desirable documentation; and any such ordinance or resolution may

be introduced and enacted or adopted, as applicable, in a single session of the Mayor and City Council and shall not be subject to petition to referendum.

(f) Notwithstanding anything to the contrary contained in the City Code, the City may select the counterparty or counterparties to any capital lease or related document without complying with any public bidding procedures.

(g) No capital lease shall be construed to be a debt of the City or constitute a pledge of the full faith and credit and taxing power of the City.

(h) The City and its appropriate officials are authorized to take any and all action deemed necessary or appropriate to maintain the exclusion from gross income for federal income tax purposes of the interest payable on any capital lease, including (without limitation) filing any forms or reports required under the Internal Revenue Code of 1986, as amended, and the regulations and rulings issued thereunder, restricting the investment yields of proceeds of a capital lease, and making any required rebate payments.

(i) Nothing in this Section 82B shall prevent the City from entering into a capital lease the interest on which is not excludable from gross income for federal income tax purposes.

(j) The provisions of this Section 82B shall be liberally construed to effectuate the acquisition of real, personal or mixed property by the City through capital leases.

(k) Notwithstanding any other provision of law, any capital leases and related documents entered into by or on behalf of the City prior to the date this Section 82B is added to the Charter, and all ordinances and resolutions passed concerning them are declared to be valid, legal and binding and of full force and effect as if fully set forth in this Charter. (Res. No. 134, 12–6–06.)

Water Bonds of 1924

(See note (14))

Section 83. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes or borrow money to pay bonds.

The mayor and city council shall charge and collect for the water supplied to the residents of the City of Cumberland and vicinity, a sum sufficient to pay the expenses heretofore and hereafter necessary for the operating of the water system of Cumberland, Maryland, and to pay for the redemption of the bonds now outstanding against the City of Cumberland for water improvements, and this bond issue, and the interest on all the bonded indebtedness of the City of Cumberland, pertaining to the water system of said city, and the money so charged and collected shall be kept and maintained in a fund separate, it being the intention of this subheading to enable the Mayor and City Council of Cumberland to so operate the water supply of said city that the revenue therefrom shall be used to defray the heretofore or hereafter expenses connected therewith, provided if the receipts from the water department shall be less than the expenses in

any year or years, the mayor and city council shall levy from time to time such amount on the assessable property of the city as may be necessary to pay the bonds issued hereunder, or are empowered to borrow an amount not exceeding thirty thousand ($30,000.00) dollars in any one year, and to pledge the credit of the city for the security of the same, provided, however, that the water rate shall be increased for the succeeding year sufficient to pay off such deficit. (1924, ch. 69, § 4; P.L.L. 1930, art. 1A, § 167.)

Section 84. Bonds not subject to limitation on bonded indebtedness.

The bonds hereunder authorized shall be issued in addition to and exclusive of the ten per cent bonded indebtedness on the assessed valuation of the property in the City of Cumberland authorized by section 81 of this article. (1924, ch. 69, § 5; P.L.L. 1930, art. 1A, § 168.)

Section 85. Penalty for violation of subheading.

If the mayor or any member of the city council shall violate any of the provisions of this subheading, or expend or attempt the expenditure of any of the proceeds of said bond issue for any other purpose than herein set forth, he or they, shall, upon trial and conviction, be sentenced to pay a fine of not less than one hundred ($100.00) dollars, nor more than one thousand ($1,000.00) dollars, or be sentenced to confinement in the Allegany County Jail for not more than six months, or both fine and imprisonment in the discretion of the court. (1924, ch. 69, § 6; P.L.L. 1930, art. 1A, § 169.)

Water Improvement Bonds of 1929

(See note (15))

Section 86. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes or borrow money to pay bonds.

The mayor and city council shall charge and collect for the water supplied to the residents of the City of Cumberland and vicinity, a sum sufficient to pay the expenses heretofore and hereafter necessary for the operating of the water system of Cumberland, Maryland, and to pay for the redemption of the bonds now outstanding against the City of Cumberland for water improvements, and this bond issue, and the interest on all the bonded indebtedness of the City of Cumberland, pertaining to the water system of said city, and the money so charged and collected shall be kept and maintained in a fund separate, it being the intention of this subheading to enable the Mayor and City Councl **[**Council**]** of Cumberland to so operate the water supply of said city that the revenue therefrom shall be used to defray the heretofore or hereafter expenses connected therewith, provided if the receipts from the water department shall be less than the expenses in any year or years, the mayor and city council shall levy from time to time such amount on the assessable property of the city as may be necessary to pay the bonds issued hereunder, or are empowered to borrow an amount not exceeding thirty thousand ($30,000.00) dollars in any one year, and to pledge the credit of the city for the security of the same, provided, however, that the water rate shall be increased for the succeeding year sufficient to pay off such deficit. (1929, ch. 548, § 4; P.L.L. 1930, art. 1A, § 173.)

Section 87. Bonds not subject to limitation on bonded indebtedness.

The bonds hereunder authorized shall be issued in addition to and exclusive of the ten per cent bonded indebtedness on the assessed valuation of the property in the City of Cumberland authorized by section 81 of this article. (1929, ch. 548, § 5; P.L.L. 1930, art. 1A, § 174.)

Section 88. Penalty for violation of subheading.

If the mayor or any member of the city council shall violate any of the provisions of this subheading, or expend or attempt the expenditure of any of the proceeds of said bond issue for any other purpose than herein set forth, he or they, shall, upon trial and conviction, be sentenced to pay a fine of not less than one hundred ($100.00) dollars, nor more than one thousand ($1,000.00) dollars, or be sentenced to confinement on **[**in**]** the Allegany County Jail for not more than six months, or both fine and imprisonment in the discretion of the court. (1929. ch. 548, § 6; P.L.L. 1930, art. 1A, § 176.)

Trustees of Waterworks

(See note (16))

Section 89. Authority of city to convey part of waterworks lot to trustees.

The Mayor and City Council of Cumberland are hereby authorized and empowered to convey to the trustees mentioned in section 90 of this article that part of the old waterworks lot (part of City Lot No. 3 in Cumberland, Maryland) binding on Cherry Alley and extending along Green Street a distance of sixty (60) feet and going back an even width of sixty (60) feet a distance of ninety–five (95) feet to Water Street; and the said Mayor and City Council of Cumberland are further authorized and empowered to convey the remainder of said old waterworks lot to the aforesaid trustees whenever said mayor and city council, in their discretion, may deem it proper to do so. (1922, ch. 514, § 1; P.L.L. 1930, art. 1A, § 177.)

Section 90. Trustees named; purpose for holding part of waterworks lot; filling of vacancies in office of trustees.

George Henderson, Arthur P. Dixon, Harry E. Flook, Frank M. Wilson, William A. Huster, Harry Beneman, William C. Walsh, and whoever from time to time may be Mayor of the City of Cumberland, are hereby appointed trustees for the purpose of holding the lot of ground mentioned in the preceding section, and said trustees shall hold said lot of ground for the purpose of establishing and maintaining thereon an American Legion Building. In the event of the death, resignation or other disqualification of any of said trustees, the remaining trustees shall have power by majority vote to appoint other trustees, to the end that there may always be seven properly qualified trustees, and the appointment of any new trustees shall be made a matter of record in the proceedings of the Mayor and City Council of Cumberland. (1922, ch. 514, § 2; P.L.L. 1930, art. 1A, § 178.)

Water Improvement Bonds of 1931

(See note (17))

Section 91. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes or borrow money to pay bonds.

The mayor and city council shall charge and collect for the water supplied to the residents of the City of Cumberland and vicinity, a sum sufficient to pay the expenses heretofore and hereafter necessary for the operating of the water system of Cumberland, Maryland, and to pay for the redemption of the bonds now outstanding against the City of Cumberland for water improvements, and this bond issue, and the interest on all the bonded indebtedness of the City of Cumberland, pertaining to the water system of said city, and the money so charged and collected shall be kept and maintained in a fund separate, it being the intention of this subheading to enable the Mayor and City Council of Cumberland to so operate the water supply of said city that the revenue therefrom shall be used to defray the heretofore or hereafter expenses connected therewith, provided if the receipts from the water department shall be less than the expenses in any year or years, the mayor and city council shall levy from time to time such amount on the assessable property of the city as may be necessary to pay the bonds issued hereunder, and the interest thereon, or are empowered to borrow an amount not exceeding thirty thousand dollars ($30,000.00) in any one year, and to pledge the credit of the city for the security of the same; provided, however, that the water rate shall be increased for the succeeding year sufficient to pay off such deficit. (1931, ch. 6, § 4.)

Section 92. Bonds not subject to limitation on bonded indebtedness.

The bonds hereunder authorized shall be issued in addition to and exclusive of the ten per cent bonded indebtedness on the assessed valuation of the property in the City of Cumberland authorized by section 81 of this article. (1931, ch. 6, § 5.)

Section 93. Penalty for violation of subheading.

If the mayor or any member of the city council shall violate any of the provisions of this subheading, or expend or attempt the expenditure of any of the proceeds of said bond issue for any other purpose than herein set forth, he or they, shall, upon trial and conviction, be sentenced to pay a fine of not less than one thousand dollars ($1,000.00), or be sentenced to confinement in the Allegany County Jail for not more than six months, or both fine and imprisonment in the discretion of the court. (1931, ch. 6, § 6.)

Water Improvement Bonds of 1933

(See note (18))

Section 94. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes to pay bonds.

The mayor and city council shall charge and collect for the water supplied to the residents of the City of Cumberland and vicinity, a sum sufficient to pay the expenses heretofore and hereafter necessary for the operating of the water system of Cumberland, Maryland, and to pay for the redemption of the bonds now outstanding against the City of Cumberland for water improvements, and this bond issue, and the interest on all the bonded indebtedness of the City of Cumberland, pertaining to the water system of said city; the full faith and credit of the Mayor and City Council of Cumberland shall be pledged to secure the bonds issued hereunder; and if at any time the receipts of the water department shall be insufficient to pay the interest on said bonds, to meet sinking fund requirements, and to redeem said bonds as they mature, then the Mayor and City Council of Cumberland shall levy from time to time such amount on the assessable property of the city as may be necessary to make up any deficit. (1933, ch. 23, § 5.)

Section 95. Bonds not subject to limitation on bonded indebtedness.

The bonds hereunder authorized shall be issued in addition to and exclusive of the ten per cent bonded indebtedness on the assessed valuation of the property in the City of Cumberland authorized by section 81 of the Charter of the City of Cumberland. (1933, ch. 23, § 4.)

Section 96. Penalty for violation of subheading.

If the mayor or any member of the city council shall violate any of the provisions of this subheading, or expend or attempt the expenditure of any of the proceeds of said bond issue for any other purpose than herein set forth, he or they, shall, upon trial and conviction, be sentenced to pay a fine of not less than one thousand dollars ($1,000.00), or be sentenced to confinement in the Allegany County Jail for not more than six months, or be both fined and imprisoned in the discretion of the court. (1933, ch. 23, § 6.)

Water Improvement Bonds of 1939

(See note (19))

Section 97. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes or borrow money to pay bonds.

The mayor and city council shall charge and collect for the water supplied to the residents of the City of Cumberland and vicinity, a sum sufficient to pay the expenses heretofore and hereafter necessary for the operating of the water system of Cumberland, Maryland, and to pay for the redemption of the bonds now outstanding against the City of Cumberland for water improvements, and this bond issue, and the interest on all the bonded indebtedness of the City of

Cumberland, pertaining to the water system of said city, and the money so charged and collected shall be kept and maintained in a fund separate, it being the intention of this subheading to enable the Mayor and City Council of Cumberland to so operate the water supply of said city that the revenue therefrom shall be used to defray the heretofore or hereafter expenses connected therewith, provided if the receipts from the water department shall be less than the expenses in any year or years, the mayor and city council shall levy from time to time, such amount on the assessable property of the city as may be necessary to pay the bonds issued hereunder, and the interest thereon, or are empowered to borrow an amount not exceeding thirty thousand ($30,000.00) dollars in any one year, and to pledge the credit of the city for the security of the same; provided, however, that the water rate shall be increased for the succeeding year sufficient to pay off such deficit. (1939, ch. 23, § 4.)

Section 98. Bonds not subject to limitation on bonded indebtedness.

The bonds hereunder authorized shall be issued in addition to and exclusive of the ten per cent bonded indebtedness on the assessed valuation of the property in the City of Cumberland authorized by section 81 of this article. (1939, ch. 23, § 5.)

Section 99. Penalty for violation of subheading.

If the mayor or any member of the city council shall violate any of the provisions of this subheading, or expend or attempt the expenditure of any of the proceeds of said bond issue for any other purpose than herein set forth, he or they, shall, upon trial and conviction, be sentenced to pay a fine of not less than one thousand ($1,000.00) dollars, or be sentenced to confinement in the Allegany County Jail for not more than six months, or both fine and imprisonment in the discretion of the court. (1939, ch. 23, § 6.)

Water Improvement Bonds of 1941

(See note (20))

Section 100. Charges for water to cover operation of water system and redeem bonds; authority of system to levy taxes or borrow money to pay bonds.

The mayor and city council shall charge and collect for the water supplied to the residents of the City of Cumberland and vicinity, a sum sufficient to pay the expenses heretofore and hereafter necessary for the operating of the water system of Cumberland, Maryland, and to pay for the redemption of the bonds now outstanding against the City of Cumberland for water improvements, and this bond issue, and the interest on all the bonded indebtedness of the City of Cumberland, pertaining to the water system of said city; and the money so charged and collected shall be kept and maintained in a fund separate, it being the intention of this subheading to enable the Mayor and City Council of Cumberland to so operate the water supply of said city that the revenue therefrom shall be used to defray the heretofore or hereafter expenses connected therewith, provided if the receipts from the water department shall be less than the expenses in any year or years, the mayor and city council shall levy from time to time such amount on the assessable property of the city as may be necessary to pay the bonds issued hereunder, and the

interest thereon, or are empowered to borrow an amount not exceeding thirty thousand ($30,000.00) dollars in any one year, and to pledge the credit of the city for the security of the same; provided, however, that the water rate shall be increased for the succeeding year sufficient to pay off such deficit. (1941, ch. 932, § 4.)

Section 101. Bonds not subject to limitation on bonded indebtedness.

The bonds hereunder authorized shall be issued in addition to and exclusive of the ten per cent bonded indebtedness on the assessed valuation on property in the City of Cumberland now authorized by the City Charter, and any and all Acts or parts of Acts or any part or parts of the Charter of the City of Cumberland conflicting in any way herewith is or are repealed insofar and to the extent that the same shall so conflict, and none of the limitations or restrictions on the power of the Mayor and City Council of Cumberland to borrow money or issue and sell bonds contained in the Charter of said municipality or in any other law which limits, restricts or in any other way affects the powers herein granted, nor any of the provisions of chapter 630 of the Acts of 1939 of the General Assembly of Maryland (See note (21)) shall be applicable thereto. (1941, ch. 932, § 5.)

Section 102. Penalty for violation of subheading.

If the mayor or any member of the city council shall violate any of the provisions of this subheading, or expend or attempt the expenditure of any of the proceeds of said bond issue for any other purpose than herein set forth, he or they, shall, upon trial and conviction, be sentenced to pay a fine of not less than one thousand ($1,000.00) dollars, or be sentenced to confinement in the Allegany County Jail for not more than six months, or both fine and imprisonment in the discretion of the court. (1941, ch. 932, § 6.)

Water Improvement Bonds of 1945

(See note (22))

Section 103. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes to pay bonds.

The mayor and city council shall charge and collect for the water supplied to the residents of the City of Cumberland and vicinity, a sum sufficient to pay the expenses heretofore and hereafter necessary for the operating of the water system of Cumberland, Maryland, and to pay for the redemption of the bonds now outstanding against the City of Cumberland for water improvements, and this bond issue, and the interest on all the bonded indebtedness of the City of Cumberland pertaining to the water system of said city; and the money so charged and collected shall be kept and maintained in a fund separate; it being the intention of this subheading to enable the Mayor and City Council of Cumberland to so operate the water supply of said city that the revenue therefrom shall be used to defray the heretofore or hereafter expenses connected therewith, provided if the receipts from the water department shall be less than the expenses in any year or years, the mayor and city council shall levy from time to time such amount on the assessable property of the city as may be necessary to pay the bonds issued hereunder, and the

interest thereon, provided, however, that the water rates shall be increased for the succeeding year sufficient to pay off such deficit. (1945, Sp. Sess., ch. 3, § 4.)

Section 104. Bonds not subject to limitation on bonded indebtedness.

The bonds hereunder authorized shall be issued in addition to and exclusive of the ten per cent bonded indebtedness on the assessed valuation on property in the City of Cumberland now authorized by the City Charter, and any and all Acts or parts of Acts or any part or parts of the Charter of the City of Cumberland conflicting in any way herewith is or are repealed insofar and to the extent that the same shall so conflict, and none of the limitations or restrictions on the power of the Mayor and City Council of Cumberland to borrow money or issue and sell bonds contained in the Charter of said municipality or in any other law which limits, restricts, or in any other way affects the powers herein granted, nor any of the provisions of chapter 630 of the Acts of 1939 (See note (21)) or any amendments thereto of the General Assembly of Maryland, shall be applicable thereto. (1945, Sp. Sess., ch. 3, § 5.)

Section 105. Penalty for violation of subheading.

If the mayor or any member of the city council shall violate any of the provisions of this subheading or expend or attempt the expenditure of any of the proceeds of said bond issue for any other purpose than herein set forth, he or they, shall, upon trial and conviction, be sentenced to pay a fine of not less than one thousand ($1,000.00) dollars, or be sentenced to confinement in the Allegany County Jail for not more than six months, or both fine and imprisonment, in the discretion of the court. (1945, Sp. Sess., ch. 3, § 6.)

Water Improvement Bonds of 1949

(See note (23))

Section 106. Charges for water to cover operation of water system and redeem bonds; authority of city to levy taxes to pay bonds.

The mayor and city council shall charge and collect for the water supplied to the residents of the City of Cumberland and vicinity, a sum sufficient to pay the expenses heretofore and hereafter necessary for the operating of the water system of Cumberland, Maryland, and to pay for the redemption of the bonds now outstanding against the City of Cumberland for water improvements, and this bond issue, and the interest on all the bonded indebtedness of the City of Cumberland pertaining to the water system of said city; and the money so charged and collected shall be kept and maintained in a fund separate; it being the intention of this subheading to enable the Mayor and City Council of Cumberland to so operate the water supply of said city that the revenue therefrom shall be used to defray the heretofore, or hereafter expenses connected therewith provided if the receipts from the water department shall be less than the expenses in any year or years, the mayor and city council shall levy from time to time such amount on the assessable property of the city as may be necessary to pay the bonds issued hereunder, and the interest thereon, provided, however, that the water rates shall be increased for the succeeding year sufficient to pay off such deficit. (1949, ch. 496, § 4.)

Section 107. Bonds not subject to limitation on bonded indebtedness.

The bonds hereunder authorized shall be issued in addition to and exclusive of the ten per cent bonded indebtedness on the assessed valuation on property in the City of Cumberland now authorized by the City Charter, and any and all Acts or part of Acts or any part or parts of the Charter of the City of Cumberland conflicting in any way herewith is or are repealed insofar and to the extent that the same shall so conflict, and none of the limitations or restrictions on the power of the Mayor and City Council of Cumberland to borrow money or issue and sell bonds contained in the Charter of said municipality or in any other law which limits, restricts, or in any other way affects the powers herein granted, nor any of the provisions of sections 34–36 of article 31 of the Annotated Code of Maryland (1939 Edition), as amended by the 1947 Supplement (See note (21)), shall be applicable hereto. (1949, ch. 496, § 5.)

Section 108. Penalty for violation of subheading.

If the mayor or any member of the city council shall violate any of the provisions of this subheading, or expend or attempt the expenditure of any of the proceeds of said bond issue for any other purpose than herein set forth, he or they, shall, upon trial and conviction, be sentenced to pay a fine of not less than one thousand dollars ($1,000.00), or be sentenced to confinement in the Allegany County Jail for not more than six months, or both fine and imprisonment, in the discretion of the court. (1949, ch. 496, § 6.)

Water Supply

Section 109. Authority of city to improve, etc., water system; authority of city to purchase, lease, etc., land and sources of water.

The Mayor and City Council of Cumberland shall have the right to enlarge, improve, alter and reconstruct the waterworks and system of the City of Cumberland, with power, from time to time, to contract for, purchase, lease and hold in fee simple or for a term of years any land, real estate, spring, brook, water and watercourse, and also the right to use and occupy forever or for a term of years any land, real estate, spring, brook, or watercourse which they may deem expedient and necessary for the purpose of conveying water into said city, for the use of said city, and for the health and convenience of the inhabitants thereof, and also the right to enter, pass through, from time to time, as occasion may require, and to use and occupy the said lands through which they may deem it necessary to convey said water, and they are hereby invested with all the rights and powers necessary for the introduction of water into the said city. (1922, ch. 96, § 68; P.L.L. 1930, art. 1A, § 68.)

Section 110. Authority of city to agree with owners of land, sources of water, etc.

Said mayor and city council are hereby authorized to agree with the owner or owners of any land, real estate, spring, brook, water or watercourse as aforesaid, earth, timber, stone, or other material which they may conceive expedient or necessary to purchase and hold for the

purpose of introducing an additional supply into or improving the present supply of water in the City of Cumberland. (1922, ch. 96, § 69; P.L.L. 1930, art. 1A, § 69.)

Section 111. Authority of city to condemn land, sources of water, etc.

If the said mayor and city council cannot agree, or if there be any incapacity or disability to contract with the owner or owners of such land, or real estate, spring, brook, water or watercourse as aforesaid, earth, timber, stone or other material, or with the owner or owners of such land through which they may find it necessary to have a right of way, or entry, or passage for the purpose of conveying the said water into or through the said city, or if such owner or owners shall be absent out of the state, or unknown, or without legal capacity to contract, by reason of infancy, coverture or otherwise, it shall be lawful for the Mayor and City Council of Cumberland to secure by condemnation, any such lands, real estate, spring, brook, water or water course, easement or franchise, earth, timber, stone or other materials which they may deem necessary, in the same manner and by the same proceedings as is now provided for in condemnation by corporations under article 23, section 390 (See note (24)), etc., of the Code of Public General Laws of the State of Maryland. (1922, ch. 96, § 70; P.L.L. 1930, art. 1A, § 70.)

Section 112. Authority of city to purchase water companies.

The said Mayor and City Council of Cumberland are hereby authorized to subscribe for and take stock in any water company, formed under the laws of this state or any other state of the Union, which shall have for its object the furnishing and supplying of water to the City of Cumberland in accordance with the plan voted for by a majority of the votes cast at the election held in 1910. But in case of any subscription to the stock of any such company the Mayor and City Council of Cumberland shall take all the stock in such water company except such shares as may be necessary to allot to citizens of the United States to qualify them as directors to act as such in any such company. The said Mayor and City Council of Cumberland are hereby given full power and authority to do any other act or thing which may be necessary to carry out and complete and effectuate the objects and purposes of the sections of this article pertaining to the water system and supply of said city. (1922, ch. 96, § 71; P.L.L. 1930, art. 1A, § 71.)

Section 113. Authority of city to condemn rights of way.

If the mayor and city council cannot agree, or if there be any incapacity or disability to contract with the owner or owners of any land traversed or through which is laid the water main of the City of Cumberland, extending from the Fort Hill Reservoir, near the City of Cumberland, to the intersection of the water main of said city with the Mason and Dixon Line between Allegany County, Maryland, and Bedford County, Pennsylvania, through which the water is conveyed from Evitts Creek in Bedford County, Pennsylvania, to the City of Cumberland; or if such owner or owners shall be absent out of the state or unknown, or without legal capacity to contract by reason of infancy, coverture or otherwise, it shall be lawful for the Mayor and City Council of Cumberland to secure by condemnation a right of way, as nearly as practicable fifty feet in width (except where the same may cross public roads), the same to extend as nearly as practicable twenty–five feet on each side of the center line of said main, the title to which, whether acquired by purchase or condemnation, shall thereafter vest in the Mayor and City

Council of Cumberland in fee, with the right to purchase or condemn such land on either side or right of way as may be necessary to properly grade any surface water on streams over or under said main, such condemnation to be in the manner and by the same proceedings as heretofore provided for railroad companies by the Acts of Assembly of 1896, Chapter 151, and by the Acts of Assembly of 1892, Chapter 657, Section 167A (which should have been designated 167B.) (See note (25)) (1922, ch. 96, § 72; P.L.L. 1930, art. 1A, § 72.)

Section 114. Ordinances relative to water system.

The mayor and city council shall have and are hereby invested with the full power and authority to enact and pass all ordinances which from time to time they may deem necessary and proper to effect the objects herein specified, and to regulate the introduction and use of said water and the improvements thereof, and for the protection and preservation of its works, machinery and property connected therewith, and it shall be the duty of the commissioner of water and electric light to see that the ordinances so passed are properly carried out and enforced. (1922, ch. 96, § 73; P.L.L. 1930, art. 1A, § 73.)

Taxes

Section 115. Preparation of tax ledger.

It shall be the duty of the city comptroller of said city to place the name of every person subject to taxation for property in said city on the tax ledger, and to place also on said tax ledger all property subject to taxation in said city, together with the values placed by the state and county assessment and by the Maryland Department of Assessments and Taxation upon said property; and he shall also place thereon such new assessments and transfers as may be in the hands of the county commissioners, and reported to him by the Maryland Department of Assessments and Taxation during the period of time between the preceding January 1st and July 1st. It shall also be his duty to complete said tax ledger as above provided for, and to report the same to the mayor and city council not later than August first of each year. (Char. Amend. Reso. No. 27, § 2.)

Section 116. Treasurer to fill out tax cards for property transferred; report of same to city comptroller.

It shall be the duty of the treasurer of said city to fill out tax cards for all property transferred on the state and county tax books, or transferred by the Maryland Department of Assessments and Taxation, and to have said cards completed and reported to the city comptroller on or before July fifteenth in each year, and also to prepare tax cards for all new assessments on the state and county books or reported to him by the Maryland Department of Assessments and Taxation, and to have the same completed and reported to the city comptroller on or before July fifteenth of each year; said mayor and city council shall have the power and authority to provide compensation for the persons doing or assisting in doing the above work. (Char. Amend. Reso. No. 27, § 2.)

Section 117. City comptroller to prepare statement of anticipated revenue; special meeting of mayor and council to fix tax rate; calculation of individual taxes.

Upon the termination of their sittings as a board of equalization and review, said mayor and city council shall turn over said tax ledger to the city comptroller, and it shall be the duty of the city comptroller within two weeks thereafter, to submit to the said mayor and city council a statement giving the estimated amount of the tax for each purpose for which taxation is permitted, and also a statement of the revenue received from license, police fines and all other sources, not including taxes, during trhe **[**the**]** preceding year, and also a statement of the appropriations made for the preceding year, together with the amounts expended for each department for which an appropriation was made. Upon the receipt of said comptroller's statement as above set out, it shall be the duty of the said mayor and city council to call a special meeting for the purpose of considering the same and fixing the tax rate for the current year, and within two weeks after said tax rate is fixed, the city comptroller shall calculate the amount of tax due on each assessment in the tax ledger and place the same in the hands of the city treasurer, together with the warrants to collect the same. (Char. Amend. Reso. No. 27, § 2.)

Section 118. When tax rate to be established. (See note (26))

The Mayor and City Council shall pass ordinances fixing the tax rate as soon as may be practical after the date of finality in each year and in any event before the first day of July next following. All ordinary City taxes are due and payable without interest as of the first day of July in each tax year; these taxes are overdue and in arrears on the first day of the succeeding October, and from and after this day of October 1 they shall bear interest at the maximum rate permitted by State law. The Mayor and City Council may impose prior to July 1 and collect such penalties for failure to make payment by or after the date taxes become overdue and in arrears, as may have been fixed by Ordinance or Resolution, and the Mayor and City Council may from time to time adopt, promulgate, amend and repeal such Ordinances or Resolutions. (1922, ch. 96, § 61; P.L.L. 1930, art. 1A, § 61; 1949, ch. 559; Res. No. 88, 12–30–82.)

Section 119. Rendering of tax bills to taxpayers; when taxes to be paid; manner of collecting unpaid taxes; monthly returns and payments by treasurer; allowance for insolvent or uncollectible taxes.

The said treasurer shall within thirty days after the receipt of such warrant and list, render to each person named therein an account of his, her or their tax; and may, unless the same be paid within thirty days after the delivery of such account, collect the same by distress and the sale of goods and chattels of the delinquent, and said treasurer shall account for the amount of such assessment with the mayor and city council and shall make monthly returns and payments in the manner directed by said council of all taxes collected by him under the penalty of double the amount thereof, and the said treasurer shall, within one year after said warrant and list are placed in his hands make a complete settlement of all his collections and of all the taxes levied as aforesaid. The bond of any treasurer who shall not have settled as aforesaid, within one year from the time of receiving said warrant and list, shall be put in suit for recovery of what shall be found to be due to the city. He shall not be allowed for any insolvent or uncollectible taxes,

unless the same shall have been allowed him within six months after the receipt of said warrant and list. (Char. Amend. Reso. No. 27, § 2.)

Section 120. Taxes and water rents constitute lien on property; collection of taxes from rents or sale of property.

All taxes levied by said mayor and city council for the general purpose of said city, or for the payments of interests or for the sinking fund provided for the redemption of the bonds and funded indebtedness of the city, now issued, or hereinafter to be issued in pursuance of any Act of the legislature, and all water rents charged by said city for the use of water from its waterworks, shall be a lien upon the property of the party or parties against whom said tax or water rents may be charged, whether such person be a resident or nonresident of the city, whether adult or infant, non compos, femme covert, or otherwise, and if such tax or water rents cannot be made out of the personal property of such person, then the same may be collected out of the rent of his or her real estate by judgment and attachment, or the treasurer may sell real estate for payment of taxes or water rents due thereon by complying with the same requirements as county collectors are directed to comply with by the Code of Public General Laws, in order to sell real estate for the payment of state and county taxes. (Char. Amend. Reso. No. 27, § 2.)

Section 121. City may purchase and sell property sold for taxes.

The mayor and city council of Cumberland is hereby authorized and empowered, in its discretion, to purchase any property, real or personal, offered for sale to enforce the payment of any state or county taxes due thereon, or any such property offered for sale by the city treasurer to enforce the payment of any municipal taxes, water rents, or any other municipal liens or assessments due thereon, and to sell and convey or lease any property so purchased, in its discretion, and give a valid deed or lease therefor to the lessee or purchaser of the same. (Char. Amend. Reso. No. 27, § 2.)

Section 122. At least twenty–five per cent of taxes to be collected quarterly; bond of treasurer; proof of delivery of levy list to treasurer constitutes prima facie evidence of right of city to recover from treasurer.

The treasurer shall collect and pay over to the city at least twenty–five per centum of the levy placed in his hands for collection quarterly, dating from the date of said levy, and shall give bond conditioned as follows: Now, the condition of this obligation is such that whereas the above bound ..... has been elected treasurer of the taxes of the City of Cumberland; now, therefore, if the said ……..... during his continuance in said office, and until his successor shall have been duly elected and qualified, shall, in all things, diligently and faithfully discharge the duties thereof, and shall well and truly account for, and pay over, agreeable to the Charter of the city and the ordinances passed thereof, all moneys which he shall receive on account of the City of Cumberland, then this obligation shall be void and of no effect; but otherwise it shall remain in full force and virtue in law, and on all taxes remaining unpaid for sixty days after the same shall have been levied he shall charge and collect interest from the date of the levy at the rate of six per cent per annum, to be accounted for with the tax. And in all suits by the mayor and city council upon the bond of said treasurer for any tax placed in his hands

according to law, or for breach of his duty in not paying over money collected by him, proof of the delivery of the levy list shall be sufficient prima facie evidence to entitle said mayor and city council to recover judgment in such suit unless the said treasurer shall show that he has discharged his duty in such case according to law. (Char. Amend. Reso. No. 27, § 2.)

Section 123. Authority of city to exempt manufacturing companies from taxation.

a. *Definitions.* As used in this Section, the following terms shall have the meanings indicated:

1. *Aggregate Costs.* The total certified cost of manufacturing machinery and equipment purchased in any single fiscal year.

2. *Certified Costs*. The actual cost of the manufacturing machinery and equipment certified by the owner to the City.

3. *City.* The City of Cumberland, Maryland.

4. *Fiscal Year*. The period starting July 1 in each year and ending the 30th day of June following.

5. *Manufacturing Machinery and Equipment.* All machinery and equipment which by acceptable and consistent accounting standards is capitalized for the purpose of claiming depreciation and which is used in manufacturing, assembling, processing or refining products for sale or in the generation of electricity. It shall include all machinery and equipment used in any stage of such operations, from the handling of raw materials or components on the manufacturing site until the product is ready for delivery or storage. It shall also include capitalized replacement parts upon manufacturing machinery and equipment, and the purchase of capitalized services for the assembly or fabrication of manufacturing machinery or replacement parts thereof. It shall not include machinery or equipment used in administration, managerial, sales and other nonoperational activities. It shall not include machinery or equipment used in the general construction industry, including residential, commercial and industrial construction machinery or equipment. The term also does not include machinery or equipment used in the extraction and processing of minerals, metals, or any earthen materials and/or bi–products resulting from such extraction or processing. The term also does not include any personal property which when installed becomes a part of the real estate, nor does it include tools and appliances which are charged to expense accounts and/or are not capitalized. Specifically included, however, is any machinery, device, or equipment which might normally be considered as a part of real estate, required to confirm **[**conform**]** to air or water pollution standards, laws or regulations and to melting, smelting, heating, annealing, or coke–oven furnaces.

6. *Owner*. Shall be a person engaging in manufacturing activities in Cumberland, Maryland. An owner shall not include a person in actual possession or control under a lease or rental agreement. Provided, however, that if such lease or rental agreement composes upon the person in possession or control under such agreement, the obligation to pay personal property tax, such person shall be determined an owner for such purposes hereof.

7. *Person.* Includes a corporation, partnership, association, joint venture, or other business organization.

b. *Exemption Granted.* Subject to the provisions of Section 7–225 of the Tax Property Article of the Annotated Code of Maryland, manufacturing machinery and equipment subject to the tax imposed by Section 7–225 of the said Tax Property Article, shall be subject to City property tax on zero percent (0%) of its assessment. (Res. No. 116, 6–19–96; 1922, ch. 96, § 65; P.L.L. 1930, art. 1A, § 65; 1931, ch. 8; 1947, ch. 163; Charter Amendment Resolution No. 107, 3–29–95; Res. No. 137, 3–26–08.)

Section 124.

(Repealed by Charter Amendment Resolution No. 8.)

Franchises

Section 125. Authority of city to grant franchises; notice of grant of franchise to be published in newspapers; maximum term of franchises.

The Mayor and City Council of Cumberland may grant specific franchises or rights in or relating to its highways, avenues, streets, lanes, alleys and parks; provided, however, that no franchise of the city shall be granted to any corporation or individual, unless notice of the same shall have been first published for at least two weeks in two newspapers of the City of Cumberland; and no franchise right or privilege in relation to any highways, avenues, streets, alleys, lanes or parks, either on, above or below the surface of the same, shall be granted by the mayor and city council to any person or corporation for a longer period than fifty years. (1922, ch. 96, § 66; 1924, ch. 272; P.L.L. 1930, art. 1A, § 66.)

Sewers

Section 126. Authority of city relative to sewers and sewage disposal.

The said mayor and city council are authorized to acquire by purchase from the owner or owners any land, real or leasehold estate, improved or unimproved, right of way, easement, water right or watercourse, within or beyond the limits of the City of Cumberland, which they may conceive expedient or necessary to purchase and hold for the purpose of building sewers or drains and disposal plants or for the purpose of constructing and operating a general sewerage and drainage system for said city or for the purpose of carrying out or exercising any of the powers and privileges granted said mayor and city council by law, and if the said mayor and city council cannot agree with said owner or owners or if said owner or owners, or any of them be absent from the state or unknown or without legal capacity to contract, by reason of infancy, coverture, insanity or otherwise, it shall be lawful for the said mayor and city council to secure by condemnation any such land, real or leasehold estate, improved or unimproved right of way,

easement, water right or watercourse which they may deem necessary for the purpose of building or operating any sewer or sewers, or drain or drains, and disposal plants or for a general sewerage or drainage system, or for any of the public purposes for which said mayor and city council are granted powers by law, in the same manner and by the same proceedings as are now provided for in condemnation by corporations under Article 23, Sections 329, etc., of the Code of Public General Laws of the State of Maryland (1939 ed.). (See note (27)) (1922, ch. 96, § 67; 1924, ch. 88; P.L.L. 1930, art. 1A, § 67.)

Streets

(See note (28))

Section 127. Authority of city to lay out, open, widen, close, etc., streets and alleys; payment of damages; assessment of benefits; notice of work to be published; service of personal notice on property owners; establishment of grade of streets and alleys.

The Mayor and City Council shall have power to provide for the laying out, opening, extending, widening, straightening, relocating or closing of any street or alley, or parts thereof, within the city, which, in their opinion, the public welfare or convenience may require; to provide for ascertaining whether any and what amount in value of damage will be caused thereby, for which the owner or possessor of any property through which said street or alley–way may pass, ought to be compensated, to provide for assessing and levying either generally on the whole assessable property within the city or specially on the property of persons benefited, the whole or any part of the damages and expenses which will be incurred in laying out, opening, extending, widening, straightening, relocating or closing such street or alley, or parts thereof, and grading the same; to provide for collecting and paying the compensation awarded to any person before any such street or alley, or part thereof, shall be laid out, opened, extended, widened, straightened, relocated or closed, to enact all ordinances from time to time necessary or proper to the exercise of the powers granted in this section, provided that before they shall proceed to execute any of the powers vested in them by this section, at least ten days' notice shall be given to any application which may be made for the passage of any such ordinance, by personal notice in writing served ten days before upon each property holder to be affected by the passage of the proposed ordinance, giving notice of the time and place named for the passing of said ordinance, provided said parties are residents of Allegany County, and provided further that whenever said Mayor and City Council open, lay out, extend, widen, straighten or relocate any street or alley, or any part or parts thereof, they shall establish the grade hereof, and such grade when so established shall be indicated upon a plat, and a description thereof shall be recorded in the office of the clerk of the Circuit Court for Allegany County; and when the Mayor and City Council deem it proper to do so they shall have the said streets or alleys graded. (1922, ch. 96, § 74; P.L.L. 1930, art. 1A, § 74; Res. No. 132, 8–2–05.)

Section 127A. Reversion of title to land when streets closed.

In the event any street or alley or parts thereof within the City of Cumberland shall be or have been closed or vacated under the provisions of section 127, said portions, if previously dedicated as a public street or alley, shall vest in the persons or corporations owning the property

on each side thereof in equal proportions according to the length or breadth of such land as the same may border thereon, and as the titles to such bordering lands may be held by the said owners thereof respectively. If any portion of said public street or alley so closed shall have been acquired by the Mayor and City Council of Cumberland either by purchase or pursuant to said section 127, then and in that event the title thereto shall upon the closing of said street or alley become vested in the Mayor and City Council of Cumberland. (1951, ch. 330, § 1.)

Section 128. Appeals to circuit court from decisions of street commissioners.

Any person who shall feel aggrieved by the decision of the Mayor and City Council to lay out or close such streets, as to the amount of damages allowed him, or benefits assessed against him, may appeal therefrom at any time within thirty days to the Circuit Court for Allegany County, which said appeal shall be taken by filing written notice thereof with the clerk of said City Council, who shall thereupon without unnecessary delay, transmit to said Circuit Court a record of the proceedings of said Mayor and City Council in said matter, and said appeal to be docketed upon the trial docket at the next succeeding term of said Circuit Court; the party taking said appeal to be docketed as Plaintiff and said Mayor and City Council as defendant; and said party Appellant shall thereupon be entitled to a jury trial, to assess the amount of damages payable to or amount of benefits chargeable against him, as the case may be, and upon said appeal it shall be competent for the court to quash the proceedings upon the motion of the Appellant for errors or omissions rendering the same fatally defective; and upon the trial of said cause in said Circuit Court, either party may take bills of exceptions to any rulings of said court upon matters of law arising in the progress of such trial, and either party may appeal to the court of appeals of this state from any such rulings, or from the action of said court in quashing or refusing to quash such proceedings. (1922, ch. 96, § 75; Res. No. 132, 8–2–05.)

Section 129. Authority of city to pave, repave, etc., streets, construct curbs, gutters, sewers, etc., and assess costs against abutting property; city may require payment of assessments prior to issuance of building, etc., permits; limitation on making of improvements.

The mayor and city council may whenever in its judgment the public interest or convenience require it, have any street, lane or alley, or parts thereof, in said city paved, repaved, graded, regraded, curbed, recurbed, guttered, reguttered, sewered, resewered, surfaced or resurfaced, or otherwise improved and levy the whole expense thereof or any portion thereof, on the property binding on such street, lane or alley, at a charge on a front foot basis for each lot binding thereon, and collect the expense thereof as directed in section 132, and in case less than the whole cost is assessed upon the abutting property, the city shall pay the remainder thereof. The mayor and city council shall provide by ordinance for the giving of notice by publication or by service or written notice personally upon the parties to be affected by said construction or improvements, and allow them to be heard before any such construction and improvements are made, but nothing in this section shall be construed as preventing the mayor and city council from constructing any sewer or sewers or system of sewers and paying for the same out of the funds of the city, nor to prevent the said mayor and city council from charging a reasonable sum for the use of said sewer, either by an annual charge or by a charge for the right of connection therewith, in perpetuity; and nothing in this section shall be construed as preventing the mayor and city council from paving, repaving, grading, regrading, curbing, recurbing, guttering,

reguttering, surfacing or resurfacing and paying for the same out of the funds of the city, nor to prevent the said mayor and city council from charging a reasonable sum for said paving, repaving, grading, regrading, curbing, recurbing, guttering**[,]** reguttering, surfacing or resurfacing prior to the issuance of an occupancy permit and/or building permit, or any other type of permit for the abutting property or portion thereof, all of which powers are hereby granted the mayor and city council; and provided further that the said mayor and city council may only exercise the right to repave, resurface, regrade, recurb, regutter, resewer and otherwise improve, after the expiration of five (5) years from the time of the completion of the last paving, grading, surfacing, curbing, guttering or otherwise improving of said street, lane or alley which is to be repaved, regraded, recurbed, resurfaced or resewered. (1922, ch. 96, § 76; P.L.L. 1930, art. 1A, § 76; Char. Amend. Reso. No. 9, § 2.)

Section 130. Levy of costs of improvements on abutting property owners; assessments constitute lien; statement of costs and assessments to be filed with clerk of circuit court; duration and revival of lien.

The mayor and city council shall levy any sum of money on the owners of property in said city for the grading, regrading, paving, repaving, surfacing, resurfacing, guttering, reguttering, sewering or resewering, or otherwise improving the streets, lanes or alleys in said city, or any of them, and the sum so levied shall be a preferred lien on said property the same as city taxes now are; provided said mayor and city council shall within six (6) months after the completion of such grading, regrading, paving, repaving, surfacing, resurfacing, guttering, reguttering, sewering, resewering or otherwise improving, cause to be filed with the clerk of the circuit court for Allegany County, Maryland, a statement showing the whole amount expended in such grading, regrading, paving, repaving, surfacing, resurfacing, guttering, reguttering, sewering or resewering, or otherwise improving, and the names of such persons, firms or corporations among whom the said sum has been apportioned, and the amount apportioned to each, and a general description or reference to the land owned by each of said parties upon which such sums are intended to operate as a lien, and said statement shall constitute a lien on said property for a period of twelve (12) years from the date of the filing of such lien, and no longer, unless the same shall be revived or enforced by scire facias as provided in section 132 of the Charter of the City of Cumberland. (1922, ch. 96, § 77; P.L.L. 1930, art. 1A, § 77; Char. Amend. Reso. No. 9, § 2.)

Section 131. Schedule of fees for improvements.

The mayor and city council shall, if it so desires, adopt a schedule of fees for paving, repaving, grading, regrading, surfacing, resurfacing, guttering, reguttering, sewering, resewering and otherwise improving, which said charges shall be uniform throughout the City of Cumberland; however, the mayor and city council have the power to change said charges by ordinance at any and all times hereafter. (1922, ch. 96, § 78; P.L.L. 1930, art. 1A, § 78; 1927, ch. 94; Char. Amend. Reso. No. 9, § 2; Char. Amend. Reso. No. 14, § 1.)

Section 132. Enforcement of liens for improvements.

Said lien shall be enforceable by scire facias issued out of the circuit court for Allegany County, and said writ of scire facias shall be served by the sheriff of Allegany County upon the party against whom said lien is filed, or one of them if more than one, or left at his usual place of abode, or left at the usual place of abode of one of them, if said party or parties reside in the City of Cumberland, or Allegany County, or if none of said parties live in said city or county, he shall set up the same on the land or premises against which said lien is filed, or deliver the same to any person in possession thereof, and shall then return the same to the circuit court for Allegany County, "made known," and upon such scire facias the defendants may rely upon any defense which would render the imposition of such lien void or operate as a discharge thereof, excepting that no question as to the validity of such lien upon any matter of form shall be heard by any court in said state, and such scire facias may issue at any time within twelve years from the filing of the statement required by the last preceding section, but any defendant intending to dispute the validity of said lien and wishing to test the same before the expiration of said time may at any time after the filing of said statement give notice to said mayor and city council in writing that he disputes the validity of such lien and wishes to test the same so as to free his property from said lien claim, and in such case, unless said mayor and council issue a scire facias thereon against said property within sixty days after the receipt of such notice, said lien shall be waived and avoided as against his property, and in all cases shall stand for trial at the first term of court after the issuing thereof; provided the same shall have been served on the defendants in one of the manners hereinbefore provided, and a return of such service made by the sheriff at least ten days before the commencement of said term, and upon all judgments rendered in such cases, there shall be a stay of thirty days and no longer; provided that either party may appeal to the court of appeals of Maryland from any ruling or decision of any question of law decided by the circuit court in such trial. In case the defendant shall appeal and file a proper appeal bond, the said stay of thirty days shall be counted from the affirmance of such judgment if the same shall be affirmed, and not from the date of the judgment below. (1922, ch. 96, § 79; P.L.L. 1930, art. 1A, § 79; 1927, ch. 94; Char. Amend. Reso. No. 14, § 2.)

Section 133. Authority of city to grade, curb and pave sidewalks and gutters.

The mayor and city council, in addition to the powers heretofore granted as to grading, curbing, paving, repaving and repairing the streets of said city, shall have full powers to grade, curb and pave all sidewalks and gutters which in their judgment and public convenience may require, and to cause said sidewalks and gutters to be repaved or regraded or repaired or otherwise improved and to collect the cost thereof from the person owning the property fronting on any sidewalks, curb or gutter, in the same manner as is provided for the paving and repaving of streets in sections 130 and 131 of this article, and said mayor and city council shall also have the same powers to file liens and enforce the same as are provided in sections 132 and 133 of this article for the filing and enforcement of liens for paving and repaving streets. (1922, ch. 96, § 80; P.L.L. 1930, § 80.)

Section 134. Authority of city to require property owners to grade, curb, pave, etc., sidewalks.

Said mayor and city council, in addition to the powers granted in the preceding section, shall also have power to cause any sidewalks in said city to be graded, curbed, paved or repaved, regraded or recurbed by the owners of the property abutting on said sidewalk, upon giving said owners of the property written notice to pave, grade, curb, repave, regrade or recurb said sidewalks, and setting out in said written notice the material to be used in said sidewalk, and the grade and width of the sidewalk; provided that no notice to repave, regrade or recurb any sidewalk shall be given within ten years after said sidewalk has been paved, graded or curbed in accordance with this or the preceding section. (1922, ch. 96, § 81; P.L.L. 1930, art. 1A, § 81.)

Section 135. Penalty for failure to comply with notice issued pursuant to preceding section.

Any owner of property who fails to comply with the terms of any notice given him under the provisions of the preceding section within thirty days after the receipt of such notice shall be deemed guilty of maintaining a nuisance and shall be subject to a fine of not less than one dollar nor more than ten dollars for each day said notice is not complied with. (1922, ch. 96, § 82; P.L.L. 1930, art. 1A, § 82.)

Off–Street Parking

Sections 135A to 135E.

(Repealed by Charter Amendment Resolution No. 29.)

Parks

Section 136. Authority of city to hold, use, receive, etc., land for park purposes.

The said Mayor and City Council of Cumberland are hereby authorized to receive, have, hold, use and enjoy any real estate or land for park purposes which, in their judgment, they may deem advisable in the interest of the City of Cumberland, and for the pleasure, use and enjoyment of the citizens thereof, and the said Mayor and City Council are hereby authorized to purchase, agree and contract with the owner or owners of any land which they may conceive expedient or proper to purchase and hold for the purpose of establishing a public park or parks or adding to or improving any land now held for park purposes in the City of Cumberland, or adjacent thereto in Allegany County, Maryland. (1922, ch. 96, § 83; P.L.L. 1930, art. 1A, § 83.)

Section 137. Authority of city to condemn land for park purposes.

If the said Mayor and City Council of Cumberland cannot agree, or if there be any incapacity or disability to contract with the owner or owners of such land or real estate, which they may deem necessary or proper for establishing or making of a public park in or near the City of Cumberland, in Allegany County; or if any such owner or owners shall be absent out of

the state, or unknown, or without legal capacity to contract, by reason of infancy, coverture, or otherwise, it shall be lawful for the Mayor and City Council of Cumberland to secure by condemnation any such land or real estate, which they may deem necessary or proper for the purpose aforesaid, in the same manner and by the same proceedings as is now provided for condemnation by corporations under article 23, section 848, (See note (29)) etc., of the Code of Public General Laws of the State of Maryland. (1922, ch. 96, § 84; P.L.L. 1930, art. 1A, § 84.)

County Property

Section 138. City jurisdiction over county property within city.

The mayor and city council shall have the same power over the public grounds on which are erected the county buildings as over other parts of the city, and the ordinances of said city shall have force as well in said grounds as in other parts of the city; but nothing in this section shall interfere with the title of the county commissioners to said lots, or their control over the same. (1922, ch. 96, § 85; P.L.L. 1930, art. 1A, § 85.)

Markets

Section 139. Authority of city to purchase, use, etc., land, buildings and other property for market purposes.

The said Mayor and City Council of Cumberland are hereby authorized to buy, receive, have, hold, use and enjoy any real estate, land, buildings, or other property for the purpose of conducting or establishing a market within the limits of said city, should they deem such action advisable; and they are further authorized to purchase, lease, acquire by contract or otherwise, any market or any buildings or other property necessary or useful for the establishment or maintenance of a market, to sell, lease, or otherwise dispose of said market or space or stalls in said market, and to do everything necessary or useful in the conduct of said market. (1922, ch. 96, § 86; P.L.L. 1930, art. 1A, § 86.)

Section 140. Maximum expenditure for markets.

For the purpose of carrying out the authority conferred by the preceding section the Mayor and City Council of Cumberland are hereby authorized to expend any amount they deem necessary; provided said amount shall not in any event exceed the sum of $100,000.00. This authority to supercede **[**supersede**]**, only so far as markets are concerned, the provisions of section 1 of this article restricting the purchasing power of said mayor and city council to $10,000.00. (1922, ch. 96, § 87; P.L.L. 1930, art. 1A, § 87.)

Light and Power

Section 141. Authority of city to sell electricity.

The Mayor and City Council of Cumberland shall have the power to sell and furnish electric light and power to the citizens of Cumberland, for domestic and manufacturing purposes, upon such terms as the mayor and city council shall prescribe, to erect such plant and buildings, purchase and install machinery and appliances as may be required and to **[**do**]** anything necessary to effectuate the object and purposes of this article. (1922, ch. 96, § 88; P.L.L. 1930, art. 1A, § 88.)

Damages

Section 142. Notice of injuries to be given city within thirty days; city not liable for certain defects without notice. (See note (30))

Before the City of Cumberland shall be liable for damages of any kind the person injured, or someone in his behalf, shall give the mayor or city clerk notice in writing of such injury within thirty days after the same has been received, stating specifically in such notice when, where and how the injury occurred, and the extent thereof. The City of Cumberland shall never be liable on account of any damage or injury to person or property arising from or occasioned by any public street, highway or grounds, including accumulations of snow or ice, or any public work of the city unless the specific defect or the accumulation of snow or ice causing the damage or injury shall have been actually known to the mayor or city engineer by personal inspection for a period of at least twenty–four hours prior to the occurrence of the injury or damage, unless the attention of the mayor or engineer shall have been called thereto by notice thereof in writing at least twenty–four hours prior to the occurrence of the injury or damage and proper diligence has not been used to rectify the defect or cause said accumulations of snow or ice to be removed after actually known or called to the attention of the mayor and city engineer as aforesaid. (1922, ch. 96, § 89; P.L.L. 1930, art. 1A, § 89.)

Public Accountant

Section 143. Appointment by mayor and council.

The Mayor and City Council of Cumberland shall, on the first Monday in June, 1922, and every two years thereafter, appoint for said city, a certified public accountant, who is skilled in the examination and adjustment of books and accounts. (1922, ch. 96, § 90; P.L.L. 1930, art. 1A, § 90.)

Section 144. Audit of books of city officers; report of audit to mayor and council.

As soon as practicable after his appointment as aforesaid, it shall be the duty of said certified public accountant, to carefully examine, settle and adjust the books and accounts of

every officer of said city, who shall, in the course of his official business, receive any moneys belonging to the said city, and shall ascertain whether said officers of the said city have complied with the laws and city ordinances in the discharge of their official duties; as soon as practicable after said certified public accountant has completed his work as aforesaid, it shall be his duty to make a full and complete report thereof to the mayor and city council, showing the state of accounts between the said city and said officers; and if any of said officers have not complied with the laws and ordinances of said city in the discharge of their official duties the said certified public accountant shall call special attention thereto in said report. (1922, ch. 96, § 91; P.L.L. 1930, art. 1A, § 91.)

Section 145. Duty of city officers to deliver books to accountant.

It shall be the duty of every officer of said city mentioned in the preceding section to deliver to said certified public accountant whenever he (said certified public accountant) shall demand the same to be examined by him as aforesaid, all his books, papers and accounts with the said city. Any such officer who fails or refuses to deliver to said certified public accountant his books, papers and accounts, as aforesaid, after said certified public accountant has demanded the same, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars nor more than five hundred dollars; all such fines shall be paid into the city treasury. (1922, ch. 96, § 92; P.L.L. 1930, art. 1A, § 92.)

Section 146. Report of accountant deemed prima facie correct; compensation of accountant; regulation of activities of accountant by mayor.

Any such report of said certified public accountant as is mentioned in this section of this article shall be taken as prima facie correct in any suit or settlement between said city and any of the officers herein mentioned. The said certified public accountant shall be paid out of the city treasury for his services herein prescribed a sum not to exceed the sum of fifteen hundred dollars ($1500). The mayor shall have full power to regulate the duties of said certified public accountant; and before he shall be entitled to payment for said services, said account of said certified public accountant shall be presented to the city council, and if found to be correct shall be ordered paid out of the money in the city treasury. (1922, ch. 96, § 93; P.L.L. 1930, art. 1A, § 93; 1945, ch. 757.)

Debt

Section 147. Approval of mayor and council to incur debt.

It shall not be lawful for any officer or employee of the mayor and city council, or the mayor, or any member of the city council in his individual capacity, or as a member of any committee, or for any committee of the city council to make any purchase, incur any obligations, or in any way pledge the faith and credit of the city for any sum for any purpose whatever, without first having obtained the written order of the council, approved by the mayor (or passed over his veto, as the case may be) and any debt or obligation contracted in violation of the

provisions of this section shall be altogether and every way subject to the approval and ratification of said mayor and city council. (1922, ch. 96, § 94; P.L.L. 1930, art. 1A, § 94.)

Appropriations

Section 148. Annual appropriation to be made in August (See note (31)); contingent fund; special contingent fund.

During the month of August in each and every year it shall be the duty of the Mayor and City Council of Cumberland to make appropriations for each and every department of the city government, and also to provide an appropriation of not more than fifty thousand dollars ($50,000.00) to be known as the contingent fund, for operating each and every one of said departments during the then fiscal year, and said departmental appropriations, when so made, shall not be changed, nor shall any of said appropriations be overdrawn by any department before April 1st of the succeeding year; and said mayor and city council at the same time shall have power to appropriate, to be included in the general tax levy, a sum not to exceed ten per centum of the total amounts above mentioned to be appropriated and this sum shall be known as the special contingent fund which may be used by any department of the city for capital expenditures only as the mayor and city council may from time to time direct and only then when five members of the council so authorize its use or any part thereof. (1922, ch. 96, § 95; P.L.L. 1930, art. 1A, § 95; 1935, ch. 21; 1949, ch. 561; Char. Amend. Reso. No. 11, § 1.)

Section 149. City comptroller to advise council of overdrawn appropriations; annual report by city comptroller in January; transfer of money between departments; appropriations from contingent fund.

It shall be the duty of the city comptroller to advise the said mayor and city council when any appropriation is about to be overdrawn or is overdrawn prior to January 1st of each year, and at the first meeting of said mayor and city council held after January 1st of each year it shall be the duty of the said city comptroller to file with the said mayor and city council a report showing the amounts of said appropriations still unexpended in each department, and upon receipt of said report the said mayor and city council may from time to time by majority vote, appropriate money from the contingent fund to such departments as they deem in need of additional appropriations, and they may also from time to time, after the receipt of said report by a vote of at least four members of said council, transfer money from one department to another; provided, that the said mayor and city council shall at all times have authority to transfer money from the contingent fund or any department to the water department. (1922, ch. 96, § 96; P.L.L. 1930, art. 1A, § 96.)

Contracts

Section 150. Purchase of supplies and equipment.

The Mayor and City Council shall provide, by Ordinance, for the manner in which supplies and materials shall be purchased for the use of the various City departments and Agencies.

Such Ordinance shall designate the officer responsible for the purchase of supplies and materials, the manner in which purchases may be ordered and made, the price level at which competitive public bidding shall be required, and types of purchases for which such bidding shall be required. (Char. Amend. Reso. No. 34, § 1; Char. Amend. Reso. No. 68, § 1.)

Section 151.

(Repealed by Charter Amendment Resolution No. 68, § 1.)

Fiscal Year

Section 152. Fiscal year of city designated; books and papers of city officer remain property of city. (See note (32))

The fiscal year for the City of Cumberland shall begin on the first day of July in each and every year. All books required to be kept by the several officers as hereinbefore provided, shall be procured by the mayor and city council, and the same, together with all papers pertaining thereto, shall be the property of said city, and shall be returned to said mayor and city council by the officer or officers required to keep the same, at the end of their term. (1922, ch. 96, § 101; P.L.L. 1930, art. 1A, § 101; 1949, ch. 573.)

Workmen and Wages

Section 153. Public works contracts; consulting services.

The Mayor and City Council shall provide, by Ordinance, for the manner in which public works, improvements, construction, consulting services for the various City departments, and other services to be performed by independent contractors, may be contracted; and such Ordinance shall designate the officer responsible for the contracting of public works, improvements, construction and services, the manner in which such contracts may be let and circumstances under which competitive bidding shall be required. (Char. Amend. Reso. No. 68, § 2.)

Section 154. Public bidding.

When competitive public bidding is required, the City Clerk, or other officer designated by the Mayor and City Council, shall solicit bids by advertising at least twice within a seven (7) day period, in a publication of general circulation within the City. All bids shall be in writing and sealed and shall be opened by the City Clerk in public session of the Mayor and City Council.

The Mayor and City Council shall accept the lowest or best bid deemed to be reasonable, and in the best interests of the City, price, quality of goods, work or services, time of delivery, or completion, residency, and responsibility of bidders all being considered.

Notwithstanding the foregoing, unless a lower percentage for local businesses is established by ordinance, the Mayor and City Council shall extend a seven percent preference for businesses located within the City and a five percent preference for businesses located within Allegany County, Maryland for all contracts that are completely funded by the City without contribution, in whole or in part, from any third parties. The amount of the preference shall be equal to the amount of the percentage applied to the lowest or best bid deemed to be reasonable and in the best interests of the City. If the bidder submitting the lowst or best bid is not a local business, and if a local business has also submitted such a bid, and, with the benefit of the preference, the local business's bid is equal to or less than the non–local bidder's bid, the City shall award the contract to the local business at its submitted bid price. The local bidder shall certify, under penalty of perjury, that it qualifies as a local business. The preference is waived if the certification does not appear on the bid. For purposes of this section, the term "local business" shall be defined by ordinance.

The Mayor and City Council may reject any or all bids, may readvertise for new bids, and may postpone or abandon any purchase or work.

Nothing herein shall be construed to prohibit the City from performing any work or service with City personnel without the need to advertise for bids, or from performing such work or service after the rejection of bids.

The Mayor and City Council may adopt, by Ordinance, such rules, regulations and procedures as may be necessary for the implementation of the purchasing of supplies and contracting for services. (Char. Amend. Reso. No. 68, § 2; Char. Amend. Reso. No. 102, 1–27–93; Char. Amend. Reso. No. 139, 5–19–10.)

Sections 155, 156.

(Repealed by Charter Amendment Resolution No. 68, § 2.)

Section 157.

(Repealed by Charter Amendment Resolution No. 3.)

Sections 158, 159.

(Repealed by Charter Amendment Resolution No. 68, § 2.)

Section 160.

(Repealed by Charter Amendment Resolution No. 10.)

Registration of Voters

Section 161. City to maintain registration of qualified voters.

The mayor and city council shall maintain a registration of the qualified voters of the city, by wards and precincts. The basis of such registration shall be that which exists at the time this subtitle becomes effective. Thereafter it shall be maintained and recorded as specified in this subtitle. (1922, ch. 96, § 103; 1924, ch. 1, § 103; 1929, ch. 552, § 103; P.L.L. 1930, art. 1A, § 103; 1951, ch. 497, § 1.)

Section 162. Qualifications of voters.

Any person shall be eligible to register as a voter in municipal elections who is a citizen of the United States, a resident of the city and at least eighteen years of age at the time of the next municipal election. (1922, ch. 96, § 104; 1924, ch. 1; P.L.L. 1930, art. 1A, § 104; 1951, ch. 497, § 1; Char. Amend. Reso. No. 52 § 1; Reso. No. 63, § 1, 2–26–74.)

Section 162A. Duties of city clerk; manner of keeping registration books.

The city clerk shall be in charge of all books and papers pertaining to the registration of voters. He shall carefully keep and preserve the same, and do all things necessary and proper to carry out his duties under this subtitle. The registration records shall be kept generally in the manner required for the board of election supervisors of Allegany County, except that the applicant shall not be required to state his party affiliation, if any, nor shall any record be kept of such affiliation. (1951, ch. 497, § 1.)

Section 162B. Manner of registration; identification card for voter; recordation of voter's name in registration books; preservation of application forms; when registration books closed.

(a) Any applicant for registration or for a change in registration as a voter in municipal elections in the city shall present himself at the office of the city clerk, at any time during the regular business hours of such office. The city clerk, or some employee of his office, shall by suitable questions determine if the said applicant satisfies the requirements to be a qualified voter in the city, as set out in this subtitle, the answer to be given under oath. The answers of the applicant shall be recorded on a form designed and kept by the city clerk for such purpose, and the applicant shall sign his name on such form.

(b) If the said applicant satisfies the requirements of this subtitle for registration as a voter of the city, the city clerk shall accept his registration. He shall immediately give to the registrant a small identification card, attesting over his signature to the registrant's name, address, ward and precinct numbers, and to the fact of the registration. Thereafter, as soon as practicable, the city clerk shall record the registrant's name and such other data as necessary in the registration book or books containing the registration lists for the ward and precinct in which the registrant has been registered. The original form on which the applicant's answers were recorded shall be filed alphabetically in a permanent file.

(c) The city clerk shall not accept any such registration or change in registration during the period extending from the second Tuesday in April to seven days after the municipal general election, in any year in which elections are held in the city, nor within the period extending from seven days before to seven days after any municipal special election.

(d) Any person qualified to vote shall be permitted to register and reregister by casting an absentee ballot. When properly registered under this subsection, a person shall continue as a registered voter to the same extent and for the same period that he would be registered had he appeared in person and been registered under the provisions of this Charter.

(e) Notwithstanding any provisions to the contrary contained in this Charter, registration of voters by mail shall be permitted and encouraged. A registration by mail program shall be established and administered by the City Clerk who shall promulgate such rules and regulations as may be required to implement registration by mail, providing the same are not inconsistent with any provision of this Charter. Registration by mail forms shall be designed to require the applicant to provide information required by this Charter and applicable ordinances to ascertain the qualifications of the voter applying for registration by mail and for the purpose of preventing fradulent **[**fraudulent**]** registrations. The information required on such forms shall be provided by the applicant under the penalties of perjury. (1951, ch. 497, § 1; Reso. No. 63, § 2, 2–26–74; Char. Amend. Reso. No. 77, 5–15–80; Char. Amend. Reso. No. 105, 12–15–93; Char. Amend. Reso. No. 115, 3–6–96.)

Section 162C. Temporary certificates of registration.

Registration shall be essential to the right of voting at any election held under the provisions of this article, but it shall not be conclusive evidence of such right to vote. If at any municipal general or primary election the poll books or other records in any precinct shall show no record as to the registration of a particular person, and the city clerk shall ascertain as a matter of fact that there is in his office an original form of registration for such person, the city clerk shall issue to such person a temporary certificate of registration. Such temporary certificate of registration shall be sufficient evidence of the right of such person to vote in the particular election and at the proper precinct. Thereafter, as soon as practicable, the city clerk shall make such additions and corrections as necessary to the said poll books or other records, in order to list said person therein as a qualified voter. (1951, ch. 497, § 1.)

Section 162D. Correction of records; removal of persons not voting for five years from registration lists; registrations not to be cancelled within sixty days of any election; notice of cancellation of registration; registration of members of armed forces not to be cancelled.

(a) The city clerk shall ascertain from the board of election supervisors of Allegany County the notifications received by said board as to deaths of registered voters, as to marriages of female voters, as to changes of names by decree of order of court, and as to infamous crimes committed by registered voters, all such being reported agreeable to the provisions of Article 33, Section 33 of the Annotated Code (1947 Supplement, as amended). The city clerk shall thereupon remove the names of deceased persons and of person committing infamous crimes from the registration lists, and shall change the registration names of women whose names have been changed by marriage, and of other persons whose names have been changed by decree or order of court.

(b) The city clerk shall periodically remove from the registration lists the names of those persons who have not voted in a city election for a period of five years.

(c) The city clerk shall remove from the registration lists the name **[**names**]** of those persons who to his knowledge have lost their right to registration in the city, whether because of removal from the city or other cause of disqualification.

(d) The city clerk shall not cancel the registration of any person pursuant to the provisions of this section within a period of sixty days prior to any regular election in the city, nor within sixty days prior to any special election in the city if it has been announced that far in advance.

(e) When the city clerk cancels or changes in any way the registration of any person pursuant to the provisions of this section, he shall promptly send a written or printed notice of said change to the last known address of such person. A person whose registration has been so cancelled shall not be able to vote again in the city except by registering again as in this subtitle provided.

(f) No person's registration shall be so cancelled under the provisions of this section during his service in the armed forces of the United States. (1951, ch. 497, § 1.)

Section 162E. Clerk to deliver registration books to board of supervisors of elections; return of books to clerk after election.

The city clerk shall deliver the several registration books to the board of supervisors of elections at least three days prior to the municipal primary election, if any. The board shall use them for the primary and general municipal elections and within three days thereafter shall return them to the city clerk. (1951, ch. 497, § 1.)

Women

Section 163. Equal rights to office.

Women shall be eligible for all municipal offices or positions provided for in the preceding sections of this article, and wherever the masculine gender is used in the preceding sections of this article it shall be construed to include the feminine gender; provided, however, that women, before being eligible for any municipal office or position, must possess the same qualifications as to property, age and all other matters that men are required by this article to possess for said municipal office or position. (1922, ch. 9, § 105; P.L.L. 1930, art. 1A, § 105.)

Ordinances

Section 164. Codification of ordinances.

The said mayor and city council may at any time provide by ordinance for the codification, or recodification of such ordinances as have been or may hereafter be passed by

them and for the printing of such codification or recodification thereof and the printed copy thereof issued by authority and under the sanction of said mayor and city council shall be legal evidence of the passage of said ordinances and the contents thereof in any court of law or equity in this state. (1922, ch. 96, § 106; P.L.L. 1930, art. 1A, § 106.)

Saving Clause

Section 165. Continuation of ordinances, resolutions, etc.; bonds may be required from bonding company; Charter not to impair contracts.

All ordinances, resolutions, rules and regulations, now in force in the City of Cumberland, and not in conflict with the provisions of this article shall remain in force under this article until altered, amended or repealed by said mayor and city council after this article takes effect. It is especially provided that whenever in this article bonds are required to be given by the various persons therein named, the said mayor and city council may, if they so decide require a bonding company, or recognized solvency to be secured on any or all of said bonds, instead of requiring personal security.

It is further provided that nothing in this article shall be taken or construed to impair the obligations of outstanding legal contracts of the Mayor and City Council of Cumberland. (1922, ch. 96, § 107; P.L.L. 1930, art. 1A, § 107.)

Section 166. Preservation of rights, titles, interests, liens, etc.

All rights, titles and interests heretofore acquired by the said Mayor and City Council of Cumberland, or any other persons or corporations, in and to all liens for paving, grading, curbing, sewering, repaving, regrading, recurbing, resewering or otherwise improving the streets, lanes and alleys of said city, under sections 68, 68a, 68b, 69, 70, 70a and 70b of Article 1 of the Code of Public Local Laws of the State of Maryland, (See note (33)) or under any amendments thereto or under any other laws of the State of Maryland under which said liens may have been or have been acquired are hereby saved and preserved to be availed of by the said mayor and city council or any other persons or corporations as fully and to the same extent as though this article had not been passed, and nothing in this article shall be construed as in any manner impairing the validity of any such liens which have already accrued under the aforesaid sections of Article 1 of the Code of Public Local Laws of Maryland, or under any other laws of the State of Maryland, nor as depriving said mayor and city council or other persons or corporations, of any of the rights and remedies shall remain and be enforceable the same as though this article had not been passed. (1922, ch. 96, § 108; P.L.L. 1930, art. 1A, § 108.)

Section 167. Repeal of conflicting laws.

All laws and parts of laws in conflict with this article are hereby repealed. (1922, ch. 96, § 109; P.L.L. 1930, art. 1A, § 109.)

Buildings

Section 168. Obstruction of aisles of public buildings prohibited.

It shall not be lawful for the owners or lessees of any public hall, church, school, or place of amusement, in the Cities of Baltimore, Cumberland, Frederick, Annapolis, Hagerstown or Frostburg, to obstruct, or allow to be obstructed by others, any of the aisles or passageways in the auditorium of said halls, churches, schools or places of amusement, by placing therein any benches, chairs or stools, or other articles that may prevent free ingress or egress during the hours that said places may be open to the public. (1880, ch. 133; P.L.L. 1888, art. 1, § 94; P.L.L. 1930, art. 1A, § 111.)

Section 169. When doors to public building to remain open.

Said owners or lessees, or their agents, are required to keep open at all hours during the time said halls, churches, schools or other places of amusement are open to the public, all doors giving means of ingress or egress, unless said doors open outward from said places, then the same may be closed, but no hindrance, such as locks or catches of any kind, shall be allowed to obstruct or prevent instant and easy egress through the same; and when said doors open inwards, it is required of said owners, lessees and their agents, that said doors shall be fastened securely and firmly open. (1880, ch. 133; P.L.L. 1888, art. 1, § 94; P.L.L. 1930, art. 1A, § 111.)

Section 170. Penalty for violation of two preceding sections; disposition of fines.

Owners or lessees, or any person holding under them, or their agents, violating either of the two preceding sections, shall, on conviction thereof, be fined by the court before whom such conviction is had for any violation, a sum not exceeding five hundred dollars, to be recovered as other fines in this state, one–half of which shall go to the state and the other half to the city where such violation occurs and conviction thereof is had. (1880, ch. 133; P.L.L. 1888, art. 1, § 95; P.L.L. 1930, art. 1A, § 112.)

Section 171. Duties of judges and police officials under three preceding sections.

It is made the special duty of the judge or judges of the courts having criminal jurisdiction in said Cities of Baltimore, Cumberland, Frederick, Annapolis, Hagerstown and Frostburg, to specially charge the grand juries of said courts upon the execution of the three preceding sections, and the police authorities of said cities are specially charged with the execution thereof, and to that end shall direct nightly examinations by some of their officers, of all such places. (1880, ch. 133; P.L.L. 1888, art. 1, § 96; P.L.L. 1930, art. 1A, § 113.)

Condemnation

Section 172. Authority of city to condemn land for public use.

The Mayor and City Council of Cumberland, a municipal corporation, is hereby authorized to condemn for its necessary public uses any private property located within the corporate limits of the City of Cumberland. Said Mayor and City Council of Cumberland shall condemn said property in accordance with the provisions of Article 33A of Bagby's Annotated Code of Maryland. (See note (34)) (1929, ch. 10; P.L.L. 1930, art. 1A, § 114.)

Flood District

Section 173. Authority to establish Wills Creek Flood District.

The Mayor and City Council of Cumberland are hereby vested with jurisdiction, power and authority to establish as hereinafter provided a Wills Creek Flood District, which may be entirely within or partly within and partly without the corporate limits of the said City of Cumberland as now located or as may be hereafter located, and said mayor and city council are hereby authorized to do all or any of the things and acts hereinafter mentioned for the purposes of preventing floods, and of lessening the danger and damage incident to floods in said Wills Creek Flood District and in any other part of the City of Cumberland. (1927, ch. 479, § 1; P.L.L. 1930, art. 1A, § 115.)

Section 174. Preparation of Permanent Flood Prevention Plan.

Said mayor and city council shall also take into consideration whether or not other parts of Cumberland not included within said Wills Creek Flood District have heretofore been or may hereafter be in danger from floods from the waters of the Potomac River, and are authorized and shall prepare plans for the prevention of such floods, and may employ engineers and counsel for the purpose of preparing and completing such plans, and preparing such legislation and agreements as may be required to put such plans into effect, which said plan shall be known as "The Permanent Flood Prevention Plan." (1927, ch. 479, § 5; P.L.L. 1930, art. 1A, § 119.)

Section 175. Implementation of Partial Flood Prevention Plan.

The said mayor and city council shall have full power and authority to devise, prepare for, effect, maintain and operate any and all works or improvements necessary or desirable to complete, maintain, operate and protect the said Partial Flood Prevention Plan. They may secure and use men and equipment under the supervision of an engineer employed for that purpose, or other agents, or they may, in their discretion, let contracts for such work, either as a whole or in parts. (1927, ch. 479, § 7; P.L.L. 1930, art. 1A, § 121.)

Section 176. Right of entry on lands to make surveys and examinations.

Said Mayor and City Council of Cumberland, or their employees or agents, including contractors and their employees, and the members of the commission hereinbefore referred to, and their assistants, agents and employees may enter upon lands within the limits of the City of Cumberland or a mile beyond said limits in order to make surveys and examinations to accomplish the preliminary steps or parts or purposes of said Partial Flood Prevention Plan, and shall have access to the work needed or advisable to carry out such plans, without being liable for more than the actual damage done, but no unnecessary damage shall be done, and wherever possible to do such preliminary and final work shall be obtained on such terms as said mayor and city council may deem proper. (1927, ch. 479, § 8; P.L.L. 1930, art. 1A, § 122.)

Section 177. Powers of city in regard to flood control within city limits and within one mile of city limits.

In order to prevent or lessen the danger from floods in said City of Cumberland, and particularly to carry out any and all of the provisions of said Partial Flood Prevention Plan and to accomplish any and all of the purposes designed to be accomplished by said plan and by this subtitle, said Mayor and City Council of Cumberland is authorized and empowered to clean out, dredge, straighten, widen, deepen, divert, alter or change the course of Wills Creek or any other natural or artificial watercourse, or any ditch, drain or sewer within said city, and to fill up the same or any of them; to construct and maintain main and lateral ditches, sewers, sewer gates, pumps, canals, levees, dikes, dams, sluices, revetments, reservoirs, holding basins, floodways, pumping stations, siphons, or other similar works or instruments; to heighten, lower, alter, modify or otherwise change the banks of Wills Creek and the Potomac River; to erect walls along or at any point or points within three hundred (300) feet of said banks or any of them, and to raise, heighten, add to, lower, strengthen or otherwise change, alter or modify existing walls now located along said banks of any of them or within three hundred (300) feet of said banks or any of them; to strengthen, narrow, and otherwise change and modify the piers and other substructures of any and all existing bridges over said Will **[**Wills**]** Creek and the Potomac River; to remove all dams and other obstruction **[**obstructions**]** in the beds of either of said streams, and to lower or otherwise change and modify such dams and other obstructions, and to change the construction and operation of the same; to elevate, lower and change the grade and location of streets, alleys, and roadways, both public and private, and to close or open the same, under all the powers which now exist in said Mayor and City Council of Cumberland for said purposes and by the same methods; to remove, model, rebuild, change the location of, or otherwise alter, change or modify any and all sheds, houses, stables, garages, storerooms, or other buildings of every description, and also all fences, gates, doorways, windows, openings of all sorts, viaducts, and canal and railroad works and construction of every sort and description; to reclaim, fill in, or remove wet and overflowed land and islands, and to clear the same of all trees, bushes, and other foliage; to regulate the flow of Wills Creek or the Potomac River; to construct any and all of the works herein authorized across, through and over any gas, electric light, water power, canal or railroad company property or right of way, or any public or private highway, street, road or alley, and to operate, repair, and otherwise maintain any and all of said works; to buy, own, hold, lease, control, condemn, or otherwise acquire real and personal property, and any rights in the same, including riparian rights, easements, rights of way, wharf rights, mill rights, water rights,

franchises, rights of ingress and egress, and rights to light and air; to acquire all the material to be used in constructing and maintaining the works and improvements hereby authorized; and to do all the foregoing things and any other thing or things necessary and proper in preventing or lessening the danger from floods in said City of Cumberland and carrying out any and all of the provisions of said Partial Flood Prevention Plan; provided, however, that the foregoing rights and powers, and those hereinafter granted, shall be exercised by said Mayor and City Council of Cumberland only within the present limits of said city and within a distance of one mile in any direction beyond said limits. (1927, ch. 479, § 9; P.L.L. 1930, art. 1A, § 123.)

Section 178. Advertisement for bids for flood control work; grant or denial of contracts.

If the Mayor and City Council of Cumberland shall determine to carry out said Partial Flood Prevention Plan or any part thereof by contract, or contracts, it shall advertise for bids upon the work contemplated, and shall furnish specifications to prospective bidders for the work to be contracted for, and said advertisement shall be published once a week for two consecutive weeks in two newspapers published in the City of Cumberland, and said mayor and city council may let said contract to the lowest responsible bidder, or said mayor and city council may reject all bids and readvertise. Such contract or contracts, when awarded, shall be reduced to writing and shall be accompanied by or shall refer to plans and specifications for the work to be done prepared by an engineer, and each contractor shall give a good and approved bond, with ample security, conditioned upon the proper performance of said contract or contracts. (1927, ch. 479, § 10; P.L.L.1930, art. 1A, § 124.)

Section 179. Powers of eminent domain of city.

Said Mayor and City Council of Cumberland for the purpose of carrying out all or any part of the work necessary in putting into effect or completing said Partial Flood Prevention Plan, or in carrying out or exercising any of the powers granted by this subtitle, shall have a right of eminent domain over all property and property rights to be affected by said plan, or necessary and proper in carrying out said plan, and shall particularly have the right to condemn any and all walls, foundations, windows, doorways, rights to light or air, sewers, or any outlet or intake, in or along either side of Wills Creek within the limits of the City of Cumberland, any and all sheds, houses, fences, buildings or other structures or improvements in said Wills Creek Flood District, the bed, channel and banks of Wills Creek and any and all riparian rights in or to said Wills Creek within said city limits, and said right to condemn shall include the right to change, alter, modify or remove any or all of said properties and rights, or any part or parts thereof, and to subject the same to permanent, temporary or partial uses, or any of them. Said Mayor and City Council of Cumberland shall also have a dominant right of eminent domain over the right of eminent domain of any railroad, telegraph, telephone, electric light, gas, water power, canal or other company entitled to exercise a right of eminent domain, provided, however, that in the exercise of this right due care shall be taken to do no unnecessary damage to the property or rights of said public utilities companies and in case of failure to agree upon the terms of interference, not to interfere with the operation of usefulness of said companies beyond the actual necessities of the case, due regard being paid to the other public interests involved, and included within this dominant right of eminent domain shall be the right to condemn such part or parts of the property of the Chesapeake and Ohio Canal Company or rights therein as may be

necessary and proper for the purpose of carrying out said Partial Flood Prevention Plan. (1927, ch. 479, § 11; P.L.L. 1930, art. 1A, § 125.)

Section 180. Procedure in carrying out powers of eminent domain.

For the purpose of carrying out the condemnation powers granted by this subtitle said mayor and city council may proceed as follows:

It shall appoint three commissioners, whose duty it shall be to ascertain whether any and what amount in value of damage will be caused thereby, for which the owner or possessor of any property affected by said condemnation ought to be compensated; provided that it shall serve upon the owner or possessor of said property, if said owner or possessor is a resident of the City of Cumberland or Allegany County, actually residing therein, a notice warning said owner or possessor that said commissioners will proceed upon a certain day to be named therein, which said day shall not be less than fifteen days after the date of said notice, to hear all persons who may be interested therein, and view the premises and fix the amount of compensation to which said owner or possessor may be entitled. If said owner or possessor shall be absent from or a nonresident of the City of Cumberland, then like notice shall be given by posting the same upon the premises to be affected or by registered mail or by publication in two daily newspapers published in the City of Cumberland, once a week for three consecutive weeks. Said commissioners shall meet agreeable to the terms of said notice, and shall hear the interested parties, and shall fix the compensation, and shall return a report of their proceedings, within fifteen days thereafter, to the mayor and city council, and said report shall include a statement of the name of the owner or possessor of any property viewed, and the amount of compensation allowed, and upon the payment of the compensation allowed, and not before, the said mayor and city council shall have a right to proceed to carry on the work contemplated by such condemnation.

The right to condemn as herein authorized shall include the right to condemn property of persons non compos mentis, infants, or persons under any other legal disability to contract, and shall include property in the hands of trustees or property then being administered by any court or public officer of this state.

Any person or other owner who shall feel aggrieved by the decision of the commissioners appointed, as to the amount of damage allowed him, may appeal therefrom, at any time within ten days after said commissioner's shall have made their return, to the circuit court of Allegany County, which said appeal shall be taken by filing written notice thereof with the clerk of said city council who thereupon, without unnecessary delay, shall transmit to said circuit court a record of the proceedings of said mayor and city council and of said commissioners in said matter, and said appeal shall be docketed upon the trial docket of the then current term of the circuit court for Allegany County, and shall have precedence over other civil cases upon said docket; the party taking said appeal shall be docketed as the plaintiff and the said mayor and city council as defendant and either of said parties shall be entitled to a jury trial to assess the amount of damages payable to him, and the amount of damages payable to him as determined by said jury shall stand in the place and stead of the assessment by said commissioners, and upon said appeal, it shall be competent for the court to quash the proceedings upon the motion of the

appellant for errors or omissions rendering the same fatally defective; and upon the trial of said cause in said circuit court, either party may take bills of exceptions to any rulings of said court upon matters of law arising in the progress of such trial, and either party may appeal to the court of appeals of this state from such rulings, or from the action of said court in quashing or refusing to quash such proceedings. (1927, ch. 479, § 12; P.L.L. 1930, art. 1A, § 126.)

Section 181. Additional powers of eminent domain.

In addition to the foregoing provisions for condemnation, said mayor and city council may, in their discretion, exercise any and all of the powers of condemnation granted by this subtitle, including the right to condemn the bed of Wills Creek and all water rights in the same manner and by the same proceedings as is now provided for condemnation by corporations under Article 23, Sections 329 to 335, inclusive, of the Code of Public General Laws of the State of Maryland (1939 ed.), (See note (35)) and all amendments and additions thereto. (1927, ch. 479, § 12; P.L.L. 1930, art. 1A, § 127.)

Section 182. Authority of city to acquire land and hold stock in West Virginia.

Said Mayor and City Council of Cumberland for the purpose of carrying out the provisions of this subtitle may acquire land or rights in land in the State of West Virginia if, in its judgment, such land or rights in land be desirable and can also hold stock in any corporation or corporations holding land or rights in land in West Virginia which said mayor and city council deems desirable for the purpose of carrying out the provisions of this subtitle or any of them, and may provide for the formation of such corporation or corporations. (1927, ch. 479, § 15; P.L.L. 1930, art. 1A, § 129.)

Section 183. Right of city to police improvements and prevent trespass thereon by persons, vehicles and animals.

Said mayor and city council shall have the right to police the works and improvements carried on or completed under said Partial Flood Prevention Plan, and shall also have the right to prevent persons, vehicles or livestock from passing over the works in any manner which would result in damage thereto. (1927, ch. 479, § 16; P.L.L. 1930, art. 1A, § 130.)

Section 184. Authority of city to prevent dumping, etc., in Wills Creek or Potomac River.

Said mayor and city council shall have the right to prohibit the dumping or placing of anything or substance of any kind or character in or along the banks of Wills Creek or the Potomac River, or the filling in or other obstruction of the bed or channel of said creek or river in any manner, and for this purpose, said mayor and city council shall have jurisdiction extending one mile beyond the limits of the City of Cumberland as now or hereafter established, and said mayor and city council shall also have the power and authority to provide by ordinance such penalties as said mayor and city council may deem proper for the violation of any of the provisions of this and the preceding section, under all the powers and authority which the said mayor and city council now have for the passage of ordinances imposing penalties, provided, however, that said ordinance or ordinances shall not impose any penalty in excess of one

hundred dollars ($100.00) for each offense, and one hundred dollars ($100.00) for each day said offense continues. (1927, ch. 479, § 17; P.L.L. 1930, art. 1A, § 131.)

Section 185. Additional general powers of city in regard to flood prevention.

The Mayor and City Council of Cumberland, in addition to and not in limitation of the powers granted in the preceding sections of this subtitle, shall have the power and authority to do any and all things necessary or helpful in raising, strengthening or otherwise changing the walls on both sides of Wills Creek within the limits of the City of Cumberland; to dredge, widen, deepen or otherwise change the bed of said Wills Creek within said limits; to remove all dams or other obstructions in the bed of said Wills Creek within said limits; to strengthen, modify or otherwise change the piers, abutments or other substructures of any and all bridges across said Wills Creek in said limits; to widen, deepen, dredge and otherwise remove obstruction from the channel of the Potomac River below the present Chesapeake and Ohio Canal dam at Cumberland for a distance of one mile below said dam; to provide for the payment of the expenses necessary to carry out any and all of the aforegoing powers, and to provide for the repayment of these expenses or any part thereof by means of levying special assessments against the property or properties benefited by the exercise of any and all of the aforegoing powers, or to provide for the repayment of said expenses or any part thereof with money raised by general or special taxation levied on all the assessable property in said City; to exercise the power of eminent domain in securing all such property and rights therein as may be necessary and proper, for the carrying out of any and all of said powers, and to exercise said power under all the authority given by the Public General Laws of Maryland to corporations authorized to acquire land or any other property rights by condemnation; to acquire by purchase, gift or otherwise any and all property necessary or useful in carrying out any and all of said powers; to have any and all work performed which may be necessary or useful in carrying out any and all of said powers, and to let contracts for said work or any part thereof on competitive bids, or to have said work performed or any part thereof by its own employees, servants, and agents; to enter in and upon any land or other property where such entry will be necessary or helpful in carrying out any or all of the foregoing powers, and to pay the owner or owners of said property any damage occasioned them by said entry or entries; and to do any and all things which may be necessary or useful in any way in preventing floods or lessening the danger of floods in the City of Cumberland, or in carrying out the provisions of such Partial Flood Prevention Plan as said Mayor and City Council of Cumberland may, in their discretion, adopt for the purpose of preventing or lessening the danger of floods from Wills Creek in said City of Cumberland, or in preparing or having prepared other plans for flood prevention in said city. (1927, ch. 479, § 18; P.L.L. 1930, art. 1A, § 132.)

Section 186. Fixing compensation and terms of service of persons appointed by commissioners.

Said Mayor and City Council of Cumberland shall have full power and authority to fix the term or terms of service and the compensation of all persons appointed on any of the commissions authorized by this subtitle. (1927, ch. 479, § 20; P.L.L. 1930, art. 1A, § 135.)

Section 187. Authority to carry out powers granted by subtitle.

Said Mayor and City Council of Cumberland shall have full power and authority to provide by orders or ordinances for the carrying out of any and all of the provisions of this subtitle. (1927, ch. 479, § 21; P.L.L. 1930, art. 1A, § 136.)

Section 188. Construction of "and" and "or".

This subtitle, where the context so admits, shall be construed as though the word "or" were written "and/or" and as though the word "and" were written "and/or". (1927, ch. 479, § 22; P.L.L. 1930, art. 1A, § 137.)

Section 189. Repeal of conflicting Acts.

All Acts or parts of Acts in conflict with this subtitle are hereby repealed to the extent that they conflict with this subtitle and no further. (1927, ch. 479, § 23; P.L.L. 1930, art. 1A, § 138.)

Section 190. Severability of provisions of subtitle.

Each section of this subtitle and every part of each section are hereby declared to be independent sections, and the holding of any section or sections, or part or parts thereof, to be void, ineffective or unconstitutional for any cause, shall not be deemed to affect any other section or part thereof. (1927, ch. 479, § 24; P.L.L. 1930, art. 1A, § 139.)

Section 191. Certain territory included in special assessment district.

The authority granted to the Mayor and City Council of Cumberland by Chapter 479 of the Acts of 1927 be and it is hereby extended so as to enable said Mayor and City Council of Cumberland to include in the special assessment district contemplated by section 2 and section 14 of chapter 479 of the Acts of 1927 (Sections 116 and 128 of this Article), (See note (36)) all of those properties which have been or may hereafter be subjected to the flood waters of the Potomac River, situated on the West side of Wills Creek, in said City of Cumberland, to be known as the West Side Flood District, and said Mayor and City Council of Cumberland is hereby authorized to make said assessment in the same manner as is directed by said chapter 479 of said Acts of 1927, reserving to the owners of property therein all the rights created by said Act, provided that the aggregate amount of the assessment against the property located on said West side of Wills Creek shall not exceed the sum of twelve thousand five hundred ($12,500.00) dollars, and shall be apportioned among the several properties located therein in such proportion as the assessed value of each of said properties bears to the total assessment of all real property located in said West Side District. (1929, ch. 288, § 4; P.L.L. 1930, art. 1A, § 148.)

Memorial Hospital

Section 192. Board of governors.

(a) For the purpose of securing land, the erection of suitable buildings, the purchase of proper equipment, and the maintenance and operation of said Memorial Hospital, a Board of Governors is hereby continued in existence as an agency of the Mayor and City Council of Cumberland by the name and style of the Board of Governors of the Memorial Hospital of Cumberland, Inc., and by that name shall continue to have perpetual succession, and shall be capable to sue and be sued, to have a common seal, and the same at its pleasure, to alter and/or break, and to have all the powers herein granted to it, and all such other powers as shall be proper and necessary to operate and manage a public general hospital, along with allied medical clinics, medical offices, and other facilities to provide comprehensive health care, as fully as if incorporated for such purposes under the provisions of the Public General Laws of Maryland.

(b) Said Board of Governors shall consist of nine (9) members, including the Mayor of the City of Cumberland (or a member of the City Council selected by the Mayor), the President of the Board of County Commissioners of Allegany County (or a County Commissioner selected by the President), a physician who is a member of the active Medical Staff of the Memorial Hospital and six (6) additional members who shall be designated as hereinafter provided. The terms of the present members of said Board, excluding the Mayor of the City of Cumberland, and the President of the Board of County Commissioners of Allegany County, shall terminate on March 1, 1976, upon which said date said Board of Governors shall be restructured and redesignated to consist of nine (9) members as hereinabove provided. In addition to the Mayor of the City of Cumberland, or his councilman designate, and the President of the Board of County Commissioners of Allegany County, or his Commissioner designate, seven (7) members shall be appointed as follows, to begin terms as of March 1, 1976: The former members of the Board of Governors shall select three (3) members who shall serve terms of one year, three years and five years respectively; the Mayor and City Council shall select two members who shall serve terms of two and six years respectively; and the County Commissioners of Allegany County shall select two members who shall serve terms of four and seven years respectively. Thereafter, all terms shall be for seven years. The members of said Board appointed by the Mayor and City Council of Cumberland shall be bona fide residents of the City of Cumberland; the members appointed by the County Commissioners shall be bona fide residents of Allegany County but residing outside the City of Cumberland; and the members appointed by the Board of Governors shall be bona fide residents of either Allegany County or the City of Cumberland.

No member shall serve more than two terms, and no member, excluding the Mayor of the City of Cumberland and the President of the Board of County Commissioners of Allegany County, shall serve beyond age seventy (70). Upon attaining his or her seventy–first birthday, such member shall be deemed no longer qualified to hold such office.

(c) Said restructured Board shall organize itself as soon as is practicable after the appointment of its members by electing therefrom a temporary Chairman, Vice Chairman, Secretary and Treasurer, to serve until the first annual election in July, 1976. An annual election

to fill said offices shall be held during the regular monthly meeting of the Board of Governors during the month of July in each succeeding year. Said Board shall meet at least monthly, or more often as necessary.

(d) Said Board shall have the authority, by a majority vote at any regular meeting, to expel any member thereof for cause, and in the event of vacancies caused by the death, resignation, expulsion or removal of the member's residence from Allegany County, such vacancy shall be filled by the appointing authority which originally appointed said member, which said vacancies shall be filled as they occur, whether during or upon conclusion of a regular term.

In addition to the powers previously given, said Board of Governors shall have power to acquire additional land and improvements thereon for the purpose of expanding said hospital, and for the construction of buildings for use as medical clinics, professional medical offices or other facilities related to comprehensive health care in the vicinity of said hospital, subject to the consent and approval of the Mayor and City Council of Cumberland. The title to all land and improvements thereon acquired by the hospital, whether previously or hereafter, shall be vested and held in the name of the City of Cumberland. The Board of Governors shall have power to obtain public funds for the purposes of acquiring land and the construction and equipment of buildings as hereinbefore set forth by the sale of bonds by any public authority or political subdivision of the State of Maryland, provided said bonds, including interest thereon, are liquidated by funds derived from the revenues of Memorial Hospital.

The Board of Governors shall have the power and authority to sell, lease, mortgage or otherwise encumber any of the hospital property, including medical and professional buildings, if deemed desirable by said Board, but no real property may be sold, leased, mortgaged or otherwise encumbered without the consent and approval of the Mayor and City Council of Cumberland. (1927, ch. 411, § 6; 1929, ch. 515, § 6; P.L.L. 1930, art. 1A, § 154; Char. Amend. Reso. No. 66, §§ 1, 2; Char. Amend. Reso. No. 72, 8–9–78.)

<u>Section 193. Selection of land and preparation of plans; contracts for construction; sale of bonds; expenditure of proceeds from bonds.</u>

Said board of governors shall have power to select the land upon which said hospital shall be erected, the title to which shall be in the name of the Mayor and City Council of Cumberland, Maryland, select plans for said hospital building, and necessary auxiliary buildings, and the method and manner of equipping same, and advertise for, and make contracts for the erection and equipment of the same within the limits of the proceeds of sale of the amount of bonds hereby authorized to be used for said purpose, and/or such further sum or sums of money as shall be received from the county commissioners of Allegany County or any other individual or corporation, and shall have no power to contract for or expend a greater sum than herein provided from the sale of said bonds or received from said Board of County Commissioners of Allegany County or other individuals or corporations prior thereto. When and after the said board of governors shall have entered into contracts for the erection and equipment of said hospital building and necessary auxiliary buildings as herein provided, and after the sale of said bonds for said purpose, the Mayor and City Council of Cumberland shall deposit to the credit of

said board of governors in such financial institution as said board of governors may direct the proceeds of said bonds so sold for said purpose, and thereupon said board of governors, shall expend the same according to the terms of contracts made by them. (1927, ch. 411, § 7; P.L.L. 1930, art. 1, § 155.)

Section 194. Dedication of hospital.

Upon the completion of said hospital building and prior to its opening as a hospital, proper ceremonies shall be held to the end that such hospital shall be dedicated to the memory of those residents of Cumberland and Allegany County who served the nation in all its armed forces, and the agencies auxiliary thereto, during the War of 1917 and 1918, and there shall be thereafter at all times maintained in a prominent position in said building a proper tablet dedicated to the perpetual memory of those who died in the service of their country in said war. (1927, ch. 411, § 8; P.L.L. 1930, art. 1A, § 156.)

Section 195. Rules and regulations for operation of hospital; city and county residents to be given preference in admittance.

Said board of governors shall have power and shall be its duty to make all rules and regulations deemed necessary from time to time for the operation and maintenance of said hospital, but it shall at all times maintain a sufficient number of free beds and wards in said hospital to care for and provide proper medical service and attention for such number of persons as may reasonably be foreseen, who shall apply therefor, and bona fide residents of the City of Cumberland and Allegany County shall be preferred as to admittance over other applicants, provided, however, that this provision shall not apply to cases of extreme emergency. (1927, ch. 411, § 9; P.L.L. 1930, art. 1A, § 157.)

Section 196. Charges for hospitalization; salaries of employees; rules and regulations governing conduct of physicians, nurses, employees, etc.

Said board of governors shall have the power from time to time to regulate charges for hospitalization and the collection of the same, and to employ and fix the salaries of superintendents and such other persons as may be needed in carrying on the work of a general public hospital, and rules and regulations covering the conduct of employees, nurses, physicians and surgeons in attendance therein, and the entrance, conduct, course of study and graduation of student nurses therein, and all other general rules and regulations pertaining to the management, maintenance or operation of said hospital. (1927, ch. 411, § 10; P.L.L. 1930, art. 1A, § 158.)

Section 197. Fiscal affairs of hospital.

In the operation of said hospital all moneys received shall be deposited in the name of said board of governors in such proper financial institution as they shall order, and said board of governors shall have power to make all proper expenditures for the operation of said hospital, said expenditures shall be made only by proper vouchers signed by the chairman of said board and the treasurer thereof. Proper books and accounts shall be kept and maintained of all receipts and expenditures by said board of governors in the operation of said hospital, and shall be

audited not less than once in each year by the city comptroller or a duly qualified certified public accountant appointed by the Mayor and City Council of Cumberland. Said board of governors shall have power from time to time in the maintenance and operation of said hospital and from the funds thereof to make such repairs as may be required upon said buildings, and to purchase such supplies and equipment as may be necessary in such operation and maintenance, but shall not have authority, without the consent of the Mayor and City Council of Cumberland, to make any addition thereto, or increase the capital account thereof, unless such addition or increase of capital account shall be by donation of individuals to said board of governors. If, in the opinion of the board of governors, there shall be an amount of money in excess of such amount as may be needed in the operation and maintenance of said hospital, such amount in excess thereof shall be paid by said board of governors to the trustees of the sinking fund of the City of Cumberland for the purpose of retiring bonds under this issue, and in the event that a deficit shall be found to exist in such operation and maintenance, the Mayor and City Council of Cumberland shall have the power to appropriate to the purposes of said hospital such amount so deemed necessary. (1927, ch. 411, § 11; P.L.L. 1930, art. 1A, § 159.)

Section 198. Semiannual financial statement to mayor and council.

It shall be the duty of said board of governors to furnish to the mayor and city council at the end of each six months a statement showing the receipts, disbursements and general financial condition of said hospital. (1927, ch. 411, § 12; P.L.L. 1930, art. 1A, § 160.)

Section 199. Limitation of liability of board of governors and of city.

Neither the Mayor and City Council of Cumberland nor said board of governors, shall be liable in any suit brought against either for or by reason of the negligence of any employee, servant or agent engaged in and about the erection, maintenance or operation of said hospital. (1927, ch. 411, § 13; 1929, ch. 515, § 13; P.L.L. 1930, art. 1A, § 161.)

Section 200. Acceptance of gifts, bequests, etc.

The said board of governors are hereby authorized to accept for and on behalf of said Memorial Hospital any gift, devise or bequest of real or personal property, at any time, from any source, by any means whatsoever, and to use the same, or the proceeds from the sale of the same, either for the erection of buildings and additions or repairs, or equipment, or for maintenance, or other hospital purposes as it may deem proper, or for any other purpose specified in any condition attached to such gift, devise or bequest. (1927, ch. 411, § 14; 1929, ch. 515, § 14; P.L.L. 1930, art. 1A, § 162.)

Section 201. Repeal of conflicting acts.

Any and all acts or parts of acts, or any part, or parts, of the City Charter of Cumberland, Maryland, conflicting in any way herewith, is or are hereby repealed in so far and to the extent that the same shall so conflict. (1927, ch. 411, § 15; 1929, ch. 515, § 15; P.L.L. 1930, art. 1A, § 163.)

Section 202.

The following Section 203 of the City Charter of Cumberland, Maryland, authorizes the leasing by the Mayor and City Council of Cumberland of all or any part of the physical plant and other assets of Memorial Hospital of Cumberland to a non–profit corporation and requires (i) the approval of the substance of such lease by the Mayor and City Council of Cumberland on or before July 1, 1982, and (ii) the statement in the Lease of an effective date for the Lease and written notice as to the effective date of the Lease to the State Department of Assessments and Taxation of Maryland, the Secretary of State of Maryland and the Department of Legislative Reference of Maryland. From and after the effective date of the Lease stated in such Lease, the Board of Governors of the Memorial Hospital of Cumberland shall cease to exercise any and all of the powers set forth in the preceding Sections 192 to 201, inclusive, of this Charter except as otherwise provided in this Section, and, on such effective date, any and all right, title and interest of the Board of Governors in an **[**and**]** to the Memorial Hospital property shall vest in the Mayor and City Council of Cumberland to the extent not transferred or otherwise provided for in the Lease.

For the limited purposes of participating in, effectuating, confirming, and/or assuring the transfer of any or all of its properties, rights and interests to a Non–profit Corporation, as Lessee of Memorial Hospital, or to any entity succeeding to it in the operation and administration of the institution now known as The Memorial Hospital of Cumberland as may be approved by the Mayor and City Council of Cumberland and the proper, necessary and lawful winding–up of its affairs, the Board of Governors shall continue to exist for a period of one (1) year following the effective date of the Lease and shall have all powers that are necessary and proper to carry into full force and effect and to accomplish fully the transfer of its property, interests and assets and to wind up its affairs, including, but not limited to, the power to join in the lease to the Non–profit Corporation and to perform such actions with respect to its properties, interests, and assets as may be ordered or directed by Mayor and City Council of Cumberland; to execute and deliver such documents and assurances as may be necessary to the accomplishment of such purposes and objects; and to perform all such acts as may be lawful and proper for a board of trustees acting in the dissolution of a corporation as fully as if such Board of Governors had been incorporated under the provisions of the Public General Laws of Maryland, and were undergoing dissolution, and thereafter said Board of Governors shall have no further existence. (Char. Am. Res. No. 84, 2–11–82.)

Section 203.

Mayor and City Council of Cumberland is authorized and empowered to provide, improve, promote and support the continued provision of high qualify **[**quality**]** hospital and health care services for the residents of the City of Cumberland and its environs, and to enable, promote and support the provision of such hospital and health care services by and through the institution known as The Memorial Hospital of Cumberland owned by Mayor and City Council of Cumberland. The Mayor and City Council of Cumberland shall have, and is hereby granted, such powers, and is authorized to take such actions, as are necessary or desirable to carry into full force and effect and to accomplish fully the purposes and objects described in this Section, including, but not limited to, the power and authority to exercise the following specific powers

which are hereby found and declared to be necessary and proper to carry into full force and effect and to fully accomplish the purposes and objects contemplated by this Charter.

(a) Mayor and City Council of Cumberland may lease all land and other property comprising Memorial Hospital and such other property of every kind in which Mayor and City Council of Cumberland, Board of Governors, or any agency of the Mayor and City Council of Cumberland have any interest as they deem appropriate to the Memorial Hospital and Medical Center of Cumberland, Inc., a private non–profit corporation of the State of Maryland to be operated and administered by the Non–profit Corporation as a facility for the purpose of providing health care, hospital services, and other related services to the general public. Such property may be leased for such rentals or other consideration, nominal or otherwise, for such duration and upon such other terms as the Mayor and City Council of Cumberland provide in a form of Lease approved by it. The Lease shall be authorized by the Mayor and City Council of Cumberland on or before July 1, 1982, and shall contain a statement as to its effective date; provided, however, that written notice of the effective date of the Lease shall be given, prior to such effective date, to the State Department of Assessments and Taxation of Maryland, the Secretary of State of Maryland and the Department of Legislative Reference of the State of Maryland. The Lease shall also provide that the Non–profit Corporation, as Lessee, shall:

(1) operate Memorial Hospital as a facility providing health care, hospital services and other related services to the general public, free of discrimination based upon race, creed, sex or national origin;

(2) provide necessary emergency medical care and service to indigent residents of the City of Cumberland and Allegany County, to the extent that funds are provided (i) by the State of Maryland or by the Mayor and City Council of Cumberland or by any agency or instrumentality of either thereof, or by any other person or entity, or (ii) by inclusion of provision for payment of the cost of such care and service in the rates approved for the Non–profit Corporation by the Maryland Health Services Cost Review Commission or other regulatory body having jurisdiction;

(3) provide to Mayor and City Council of Cumberland a semi–annual financial statement of the operations of Memorial Hospital; and

(4) at all times maintain in a prominent position in the Memorial Hospital building a proper tablet dedicated to the perpetual memory of those citizens of the City of Cumberland and Allegany County who died in the service of our country in wars and other engagements of the armed forces of the United States of America.

(b) Without in any way limiting provisions that the Mayor and City Council of Cumberland may include in the Lease, the Lease may provide any one or more of the following:

(1) that the Non–profit Corporation shall indemnify and hold harmless the Mayor and City Council of Cumberland against any and all liabilities, costs, expenses, claims or causes of action arising from and relating to the operation, control, and management of the Memorial Hospital by the Board of Governors.

(2) that the Non–profit Corporation shall have the power to make such changes, deletions, removals, alterations, modifications, additions or improvements to the Memorial Hospital as it deems necessary and may negotiate contracts relating to the construction or acquisition and financing of such changes, deletions, removals, alterations, modifications, additions, or improvements without any requirement to advertise or to bid such contracts;

(3) that the Non–profit Corporation shall indemnify, hold harmless and defend Mayor and City Council of Cumberland against any and all liabilities, cost and expense resulting from the leasing of and subsequent operation of Memorial Hospital;

(4) that the Board of Governors shall join Mayor and City Council of Cumberland in the execution and delivery of any lease authorized pursuant to this Charter and such Board of Governors is expressly authorized to join in the execution and delivery of such lease;

(5) that the Mayor and City Council of Cumberland shall join the Board of Trustees of the Non–profit Corporation in the execution and delivery of any mortgage, assignment or other instrument creating a lien or other encumbrance on the Memorial Hospital property, including any mortgage of the City's fee simple interest in such property; or

(6) such other terms and provisions as the Mayor and City Council of Cumberland may deem appropriate or necessary.

(c) In the event of a lease of any of Memorial Hospital property to the Non–profit Corporation, then, in connection with borrowings by the Corporation for any of its corporate purposes, including the issuance of bonds by the State of Maryland or by any public instrumentality thereof, to finance or refinance the cost of acquiring, constructing, improving, renovating or equipping the Hospital, or any part thereof, the Mayor and City Council of Cumberland and the Non–profit Corporation may grant, transfer, assign, mortgage, encumber or otherwise pledge the Memorial Hospital property, and any interest in said property, and may assign or subordinate any interest in the Lease as security for the borrowing, and may also include in the Lease provisions for the mandatory extension of the Lease until such time as the bonds or other obligations have been paid or provision has been made for the payment thereof and any other provisions which the Mayor and City Council of Cumberland may deem necessary or appropriate under the circumstances to accomplish the financing of improvements and additions to Memorial Hospital and the operation thereof. In connection with any such borrowing, the Non–profit Corporation may subordinate to such transfer, assignment, mortgage, encumbrance, or other pledge, or may transfer, assign, mortgage, encumber or otherwise pledge, its interest in the Lease. The borrowing by the Non–profit Corporation and any transfer, assignment, mortgage, encumbrance or other pledge of Memorial Hospital or any property in connection therewith and the assignment of the Lease and the accomplishment of the transactions contemplated by this Section shall not constitute a debt of Mayor and City Council of Cumberland within the meaning of any constitutional, statutory, charter or other provision of law, ordinance or regulation which prohibits, or in any way limits or otherwise affects the incurrence of debt by Mayor and City Council of Cumberland and shall not constitute a

conveyance or any other disposition of any City property within the meaning of any provision of this Charter, ordinance or resolution so as to require any action under any such provision. In the event the Memorial Hospital property is leased to the Non–profit Corporation, Mayor and City Council of Cumberland shall have no obligation to appropriate any monies for the operation and maintenance of Memorial Hospital, although Mayor and City Council of Cumberland may appropriate monies for such purposes if they deem it necessary or appropriate.

The provisions of this Section are intended to be self–executing upon the approval of the contemplated Lease by the Mayor and City Council of Cumberland; and shall require no further advertisement; no notice, hearing, ordinance, resolution, referendum or other action shall be required prior to or in connection with the leasing, mortgaging, improvement and operation of Memorial Hospital in accordance with this Section.

(d) Upon any failure, termination, expiration, default or other cessation of the lease to the Non–profit Corporation described in the preceding parts of this Section, and subject in all cases to any existing obligations, rights and contracts, Mayor and City Council of Cumberland may, if it determines such action to be in the public interest, create a separate public body or agency to hold, operate and administer Memorial Hospital and to enable, provide, promote and support the provision of hospital and health care services by and through the hospital institution known as Memorial Hospital of Cumberland. In the event that the Mayor and City Council of Cumberland makes such determination, it shall proceed by ordinance to establish a public body or agency to undertake the operation and administration of Memorial Hospital and the other objects and purposes described in this Section. Without in any way limiting the provisions of this Section, any such ordinance may grant or delegate unto such public body or agency all such powers and authorizations as are deemed necessary and appropriate to carry into full force and effect, and to fully accomplish, the purposes and objects described in this Section, including, but not limited to, the power and authority to select land and buildings; construct improvements; effect renovations; make contracts for the erection, improvement or equipping of Memorial Hospital; make all rules and regulations deemed necessary from time to time for the operation and maintenance of Memorial Hospital; regulate charges for hospitalization and health care services and the collection of the same; employ and fix the salaries of superintendents and such other persons as may be needed in carrying on the work of a hospital; make and apply rules and regulations covering the conduct of employees, nurses, physicians and surgeons in attendance therein, and all other general rules and regulations pertaining to the management, maintenance, or operation of Memorial Hospital; to receive and deposit all proper expenditures for the operation of Memorial Hospital; maintain proper books and accounts of all receipts and expenditures for the operation of Memorial Hospital; make such repairs as may be required upon Memorial Hospital buildings; and purchase such supplies and equipment as may be necessary in the operation and maintenance of Memorial Hospital; make and execute all contracts and other instruments necessary or convenient to the exercise of powers granted to it under said ordinance; and generally to organize, coordinate, and manage the administration of Memorial Hospital in order to accomplish the objects and purposes set forth in this Section.

Upon the establishment of a public body or agency under this subsection (d) and effective upon the date that such public body or agency shall be constituted and able to exercise the powers and authorizations granted to it, the provisions of subsection (d) shall prevail over and

supercede **[**supersede**]** any inconsistent provisions of Sections 192, 193, 194, 195, 196, 197, 198, 200 and 201 of this Charter. (Char. Am. Res. No. 84, 2–11–82.)

Section 204.

(Repealed by Charter Amendment Resolution No. 15.)

Zoning

Section 205. Authority to regulate size of buildings and yards, density of population, use of buildings and land, etc.

The Mayor and City Council of Cumberland, for the purpose of promoting health, safety, morals, or the general welfare of the community, is hereby authorized and empowered to regulate and restrict the height, number of stories and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts and other open spaces, the density of population, and the location and use of buildings, structures and land for trade, industry, residence and for other purposes. (1924, ch. 560, § 1; P.L.L. 1930, art. 1A, § 179.)

Section 206. Division of city and area within one mile of city limits into districts; regulations within districts to be uniform.

For any or all of said purposes the mayor and city council may divide the City of Cumberland, and the territory one mile beyond the city limits, into districts of such number, shape and area as may be deemed best suited to carry out the purposes of this sub–title, and within such districts may regulate and restrict the erection, construction, reconstruction, alteration, repair or use of buildings, structures or land, provided, however, that all such regulations shall be uniform for each class or kind of buildings throughout each district, and provided further that the regulations in one district may differ from those in other districts. (1924, ch. 560, § 2; P.L.L. 1930, art. 1A, § 180.)

Section 207. Comprehensive plan; purposes of zoning regulations.

Such regulations shall be made in accordance with a comprehensive plan, and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and general welfare; to provide adequate light and air; to prevent overcrowding of land; to avoid undue concentration of population; to facilitate the adequate provision of transportation, water, sewerage, schools, parks and other public requirements, and such regulations shall be made with reasonable consideration, among other things, to the character of the district and it **[**its**]** peculiar suitability for particular uses, and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout the City of Cumberland and the territory one mile beyond the city limits. (1924, ch. 560, § 3; P.L.L. 1930, art. 1A, § 181.)

Section 208. Enactment and amendment of regulations; public hearings and notice of hearings required prior to enactment or amendment of regulations.

The mayor and city council shall provide by ordinance for the manner in which such regulations and restrictions and the boundaries of such districts shall be determined, established and enforced, and from time to time amended, supplemented or changed. However, no such regulation, restriction or boundary shall become effective until after a public hearing in relation thereto, at which parties in interest and citizens shall have an opportunity to be heard. At least ten days' notice of the time and place of such hearing shall be published in two of the daily newspapers published in the City of Cumberland. (1924, ch. 560, § 4; P.L.L. 1930, art. 1A, § 182.)

Section 209. Procedure when neighboring property owners protest change.

Such regulations, restrictions and boundaries may from time to time be amended, supplemented, changed, modified or repealed. In case, however, of a protest against such change signed by the owners of twenty per cent or more either of the area of the lots included in such proposed change, or of those immediately adjacent in the rear thereof extending one hundred and fifty feet therefrom, or of those directly opposite thereto, extending one hundred and fifty feet from the street frontage of such opposite lots, such amendment shall not become effective except by the favorable vote of the mayor and three members of the city council. The provisions of the previous section relative to public hearings and official notice shall apply equally to all changes or amendments. (1924, ch. 560, § 5; P.L.L. 1930, art. 1A, § 183.)

Section 210. Planning and zoning commission.

In order to avail itself of the power conferred by this subtitle the mayor and city council of Cumberland shall appoint a commission to be known as the municipal planning and zoning commission to recommend the boundaries of the various original districts, and to recommend the appropriate regulations to be enforced therein. Such commission shall make a preliminary report and hold public hearings thereon before submitting its final report, and the mayor and city council shall not hold its public hearings or take action until it has received the final report of such commission. (Char. Amend. Reso. No. 25, § 1.)

Section 211. Board of adjustment.

The mayor and city council may provide by ordinance for the appointment by the mayor of a board of adjustment, and in the regulations and restrictions adopted pursuant to the authority of this subtitle may provide that the said board of adjustment, in appropriate cases and subject to appropriate conditions and safeguards, make special exceptions to the terms of the ordinance in harmony with its general purpose and intent, in accordance with general or specific rules therein contained.

The board of adjustment shall consist of five members, each to be appointed for a term of three years, and removable for cause by the appointing authority, upon written charges and after

a public hearing. Vacancies occurring in said board either before or after the expiration of the term of any of the members thereof shall be filled by the mayor.

The board shall adopt rules in accordance with the provisions of any ordinance adopted pursuant to this subtitle. Meetings of the board shall be held at the call of the chairman, and at such other times as the board may determine. Such chairman or in his absence the acting chairman, may administer oaths and compel the attendance of witnesses. All meetings of the board shall be open to the public. The board shall keep minutes of its proceedings, showing the vote of each member upon each question, or if absent or failing to vote, indicating such fact, and it shall keep records of its examinations and other official actions, all of which shall be immediately filed in the office of the city clerk and shall be a public record.

Appeals to the board of adjustment may be taken by any person aggrieved or by any officer, department, board or bureau of the City of Cumberland affected by any decision of the administrative officer. Such appeal shall be taken within a reasonable time as provided by the rules of the board by filing with the officer from whom the appeal is taken and with the board of adjustment a notice of appeal in writing specifying the grounds thereof. The officer from whom the appeal is taken shall forthwith transmit to the board all the papers constituting the record upon which the action appealed from was taken.

An appeal stays all proceedings in furtherance of the action appealed from, unless the officer from whom the appeal is taken certifies to the board of adjustment after the notice of appeal shall have been filed with him that by reason of facts stated in the certificate a stay would in his opinion cause imminent peril to life or property. In such cases proceedings shall not be stayed otherwise than by a restraining order which may be granted by the board of adjustment or by the circuit court for Allegany County on application on notice to the officer from whom the appeal is taken and on due cause shown.

The board of ajustment **[**adjustments**]** shall fix a reasonable time for the hearing of the appeal, give public notice thereof, as well as due notice to the parties in interest, and decide the same within a reasonable time. At the hearing any person may appear in person or by agent or by attorney.

The board of adjustment shall have the following powers:

(a) To hear and decide appeals where it is alleged there is error in any order, requirement, decision or determination made by an administrative official in the enforcement of this subtitle, or of any ordinance adopted pursuant thereto.

(b) To hear and decide special exceptions to the terms of the ordinance upon which such board is required to pass under such ordinance.

(c) To authorize upon appeal in specific cases such variance from the terms of the ordinance as will not be contrary to the public interest, where owing to special conditions a literal enforcement of the provisions of the ordinance will result in unnecessary hardship, and so that spirit of the ordinance shall be observed and substantial justice done.

In exercising the above mentioned powers such board may, in conformity with the provisions of this subtitle, reverse or affirm, wholly or partly, or may modify the order, requirement, decision or determination appeal from and may make such order, requirement, decision or determination as ought to be made, and to that end shall have all the powers of the officer from whom the appeal is taken.

The concurring vote of four members of the board shall be necessary to reverse any order, requirement, decision or determination of any such administrative official, or to decide in favor of the applicant on any matter upon which it is required to pass under any such ordinance or to effect any variation in such ordinance.

Any person or persons, jointly or severally aggrieved by any decision of the board of adjustment, or any taxpayer, or any officer, department, board or bureau of the City of Cumberland, may present to the circuit court for Allegany county a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition shall be presented to the court within thirty days after the filing of the decision in the office of the board, and not thereafter.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the board of adjustment to review such decision of the board of adjustment and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall not stay proceedings upon the decision appealed from, but the court may, on application, on notice to the board and on due cause shown, grant a restraining order.

The board of adjustment shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof of such portions as may be called for by such writ. The return shall concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and shall be verified by affidavit.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence in open court, or direct that evidence be taken by one of the standing examiners of said court, and report the same to the court, and upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought for review.

Costs shall not be allowed against the board, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding in this section shall have preference over all other civil actions and proceedings. (1924, ch. 560, § 7; P.L.L. 1930, art. 1A, § 185.)

Section 212. Proceedings to prevent unlawful construction, use, etc., of buildings or land.

In case any building or structure is erected, constructed, reconstructed, altered, repaired, converted, or maintained; or any building, structure or land is used in violation of this subtitle, or in violation of any ordinance or other regulation made under authority conferred hereby, the city solicitor, in addition to other remedies may institute any appropriate action or proceedings to prevent any unlawful erection, construction, reconstruction, alteration, repair, conversion, maintenance or use, to restrain, correct or abate such violation, or to prevent the occupancy of such building, structure or land, or to prevent any illegal act, conduct, business or use in or about such premises. (1924, ch. 560, § 8; P.L.L. 1930, art. 1A, § 186.)

Section 213. Conflicts between zoning regulations and other statutes, ordinances, etc.

Wherever the regulations made under authority of this subtitle require a greater width or size of yards, courts, or other open spaces, or require a lower height of building or less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required in any other statute or local ordinance or regulation, the provisions of the regulations made under authority of this subtitle shall govern. Wherever the provisions of any other statute or local ordinance or regulation require a greater width or size of yards, court or other open spaces, or require a lower height of building or a less number of stories, or require a greater percentage of lot to be left unoccupied, or impose other higher standards than are required by the regulations made under authority of this subtitle, the provisions of such statute or local ordinance or regulation shall govern. (1924, ch. 560, § 9; P.L.L. 1930, art. 1A, § 187.)

Section 214. Exemption of buildings from regulations.

It shall be competent for the officers, commission and board of adjustment herein named to specially exempt from any general ordinance or order, any building or structure now or hereafter to be erected, from the operations of the same, provided, such officers, commission or board of adjustment shall deem the said building or its location necessary for the public welfare, but always reserving the same right of successive appeal herein contained relating to other matters. (1924, ch. 560, § 10; P.L.L. 1930, art. 1A, § 188.)

Redevelopment — Urban Renewal

Repealed. See Appendix I.

Fluoridation of Water

Section 226.

(Unnumbered Char. Amend. Reso., 6–21–90; Referendum Proclamation, 6–22–00.)

Annexation of Territory

Section 227. Area to be annexed.

That the Mayor and City Council of Cumberland shall, subject to all other ordinances of the Mayor and City Council of Cumberland, extend its systems of light, water, sewer services and other public conveniences throughout and over the streets, lanes, alleys and highways now being, or which shall be hereafter opened throughout the lands which lie within the limits as defined by this amendment, and its previous limits as the same shall be required for the convenience of the inhabitants of said territory. The property contained in said territory shall be assessed and the mayor and city council shall collect taxes from the owners thereof. Said property to be annexed is defined as follows:

Beginning for the same at the southwesterly corner of the present corporate limits of the City of Cumberland on the easterly side of Haystack Mountain; thence projecting the present southwesterly city limit lines across the property of The Cumberland Real Estate Corporation, north 43 degrees 59 minutes west 1010.00 feet to a monument in the division line between the said The Cumberland Real Estate Corporation and Sunset View Real Estate and Development Company; thence with the division line between them, north 31 degrees 25 minutes east 2227.40 feet to a stone monument at the northwesterly end of the division line between Military Lots Nos. 1150 and 1148 which is the division line between The Cumberland Real Estate Corporation and land of George Henderson, which land was conveyed to George Henderson by deed from W. R. Carscaden and James A. Perrin, Trustees in Number 19924 Equity, dated July 9, 1947, and recorded in Deed Liber No. 216, folio 89 of the Land Records of Allegany County, Maryland; thence with the division line between George Henderson and Sunset View Real Estate and Development Company, north 28 degrees 14 minutes east 799.92 feet to the southwesterly corner of the property of Sacred Heart Hospital of the Sisters of Charity, Inc.; thence with the division line between Sunset View Real Estate and Development Company and Sacred Heart Hospital of the Sisters of Charity, Inc., north 28 degrees 14 minutes east 1499.93 feet to the end of the said division line; thence continuing with the division line between Sunset View Real Estate and Development Company and George Henderson, north 28 degrees 14 minutes east 165.66 feet to a monument; thence with said division line, north 42 degrees 14 minutes east 3347.60 feet to a monument; thence south 50 degrees 46 minutes east 2417.70 feet to intersect the corporate limits of the City of Cumberland; thence with said corporate limit line, south 45 degrees 00 minutes west 8131.50 feet to the place of beginning. (Char. Amend. Reso. No. 23, § 2.)

Section 227A. Additional area to be annexed.

The mayor and city council of Cumberland shall, subject to all other ordinances of the mayor and city council of Cumberland, extend its systems of light, water, sewer service and other public conveniences throughout and over the streets, lanes, alleys and highways now being, or which shall be hereafter opened throughout the lands which lie within the limits as defined by this amendment, and its previous limits as the same shall be required for the convenience of the inhabitants of said territory. The property contained in said territory shall be assessed and the

mayor and city council shall collect taxes from the owners thereof. Said property to be annexed is defined as follows:

Beginning for the same at a point near Bedford Street, said point being the present northeast City Monument, and running thence north 66 degrees 39 minutes west 173.75 feet to a concrete monument; thence north 60 degrees 04 minutes west 799.95 feet to a concrete monument; thence north 29 degrees 47 minutes 30 seconds east 1176.85 feet to a concrete monument; thence north 60 degrees 57 minutes 30 seconds west 747.95 feet to a concerete **[**concrete**]** monument; thence south 47 degrees 47 minutes 30 seconds west 709.50 feet to a concrete monument; thence south 27 degrees 47 minutes 30 seconds west 811.79 feet to a concrete monument; thence south 58 degrees 55 minutes 20 seconds east 498.15 feet to a concrete monument; thence south 31 degrees 05 minutes west 380.45 feet to a concrete monument on the present corporate boundary line to the City of Cumberland; thence with said corporate boundary line, due east 1633.70 feet to the place of beginning. (Char. Amend. Reso. No. 28, § 1.)

City Magistrate

Section 228.

(Repealed by Charter Amendment Resolution No. 53, § 2.)

On and Off–Street Parking

Section 229.

(Char. Amend. Reso. No. 29, § 1; Char. Amend. Reso. No. 51, § 1; Repealed by Char. Amend. Reso. No. 122, 9–22–00.)

Section 230. Same — Powers, duties and functions generally.

(a) The Mayor and City Council of Cumberland shall have the power to acquire, by purchase, lease, or any other legal means, real and/or personal property, or any rights or interests therein, to be held in the name of the Mayor and City Council of Cumberland, for the purpose of developing, establishing, constructing, erecting, altering, expanding, enlarging, improving and equipping lots, buildings, structures and other facilities, including parking meters and street improvements to facilitate movement of vehicular traffic, on, under, or in said land or property, or on, under or in any land or property that is now or hereafter may be owned or otherwise held or controlled by the Mayor and City Council of Cumberland, for storing, parking and servicing motor vehicles and, in conjunction therewith, for any retail or commercial purpose which the authority deems to be necessary or appropriate to any one or more parking facility or facilities; and provided further, that all of said land, property or improvements shall be developed, improved, held or disposed of as provided by law.

(b) The Mayor and City Council of Cumberland shall have the power and authority to regulate and control all on and off–street parking, and to establish and collect fees and rentals therefrom, within the corporate limits of the City of Cumberland, and to promulgate and publish, from time to time, regulations regarding the same.

(c) The Mayor and City Council of Cumberland shall have the power and authority to appoint, hire, employ, or engage such employees and advisors as may be deemed necessary for the maintenance and operation of such parking facilities as may be operated by the Mayor and City Council of Cumberland; and to employ or hire, from time to time, by contract, consulting, planning or designing engineers or architects, or accountants, attorneys or other persons possessing technical or specialized skills in connection therewith.

(d) In addition to the power to operate off–street parking facilities, the Mayor and City Council of Cumberland is empowered and authorized to lease any such facility to private individuals, firms or corporations, upon such terms and under such conditions as it may deem proper; provided, however, that no lease or other agreement may be entered into until after invitation has been offered for pubic **[**public**]** bids for such lease proposals, said invitation to bid to be advertised in a newspaper of general circulation in the City of Cumberland at least twenty (20) days prior to the opening of said bids. The right is reserved to reject any and all bids. (Char. Amend. Reso. No. 29, § 1; Char. Amend. Reso. No. 57, § 1; Char. Amend. Reso. No. 119, 7–28–99; Char. Amend. Reso. No. 122, 9–22–00.)

Section 231. Repealed.

(Ch. Am. Res. No. 119, 7–28–99.)

Section 232. Same — Preparation of budget; collection of fees; establishment of accounting procedures; issuance of bonds.

(a) The City Administrator shall, in each year prepare a budget for the operation of all on and off–street parking for the ensuing fiscal year and shall submit the same to the Mayor and City Council for the approval of that body.

(b) All fees and rentals derived from on and/or off–street parking facilities shall be deposited with the treasurer of the City of Cumberland. The City Comptroller shall establish accounting procedures and shall also render a monthly account of all revenues and expenditures to the Mayor and City Council.

(c) For the purpose of financing and carrying out the functions of as hereinabove enumerated (particularly the cost of acquiring, developing, constructing, erecting, altering, expanding, enlarging, improving, and equipping any parking facilities, including lots, buildings, structures and other facilities in connection therewith including parking meters and street improvements to facilitate movement of vehicular traffic in the vicinity of parking areas and any retail or commercial structures or facilities which the Mayor and City Council of Cumberland deems to be necessary or appropriate to one or more parking facilities, such cost to include the cost of acquisition of all property rights, architectural and engineering services and all financing

expenses). The Mayor and City Council may issue and sell its general obligation bonds. The bonds shall be issued in the manner and within the limitations prescribed by applicable law for the issuance of general obligation bonds by the Mayor and City Council of Cumberland, except that neither the bonds nor the indebtedness represented by the bonds shall constitute an indebtedness within the meaning of Section 81 of this Charter or of any other charter, constitutional or statutory debt limitation or restriction, and except further that no ordinance authorizing the issuance and sale of bonds hereunder shall be subject to the publication and referendum provisos contained in Section 81(e) of this Charter, but may become effective immediately upon its passage.

(d) In addition to the authority conferred by subsection (c) of this section, the Mayor and City Council may issue revenue bonds, upon such terms and conditions as it deems appropriate, at public or private sale, at, above, or below par, to finance the cost of any parking facility or facilities and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the Mayor and City Council derived from or held in connection with its undertaking and operation or leasing of any one or more parking facilities under this subtitle; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from any governmental or other source, in aid of such projects under this subtitle. In addition, the Mayor and City Council may enter into an indenture of trust with any private banking institution of this state having trust powers, and may make in such indenture of trust such covenants and commitments as may be required by any purchaser for the adequate security of said bonds. Revenue bonds issued under this subsection shall not constitute an indebtedness within the meaning of Section 81 of the Charter or of any constitutional or statutory debt limitation or restriction, and shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds.

(e) Bonds issued under the provisions of this Section are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes. Bonds issued under this section shall be authorized by resolution or ordinance of the Mayor and City Council and may be issued in one or more series and shall bear such date or dates, shall mature at such time or times, bear interest at such rate or rates, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium or payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or ordinance or by any trust indenture or mortgage issued pursuant thereto. In case any of the public officials of the Mayor and City Council whose signatures appear on any bonds or coupons issued under this section shall cease to be such officials before delivery of such bond or, in the event any such officials shall have become such after the date of issue thereof, said bonds shall nevertheless be valid and binding obligations of the Mayor and City Council in accordance with their terms. Any provision of any law to the contrary notwithstanding, any bonds issued pursuant to this section shall be fully negotiable. In any suit, action or proceeding involving the validity or enforcement of any bond issued under this section or the security therefor, any such bond reciting in substance

that it has been issued by the Mayor and City Council in connection with a public parking facility or facilities shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this subtitle. (Char. Amend. Reso. No. 29, § 1; Char. Amend. Reso. No. 57, § 1; Char. Amend. Reso. No. 119, 7–28–99.)

Section 233. Severability; powers conferred by subtitle to be in addition to powers conferred by other laws.

If any provision of this subtitle, or the application thereof to any person or circumstances, is held invalid, the remainder of the subtitle, and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. The powers conferred by this subtitle shall be in addition and supplemental to the powers conferred by any other law. (Char. Amend. Reso. No. 29, § 1.)

Housing Projects

Section 234. Authorization of Mayor and City Council to initiate and to apply for funds.

(a) The Mayor and City Council of Cumberland is hereby empowered to undertake any and all projects authorized by the provisions of the Housing and Community Development Act of 1974, PL 93–833, to the extent that these provisions do not conflict with any law restricting the powers of a municipal corporation of the State of Maryland.

(b) For the purposes of initiating and carrying out any such project as set forth in the aforementioned Act, the Mayor and City Council of Cumberland is hereby authorized to apply for and receive federal funds made available through said Act by the Department of Housing and Urban Development.

(c) Any such funds received pursuant to subsection (b) hereof may be used to either initiate and carry out new projects authorized by said Act, or to continue projects already in existence and conducted by the various agencies of the City of Cumberland to the extent that the said Act allows. (Char. Amend. Reso. No. 65, § 1.)

Law Enforcement Officers' Bill of Rights

Section 235. Generally.

A. *Definitions.* As used in this section, the following words have the meanings indicated.

1. "Law–enforcement Officer" means any sworn member, authorized by law to make arrests, in the Police Department of the City of Cumberland.

Law–enforcement Officer does not include an officer serving in probationary status, except when allegations of brutality in the execution of his duties are made involving an officer who is in a probationary status.

2. "Hearing Board" means a board which is authorized by the Chief to hold a hearing on a complaint against a law–enforcement officer and which consists of not less than three (3) members, all to be appointed by the Chief and selected from law–enforcement officers within the Police Department, or law–enforcement officers of another agency, with the approval of the Chief of the other agency, and who have had no part of the investigation or interrogation of the law–enforcement officer. At least one member of the Hearing Board shall be of the same rank as the law–enforcement officer against whom the complaint has been filed.

3. "Hearing" means any meeting in the course of the investigatory proceeding, other than an interrogation, at which no testimony is taken under oath, conducted by a Hearing Board for the purpose of taking or producing testimony or receiving other evidence.

4. "Summary Punishment" is punishment imposed by the Chief of the Police Department, or member acting in that capacity which may be imposed when the facts constituting the offense are not in dispute. Summary punishment may not exceed three (3) days' suspension without pay, or a fine of One Hundred Fifty Dollars ($150.00).

5. "Chief" means the Chief of Police of the City of Cumberland.

B. *Right to engage in political activity; investigation or interrogation of officer; officer's right to sue; adverse material in officer's file*. A law–enforcement officer has the same rights to engage in political activity as are afforded to any City employee. This right to engage in political activity shall not apply to any law–enforcement officer when he is on duty or when he is acting in his official capacity.

Whenever a law–enforcement officer is under investigation or subjected to interrogation by a law–enforcement agency, for any reason which could lead to disciplinary action, demotion or dismissal, the investigation or interrogation shall be conducted under the following conditions:

1. The interrogation shall be conducted at a reasonable hour, preferably at a time when the law–enforcement officer is on duty, unless the seriousness of the investigation is of such a degree that an immediate interrogation is required.

2. The interrogation shall take place either at the office of the command of the investigating officer or in the office of the officer under investigation, as designated by the investigating officer, unless otherwise waived.

3. The law–enforcement officer under investigation shall be informed of the name, rank and command of the officer in charge of the investigation, the interrogating officer, and all persons present during the interrogation. All questions directed to the officer under interrogation shall be asked by and through one interrogator.

4. No complaint against a law–enforcement officer, alleging brutality in the execution of his duties, shall be investigated unless the complaint be duly sworn to before an official authorized to administer oaths.

5. The law–enforcement officer under investigation shall be informed in writing of the nature of the investigation prior to any interrogation, and of the names of all witnesses.

6. Interrogating sessions shall be for reasonable periods and shall be timed to allow for such personal necessities and rest periods as are reasonably necessary.

7. The law–enforcement officer under interrogation shall not be threatened with transfer, dismissal, or disciplinary action.

8. A complete record, either written, taped or transcribed, shall be kept of the complete interrogation of a law–enforcement officer, including all recess periods. A copy of the record shall be available to the officer or his counsel upon request.

9. If the law–enforcement officer under interrogation is under arrest, or is likely to be placed under arrest as a result of the interrogation, he shall be completely informed of all his rights prior to the commencement of the interrogation.

10. At the request of any law–enforcement officer under interrogation, he shall have the right to be represented by counsel or any other responsible representative of his choice who shall be present at all times during the interrogation, unless waived by the law–enforcement officer. The interrogation shall be suspended for a reasonable time until representation can be obtained.

11. The Mayor and City Council of Cumberland shall pass no Ordinance which shall abridge, nor shall the Police Department of the City of Cumberland, or the Commissioner of Police and Fire, adopt any regulation, which prohibits the right of the law–enforcement officer to bring suit arising out of his duties as law–enforcement officer.

12. The Police Department of the City of Cumberland shall insert no adverse material into any file of the officer, except the file of the internal investigating division, unless the officer has an opportunity to review, sign and receive a copy of, and comment in writing on the adverse material, unless the officer waives these rights.

C. *Disclosure by officer of property, income, etc*. No law–enforcement officer shall be required or requested to disclose any item of his property, income, assets, sources of income, debts, or personal or domestic expenditures (including those of any member of his family or household) unless such information is necessary in investigating a possible conflict of interest with respect to the performance of his official duties, or unless such disclosure is required by law.

D. *Hearing before demotion, dismissal, transfer, etc.*

(a) If the investigation or interrogation of the law–enforcement officer results in the recommendation of some action, such as demotion, dismissal, transfer, loss of pay, reassignment, or similar action, which would be considered a punitive measure, then, except in the case of summary punishment or emergency suspension, as provided below, and before taking such action, the law–enforcement agency shall give notice to the law–enforcement officer that he is entitled to a Hearing on the issues by a Hearing Board.

(b) The Hearing shall be conducted by the Hearing Board. Both the Police Department and the law–enforcement officer shall be given ample opportunity to present evidence and argument with respect to the issues involved. The Police Department shall be represented by the City Solicitor's office of the City of Cumberland, and the law–enforcement officer may be represented by counsel of his own choosing.

(c) Evidence which possesses probative value commonly accepted by reasonable and prudent men in the conduct of their affairs shall be admissible, and shall be given probative effect. The Hearing Board conducting the Hearing shall give effect to the rules of privilege recognized by law and may exclude incompetent, irrelevant, immaterial and unduly repetitious evidence. All records and documents which any party desires to use shall be offered and made a part of the record. Documentary evidence may be received in the form of copies or excerpts, or be incorporated by reference.

(d) Each party has the right to cross–examine any witness who testifies and each may submit rebuttal evidence.

(e) The Hearing Board conducting the Hearing may take notice of jurisdictional cognizable facts and, in addition, may take notice of the general technical or scientific facts within its specialized knowledge. Parties shall be notified beforehand of the material so noticed. With respect to the subject of any investigation or hearing conducted pursuant to this section, the Chief may administer oaths or affirmations and examine any individual under oath.

(f) Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a Circuit Court. Witness fees, mileage and the actual expenses necessarily incurred in securing attendance of witnesses and their testimony shall be itemized and shall be paid by the Police Department of the City of Cumberland.

E. *Decision or order; findings of fact; recommendations for action*. Any decision, order or action taken as a result of the hearing shall be in writing and shall be accompanied by findings of fact. The findings shall consist of a concise statement upon each issue in the case. A copy of the decision or order and accompanying findings and conclusions, along with written recommendations for action, shall be delivered or mailed promptly to the law–enforcement officer or to his attorney or representative of record.

F. *Appeals.* Appeals from decisions rendered in accordance with Sections D and E shall be taken to the Circuit Court of Allegany County, pursuant to Maryland Rule B2.

Any party aggrieved by the decision of the Circuit Court of Allegany County hearing an appeal in accordance with the above subsection, shall be entitled to appeal the matter to the Court of Special Appeals.

G. *Retaliation for exercising rights*. No law–enforcement officer shall be discharged, disciplined, demoted or denied promotion, transfer, or reassignment, or otherwise discriminated against in regard to his employment, or be threatened with any such treatment, by reason of his exercise of or demand for the rights granted in this subtitle, or by reason of the lawful exercise of his constitutional rights.

H. *Application to District Court for show cause order*. Any law–enforcement officer who is denied any right afforded by this subtitle may apply, either individually or through his certified or recognized employee organization, to the District Court of Allegany County, Maryland, for any order directing the law–enforcement agency to show cause why the right should not be afforded.

I. Provisions of this subtitle are not entitled to prohibit summary punishment or emergency suspension by higher ranking officers as may be designated by the Chief.

1. Summary punishment may be imposed for minor violation of departmental rules and regulations when (i) the facts which constitute the minor violation are not in dispute, (ii) the officer waives the Hearing provided for by this subtitle, (iii) officer accepts the punishment imposed by the Chief.

2. Emergency suspension may be imposed by the Chief or his designate, when it appears that the action is in the best interests of the public and the Police Department. Any person so suspended shall be entitled to a prompt Hearing. (Char. Amend. Reso. No. 67, § 2.)

Special Taxing District

Section 236. Generally.

The Mayor and City Council of Cumberland shall have power to create a Special Taxing District for the purposes of financing the design, construction, establishment, extension, alteration, or acquisition of a pedestrian mall within the central business district of the City and to levy on all real property located within said Special Taxing District ad valorem taxes in rate and amount sufficient to provide adequate annual revenues to pay the principal and interest on any bonds or obligations of the City of Cumberland issued for such purposes, as the principal and interest become due, and to pay the costs of operation and maintenance of said pedestrian mall.

BENEFIT DISTRICT. Said Special Taxing District shall consist of two benefit districts, the Primary Benefit District and the Secondary Benefit District. Said benefit districts shall be limited and determined to the following described areas:

(1) *Primary Benefit District*. The Primary Benefit District shall consist of those properties which front pedestrian mall improvements made to Baltimore Street, Centre Street and Liberty Street.

(2) *Secondary Benefit District*. The Secondary Benefit District shall consist of all properties located within that area bounded on the South by National Freeway (U.S. Route #48) Bridge, on the East by Queen City Drive, on the North by Bedford Street, and on the West by the Wills Creek Flood Protection Wall, which properties are not located within the Primary Benefit District.

LEVIES, CLASSES. The ad valorem tax levied on real property located within the Special Taxing District shall vary according to whether the affected property is located within the Primary Benefit District or the Secondary Benefit District; however, within each benefit district, the tax rate shall be uniform, and shall be levied in the same manner upon the same assessments, for the same period or periods, and as of the same date or dates of finality as are now or may hereafter be prescribed.

(1) *Primary Benefit District*. An ad valorem tax not to exceed One Dollar Thirty Cents ($1.30) per One Hundred Dollars ($100.00) of assessed value shall be levied upon real property located within the Primary Benefit District for the following purposes: (a) to provide revenues in an amount sufficient to pay the debt service on a Mall Bond Issue not exceeding One Million Dollars ($1,000,000.00) in principal amount, whether issued by the Mayor and City Council of Cumberland or by an agency thereof; and (b) to provide revenues in an amount sufficient to pay the costs of operation and maintenance of a pedestrian mall within the central business district.

(2) *Secondary Benefit District*. An ad valorem tax not to exceed Eighty Cents ($0.80) per One Hundred Dollars ($100.00) of assessed value shall be levied upon real property located within the Secondary Benefit District for the following purposes: (a) to provide revenues in an amount sufficient to pay the debt service on a Mall Bond Issue not exceeding One Million Dollars ($1,000,000.00) in principal amount, whether issued by the Mayor and City Council of Cumberland or by an agency thereof; and (b) to provide revenues in an amount sufficient to pay the costs of operation and maintenance of a pedestrian mall within the central business district.

EXEMPTIONS. Upon application made to, and approved by, the Mayor and City Council of Cumberland, the following described properties located within the Special Taxing District shall be exempt from the special ad valorem tax to be levied for the purposes herein prescribed:

(1) Properties, or portions thereof, which are occupied and used by the owner for his or her residence;

(2) Properties, or those portions thereof, used solely for light manufacturing purposes, and which qualify for a similar exemption according to the tax provisions of Allegany County, Maryland.

As to approved applications, the exemption shall be granted for all fiscal years falling within the calendar year preceding the date of submission of the application for exemption.

SPECIAL TAXING DISTRICT FUND. The ad valorem taxes levied and collected with respect to properties located in the Special Taxing District shall be deposited by the City Treasurer in a special account, to be known as the "Special Taxing District Fund." Disbursements shall be made from the Fund to pay (1) the principal of and interest on any bonds or obligations of the City of Cumberland issued for the purpose of financing the design, construction, establishment, extension, alteration or acquisition of a pedestrian mall within the central business district of the City, as the principal and interest become due, and (2) the costs of operation and maintenance of a pedestrian mall within the central business district of the city. (Char. Amend. Reso. No. 69, § 1; Char. Amend. Reso. No. 81, 4–30–81; Char. Amend. Reso. No. 138, 8–27–08.)

Section 237. Downtown Development Commission.

1. There is hereby created an agency which shall be known and designated as the "Downtown Development Commission" which shall consist of thirteen (13) members appointed by the Mayor and City Council as follows:

(a) Not less than nine (9) members shall be appointed from among those property owners and businesses which are located within the Primary Benefit District, within the Special Taxing District, as defined by Charter Amendment Resolution No. 69 as amended. At least one of these members shall be a representative of one of the financial institutions located within said Primary Benefit District.

(b) Not less than three (3) members shall be appointed from among those property owners and businesses located in the Secondary Benefit District within the Special Taxing District as defined and determined by Charter Amendment Resolution No. 69.

(c) The additional member shall be appointed from among the general population of the City and must be a resident thereof, provided however, that said additional member may be a property owner within the Special Taxing District.

(d) The Commission shall be appointed, and the first appointees shall serve terms as follows:

(1) Two appointees from a Primary Benefit District and two appointees from a Secondary Benefit District shall serve terms of six (6) years each;

(2) One appointee from a Primary Benefit District and one appointee from a Secondary Benefit District shall serve terms of five (5) years each;

(3) One appointee from a Primary Benefit District and one appointee from a Secondary Benefit District shall serve terms of four (4) years each;

(4) One appointee from a Primary Benefit District and the general appointee shall serve terms of three (3) years each;

(5) Two appointees from a Primary Benefit District shall serve terms of two (2) years each;

(6) Two appointees from a Primary Benefit District shall serve terms of one (1) year each.

Thereafter, the thirteen (13) appointed members of the Commission shall serve terms of three (3) years each. Unless removed by the Mayor and City Council, both original and successive appointees shall serve until their successors are appointed and qualify. Vacancies shall be filled for the unexpired portion of the terms of any Commission member by the Mayor and City Council. Members of the Commission shall serve without compensation.

2. Upon appointment of said Commission, the members shall have the authority to adopt by–laws, not inconsistent with this, or any other Charter provision or ordinance of the Mayor and City Council of Cumberland, and may provide in said by–laws the method whereby a chairman, vice–chairman, secretary and treasurer, and other officers, may be selected, the manner whereby meetings of said Commission may be called, held and conducted, and other matters relating to the sound and efficient operation of said Commission.

3. (a) The said Downtown Development Commission as constituted shall have the power and authority to promulgate rules and regulations governing the uses and regulations of the "Cumberland Mall" and further, to establish such fee and rental schedules to the extent that the same are legally permitted for use of the mall, which said rules and regulations and fee and rental schedules shall be effective within the area designated and defined as the Special Taxing District in Charter Amendment Resolution No. 69. Said rules and regulations shall not be in conflict with any provision of the Charter or Code of Laws of the City of Cumberland, the laws of the State of Maryland or the laws of the United States. Any rules or regulation, the violation of which would constitute a criminal offense or municipal infraction, must be submitted to the Mayor and City Council of Cumberland for its approval and adoption, and shall not be deemed effective until so approved and adopted.

(b) The Commission shall have the authority and power to appoint, hire, employ, or engage such assistants, aides, employees and advisers as may be deemed necessary by it for the proper performance of the duties of said Commission and for the maintenance and operation of the facilities and improvements under the jurisdiction of the Commission; and to employ or hire from time to time, by contract, consultants, planning and designing engineers or architects or accountants, attorneys or other persons possessing technical or specialized skills in connection with the duties, powers, and functions of said Commission.

(c) The Commission shall have the power and authority to enter into contracts in its own name which said contracts are for the purpose of developing, establishing, constructing, erecting, altering, expanding, enlarging, operating or maintaining, or improving the pedestrian mall and related facilities and improvements located within the Special Taxing

District; provided however, that the Mayor and City Council of Cumberland shall in no manner be construed to be a party to any such contract nor to be bound by any of the terms thereof unless the said Mayor and City Council shall elect to become so obligated. Further, that the Commission shall be prohibited from entering into any contract where the obligations for payments under said contracts would exceed its revenues on hand at the time of contracting.

(d) The Commission shall be authorized to sponsor in its own name events of any kind not otherwise prohibited by law, and further, to promote and encourage usage of the Cumberland Mall by the general public. Further, that the said Commission shall be authorized to make the facilities and improvements of the Cumberland Mall available to other persons and groups upon such terms and conditions as it deems proper, including the requirement for permits to be issued by the Commission. No permit shall be required from the Commission by any person, group of persons, partnership, corporation, etc. who desires to engage in the solicitation of donations for any charitable or religious purpose or organization unless such person, group, etc. shall desire to erect, place, or maintain any exhibit, sign, booth or similar device on or over the surface area of the Cumberland Mall, provided that any such permit shall be limited in scope to the placement of such device, etc. on the said Mall and the duration of any such placement. Notwithstanding any provision herein contained, any person, group of persons, partnerships, corporations, etc. conducting or proposing to conduct any activity of any kind on or over the Cumberland Mall shall be required to obtain any and all applicable permits, licenses, etc. as the same are required by the laws of the City of Cumberland, Allegany County, and/or the State of Maryland.

(e) The Commission shall conduct studies and submit reports containing specific recommendations to the Mayor and City Council of Cumberland with regard to vehicular and pedestrian traffic, parking, and special activities and events within or on the Cumberland Mall.

4. The Mayor and City Council of Cumberland shall maintain normal municipal services within the area of the Special Taxing District, including fire and police protection, street lighting, trash collection, street maintenance, and snow removal from those streets passing through the Special Taxing District open to vehicular traffic. All other repairs to, maintenance, or upkeep of, etc. the facilities and improvements within the Special Taxing District, shall be the responsibility of the Commission.

5. (a) Said Downtown Development Commission, as constituted, shall have the power and authority to manage funds held by it in its name, including the power to invest said funds, maintain separate accounts for such funds, and commit and encumber those funds for any purpose authorized hereunder.

(b) That said Downtown Development Commission shall present to the Mayor and City Council on a quarterly basis a statement showing all funds or properties in hand or in which it has any legal or equitable interest, and further, showing any use or expenditure of funds in the preceding three–month period. Said statement shall further show any commitments or encumbrances on said funds. Further, that the said Downtown Development Commission shall

no later than October 1st of each year submit to the Mayor and City Council of Cumberland a certified audit for the preceding fiscal year.

(c) That the Downtown Development Commission no later than March 1st of any given year shall submit to the Mayor and City Council a proposed budget for the succeeding fiscal year, which said budget shall be used by the Mayor and City Council for the purpose of determining an amount to be levied within the Special Taxing District for the operation and maintenance of the Downtown Pedestrian Mall. In no event shall the Mayor and City Council be obligated to levy an amount in excess of a $1.30 in the Primary Benefit District and $.80 in the Secondary Benefit District.

(d) That the Mayor and City Council shall be authorized to transfer to the benefit of the Downtown Development Commission all funds collected from the ad valorem taxes within the Special Taxing District to the extent that such funds exceed the amount required to amortize that portion of the "Mall Bond Proceeds" as more fully set forth in Charter Amendment Resolution No. 81 and Ordinance No. 2875.

(e) That in no event shall the Mayor and City Council be obligated to appropriate any general funds for use by the Downtown Development Commission for the operation and maintenance of the mall. (Char. Amend. Reso. No. 80, 4–30–81.)

APPENDIX I

Urban Renewal Authority for Slum Clearance

(See Note (40))

Section A1–101. Definitions.

(a) In this appendix the following words have the meanings indicated.

(b) "Federal Government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(c) "Slum Area" shall mean any area where dwellings predominate which, by reason of depreciation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitary facilities, or any combination of these factors, are detrimental to the public safety, health or morals.

(d) "Blighted Area" shall mean an area in which a majority of buildings have declined in productivity by reason of obsolescence, depreciation or other causes to an extent they no longer justify fundamental repairs and adequate maintenance.

(e) "Urban Renewal Project" shall mean undertakings and activities of a municipality in an urban renewal area for the elimination and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include —

(1) acquisition of a slum area or a blighted area or portion thereof;

(2) demolition and removal of buildings and improvements;

(3) installation, construction or reconstruction of streets, utilities, parks, playgrounds, and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this appendix in accordance with the urban renewal plan;

(4) disposition of any property acquired in the urban renewal area including sale, initial leasing or retention by the municipality itself, at itself, at its fair value for uses in accordance with the urban renewal plan;

(5) carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(6) acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, unsanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or prevent the spread of blight or deterioration, or to provide land for needed public facilities; and

(7) the preservation, improvement or embellishment of historic structures or monuments.

(f) "Urban Renewal Area" shall mean a slum area or a blighted area or a combination thereof which the municipality designates as appropriate for an urban renewal project.

(g) "Urban Renewal Plan" shall mean a plan, as it exists from time to time, for an urban renewal project, which plan shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum density and building requirements.

(h) "Bonds" shall mean any bonds (including refunding bonds), notes, interim certificates, certificates of indebtedness, debentures or other obligations.

(i) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other person acting in similar representative capacity.

(j) "Municipality" shall mean the City of Cumberland.

Section A1–102. Powers.

The municipality is hereby authorized and empowered to carry out urban renewal projects which shall be limited to slum clearance in slum or blighted areas and redevelopment or the rehabilitation of slum or blighted areas; to acquire in connection with such projects, within the corporate limits of the municipality, land and property of every kind and any right, interest, franchise, easement or privilege therein, including land or property and any right or interest therein already devoted to public use, by purchase, lease, gift, condemnation or any other legal means; to sell, lease, convey, transfer or otherwise dispose of any of said land or property, regardless of whether or not it has been developed, redeveloped, altered or improved and irrespective of the manner or means in or by which it may have been acquired, to any private, public or quasi public corporation, partnership, association, person or other legal entity. No land or property taken by the municipality for any of the aforementioned purposes or in connection with the exercise of any of the powers which by this appendix are granted to the municipality by exercising the power of eminent domain shall be taken without just compensation, as agreed upon between the parties, or awarded by a jury, being first paid or tendered to the party entitled to such compensation. All land or property needed or taken by the exercise of the power of eminent domain by the municipality for any of the aforementioned purposes or in connection with the exercise of any of the powers granted by this appendix is hereby declared to be needed or taken for public uses and purposes. Any or all of the activities authorized pursuant to this section shall constitute governmental functions undertaken for public uses and purposes and the power of taxation may be exercised, public funds expended and public credit extended in furtherance thereof. The municipality is hereby granted the following additional powers which are hereby found and declared to be necessary and proper to carry into full force and effect the

specific powers hereinbefore granted and to fully accomplish the purposes and objects contemplated by the provisions of this section:

(1) to make or have made all surveys and plans necessary to the carrying out of the purposes of this appendix and to adopt or approve, modify and amend such plans, which plans may include but shall not be limited to: (i) plans for carrying out a program of voluntary or compulsory repair and rehabilitation of buildings and improvements, (ii) plans for the enforcement of codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements; and (iii) appraisals, title searches, surveys, studies, and other plans and work necessary to prepare for the undertaking of urban renewal projects and related activities; and to apply for, accept and utilize grants of funds from the Federal Government for such purposes;

(2) to prepare plans for the relocation of persons (including families, business concerns and others) displaced from an urban renewal area, and to make relocation payments to or with respect to such persons for moving expenses and losses of property for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the Federal Government;

(3) to appropriate such funds and make such expenditures as may be necessary to carry out the purposes of this appendix, and to levy taxes and assessments for such purposes; to borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the Federal Government, the State, County or other public bodies, or from any sources, public or private, for the purposes of this appendix, and to give such security as may be required therefor; to invest any urban renewal funds held in reserves or sinking funds or any such funds not required for immediate disbursement, in property or securities which are legal investments for other municipal funds.**[;]**

(4) to hold, improve, clear or prepare for redevelopment any property acquired in connection with urban renewal projects; to mortgage, pledge, hypothecate or otherwise encumber such property; to insure or provide for the insurance of such property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance;

(5) to make and execute all contracts and other instruments necessary or convenient to the exercise of its powers under this appendix, including the power to enter into agreement with other public bodies or agencies (which agreements may extend over any period, notwithstanding any provisions or rule of law to the contrary), and to include in any contract for financial assistance with the Federal Government for or with respect to an urban renewal project and related activities such conditions imposes pursuant to Federal laws as the municipality may deem reasonable and appropriate;

(6) to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain an order for this

purpose from the Circuit Court for the county in which the municipality is situated in the event entry is denied or resisted;

(7) to plan, replan, install, construct, reconstruct, repair, close or vacate streets, roads, sidewalks, public utilities, parks, playgrounds, and other public improvements in connection with an urban renewal project; and to make exceptions from building regulations;

(8) to generally organize, coordinate and direct the administration of the provisions of this appendix as they apply to such municipality in order that the objective of remedying slum and blighted areas and preventing the causes thereof within such municipality may be most effectively promoted and achieved;

(9) to exercise all or any part or combination of powers herein granted.

Section A1–103. Establishment of Urban Renewal Agency.

The municipality may itself exercise all the powers granted by this appendix, or may, if its legislative body by ordinance determines such action to be in the public interest elect to have such powers exercised by a separate public body or agency as hereinafter provided. In the event said legislative body makes such determination, it shall proceed by ordinance to establish a public body or agency to undertake in the municipality the activities authorized by this appendix. Such ordinance shall include provisions establishing the number of members of such public body or agency, the manner of their appointment and removal, the terms of said members and their compensation. The ordinance may include such additional provisions relating to the organization of said public body or agency as may be necessary. In the event the legislative body enacts such an ordinance, all the powers by this appendix granted to the municipality shall, from the effective date of said ordinance, be vested in the public body or agency thereby established, except:

(1) The power to pass a resolution to initiate an urban renewal project pursuant to Section A1–104 of the Charter of the City of Cumberland;

(2) The power to issue general obligation bonds pursuant to Section A1–109 of the Charter of the City of Cumberland;

(3) The power to appropriate funds, and to levy taxes and assessments pursuant to Section A1–102(3) of the Charter of the City of Cumberland.

Section A1–104. Initiation of Project.

In order to initiate an urban renewal project, the mayor and aldermen by a two–thirds vote shall adopt a resolution which

(1) finds that one or more slum or blighted areas exist in such municipality;

(2) locates and defines the said slum or blighted areas;

(3) finds that the rehabilitation, redevelopment, or a combination thereof, of such area or areas, is necessary in the interest of the public health, safety, morals or welfare of the residents of such municipality.

Section A1–105. Preparation and Approval of Plan for Urban Renewal Project.

(a) The municipality, in order to carry out the purposes of this appendix, shall prepare or cause to be prepared an urban renewal plan for slum or blighted areas in the municipality, and shall formally approve such plan. Prior to its approval of an urban renewal project, the municipality shall submit such plan to the planning body of the municipality, for review and recommendations as its conformity with the master plan for the development of the municipality as a whole. The planning body shall submit its written recommendation with respect to the proposed urban renewal plan to the municipality within sixty days after receipt of the plan for review; upon receipt of the recommendations of the planning body or, if no recommendations are received within said sixty days, then without such recommendations, the municipality may proceed with a public hearing on the proposed urban renewal project. The municipality shall hold a public hearing on an urban renewal project after public notice thereof by publication in a newspaper having a general circulation within the corporate limits of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration. Following such hearing, the municipality may approve an urban renewal project and the plan therefor if it finds that: (1) a feasible method exists for the location of any families who will be displaced from the urban renewal area in decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families; (2) the urban renewal plan substantially conforms to the master plan of the municipality as a whole; and (3) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise.

(b) An urban renewal plan may be modified at any time, provided that if modified after the lease or sale of real property in the urban renewal project area, the modification may be conditioned upon such approval of the owner, lessee or successor in interest as the municipality may deem advisable and in any event shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert. Where the proposed modification will substantially change the urban renewal plan as previously approved by the municipality, the modification shall be formally approved by the municipality, as in the case of an original plan.

(c) Upon the approval by the municipality of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area and the municipality may then cause such plan or modification to be carried out in accordance with its terms.

Section A1–106. Disposal of Property in Urban Renewal Area.

(a) The municipality may sell, lease or otherwise transfer real property or any interest therein acquired for it by an urban renewal project, for residential, recreational, commercial, industrial, educational or other uses or for public use, or may retain such property or interest for public use, in accordance with the urban renewal plan, subject to such covenants, conditions and restrictions, including covenants running with the land, as it may deem to be necessary or desirable to assist in preventing the development or spread of future slums or blighted area or to otherwise carry out the purposes of this appendix. The purchasers or lessees and their successors and assigns shall be obligated to devote such real property only to the uses specified in the urban renewal plan, and may be obligated to comply with such other requirements as the municipality may determine to be in the public interest, including the obligation to begin within a reasonable time any improvements on such real property required by the urban renewal plan. Such real property or interest shall be sold, leased, otherwise transferred, or retained at not less than its fair value for uses in accordance with the urban renewal plan. In determining the fair value of real property for uses in accordance with the urban renewal plan, the municipality shall take into account and give consideration to the uses provided in such plan; the restrictions upon, and the covenants, conditions and obligations assumed by the purchaser or lessee or by the municipality retaining the property; and the objectives of such plan for the prevention of the recurrence of slum or blighted areas. The municipality in any instrument of conveyance to a private purchaser or lessee may provide that such purchaser or lessee shall be without power to sell, lease or otherwise transfer the real property without the prior written consent of the municipality until he has completed the construction of any or all improvements which he has obligated himself to construct thereon. Real property acquired by the municipality which, in accordance with the provisions of the urban renewal plan, is to be transferred, shall be transferred as rapidly as feasible in the public interest consistent with the carrying out of the provisions of the urban renewal plan. Any contract for such transfer and the urban renewal plan (or such part or parts of such contract or plan as the municipality may determine) may be recorded in the Land Records of the county in which the municipality is situated in such manner as to afford actual or constructive notice thereof.

(b) The municipality may dispose of real property in an urban renewal area to private persons only under such reasonable competitive bidding procedures as it shall prescribe or as hereinafter provided in this subsection. The municipality may, by public notice by publication in a newspaper having a general circulation in the community (not less than sixty days prior to the execution of any contract to sell, lease or otherwise transfer real property and prior to the delivery of any instrument of conveyance with respect thereto under the provisions of this section) invite proposals from and make available all pertinent information to private redevelopers or any persons interested in undertaking to redevelop or rehabilitate an urban renewal area, or any part thereof. Such notice shall identify the area, or portion thereof, and shall state that proposals shall be made by those interested within a specified period of not less than sixty days after the first date of publication of said notice, and that such further information as is available may be obtained at such office as shall be designated in said notice. The municipality shall consider all such redevelopment or rehabilitation proposals and the financial and legal ability of the persons making such proposals to carry them out, and may negotiate with any persons for proposals for the purchase, lease or other transfer of any real property acquired by

the municipality in the urban renewal area. The municipality may accept such proposal as it deems to be in the public interest and in furtherance of the purposes of this appendix. Thereafter, the municipality may execute and deliver contracts, deeds, leases and other instruments and take all steps necessary to effectuate such transfers.

(c) The municipality may temporarily operate and maintain real property acquired by it in an urban renewal area for or in connection with an urban renewal project pending the disposition of the property as authorized in this appendix, without regard to the provisions of sub–section (a) above, for such uses and purposes as may be deemed desirable even though not in conformity with the urban renewal plan.

(d) Any instrument executed by the municipality and purporting to convey any right, title or interest in any property under this appendix shall be conclusively presumed to have been executed in compliance with the provisions of this appendix insofar as title or other interest of any bona fide purchaser, lessees or transferees of such property is concerned.

Section A1–107. Eminent Domain.

Condemnation of land or property under the provisions of this appendix shall be in accordance with the procedure provided in the Real Property Article of the Code of Maryland.

Section A1–108. Encouragement of Private Enterprise.

The municipality, to the greatest extent it determines to be feasible in carrying out the provisions of this appendix, shall afford maximum opportunity, consistent with the sound needs of the municipality as a whole, to the rehabilitation or redevelopment of any urban renewal area by private enterprise. The municipality shall give consideration to this objective in exercising its powers under this appendix.

Section A1–109. General Obligation Bonds.

For the purpose of financing and carrying out of an urban renewal project and related activities, the municipality upon a two–thirds vote of the mayor and aldermen may issue and sell its general obligation bonds. Any bonds issued by the municipality pursuant to this section shall be issued in the manner and within the limitations prescribed by applicable law for the issuance and authorizations of general obligation bonds by such municipality, and also within such limitations as shall be determined by said municipality.

Section A1–110. Revenue Bonds.

In addition to the authority conferred by Section A1–109 of this appendix, the municipality shall have the power to issue revenue bonds to finance the undertaking of any urban renewal project and related activities, and shall also have power to issue refunding bonds for the payment or retirement of such bonds previously issued by it. Such bonds shall be made payable, as to both principal and interest, solely from the income, proceeds, revenues, and funds of the municipality derived from or held in connection with its undertaking and carrying out of urban

renewal projects under this appendix; provided, however, that payment of such bonds, both as to principal and interest, may be further secured by a pledge of any loan, grant or contribution from the Federal Government or other source, in aid of any urban renewal projects of the municipality under this appendix, and by a mortgage of any such urban renewal projects, or any part thereof, title to which is in the municipality. In addition, the municipality may enter into an Indenture of Trust with any private banking institution of this State having trust powers and may make in such indenture of trust such covenants and commitments as may be required by any purchaser for the adequate security of said bonds.

(2) Bonds issued under this section shall not constitute an indebtedness within the meaning of any constitutional or statutory debt limitation or restriction, shall not be subject to the provisions of any other law or charter relating to the authorization, issuance or sale of bonds, and are hereby specifically exempted from the restrictions contained in Sections 9, 10 and 11 of Article 31 of the Annotated Code of Maryland (1957 Edition, as amended). Bonds issued under the provisions of this Article are declared to be issued for an essential public and governmental purpose and, together with interest thereon and income therefrom, shall be exempted from all taxes.

(2) Bonds issued under this section shall be authorized by resolution or ordinance of the legislative body of the municipality and may be issued in one or more series and shall bear such date or dates, shall mature at such time or times, bear interest at such rate or rates, not exceeding six per centum per annum, be in such denomination or denominations, be in such form either with or without coupon or registered, carry such conversion or registration privileges, have such rank or priority, be executed in such manner, be payable in such medium or payment, at such place or places, and be subject to such terms of redemption (with or without premium), be secured in such manner, and have such other characteristics, as may be provided by such resolution or trust indenture or mortgage issued pursuant thereto.

(3) Such bonds may be sold at not less than par at public sales held after notice published prior to such sale in a newspaper having a general circulation in the area in which the municipality is located and in such other medium of publication as the municipality may determine or may be exchanged for other bonds on the basis of par; provided, that such bonds may be sold to the Federal Government at private sale at not less than par, and, in the event less than all of the authorized principal amount of such bonds is sold to the Federal Government, the balance may be sold at private sale at not less than par at an interest cost to the municipality of not to exceed the interest cost to the municipality of the portion of the bonds sold to the Federal Government.

(4) In case any of the public officials of the municipality whose signatures appear on any bonds or coupons issued under this appendix shall cease to be such officials before the delivery of such bond or, in the event any such officials shall have become such after the date of issue thereof, said bonds shall nevertheless be valid and binding obligations of said municipality in accordance with their terms. Any provisions of any law to the contrary notwithstanding, any bonds issued pursuant to this appendix shall be fully negotiable.

(5) In any suit, action or proceeding involving the validity or enforceability of any bond issued under the appendix or the security therefor, any such bond reciting in substance that it has been issued by the municipality in connection with an urban renewal project, as herein defined, shall be conclusively deemed to have been issued for such purpose and such project shall be conclusively deemed to have been planned, located and carried out in accordance with the provisions of this appendix.

(6) All banks, trust companies, bankers, savings banks and institutions, building and loan associations, savings and loan associations, investment companies and other persons carrying on a banking or investment business; all insurance companies, insurance associations, and other persons carrying on an insurance business; and all executors, administrators, curators, trustees, and other fiduciaries, may legally invest any sinking funds, monies, or other funds belonging to them or within their control in any bonds or other obligations issued by the municipality pursuant to this appendix, provided that such bonds and other obligations shall be secured by an agreement between the issuer and the Federal Government in which the issuer agrees to borrow from the Federal Governemnt **[**Government**]** and the Federal Government agrees to lend to the issuer, prior to the maturity of such bonds or other obligations, monies in an amount which (together with any other monies irrevocably committed to the payment of principal and interest on such bonds or other obligations) will suffice to pay the principal of such bonds or other obligations with interest to maturity thereon, which monies under the terms of said agreement are required to be used for the purpose of paying the principal of and the interest on such bonds or other obligations at their maturity. Such bonds and other obligations shall be authorized security for all public deposits. It is the purpose of this section to authorize any persons, political subdivisions and officers, public or private, to use any funds owned or controlled by them for the purchase of any such bonds or other obligations. Nothing contained in this section with regard to legal investments shall be construed as relieving any person of any duty of exercising reasonable care in selecting securities.

Section A1–111. Separability.

If any provision of this appendix, or the application thereof to any person or circumstances, is held invalid, the remainder of the appendix and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby. The powers conferred by this appendix shall be in addition and supplemental to the powers conferred by any other law.

Section A1–112. Short Title.

This Act shall be known and may be cited as the Cumberland Urban Renewal Authority for Slum Clearance Act.

Section A1–113. Authority to Amend or Repeal.

This appendix, enacted pursuant to Article III, Section 61 of the Constitution of Maryland, may be amended or repealed only by the General Assembly of Maryland.

NOTES

(1) Set out herein is the Charter of the City of Cumberland. Such Charter is officially designated Article 1A of the Code of Public Local Laws of Maryland.

The Charter was enacted in its present form by Acts 1949, chapter 647, which legalized the 1950 edition of the Charter. Amendments have been worked into their proper places. Catchlines have been prepared for all sections of the Charter. A uniform system of capitalization has been employed and a frontal analysis has been prepared for the convenience of the user. The derivation of each section is indicated by an historical citation following each section.

For constitutional provisions as to municipal charters, see Md. Const., art. 11E.

For state law as to Home Rule, see Anno. Code of Md., 1957, art. 23A, §§ 9 to 43.

(2) City is authorized by this section to buy in property at tax sales. Young v. Cumberland, 170 Md. 505, 185 Atl. 450.

(2a) Annexation Resolutions, effective July 11, 1987 and October 31, 1987, annexed 4 lots of the Woodland Acres Subdivision. These were added as subsections (b) and (c) of Section 2 since the resolutions did not clarify how the boundary description is to be amended.

(3) This section does not entitle a resident of an annexed area to mandamus to compel the city to extend its water system to his residence when the city has neither the money to make such extension nor the authority to borrow such money. Schriver v. Cumberland, 169 Md. 286, 181 Atl. 444.

(4) Reserved.

(5) Acts 1929, ch. 552, was subject to a referendum, and was approved by the voters in November, 1930, by a vote of 3,247 For and 535 Against.

(6) The city is not responsible for an unauthorized act on the part of the mayor. Cumberland v. Willison, 50 Md. 138.

(7) Charter Amendment Resolution No. 18 changed the title “city auditor” to “city comptroller”, and directed that such change be made throughout the Charter and Ordinances of the City of Cumberland. Such change has been made throughout this Charter and the City Code.

(8) The city is under an obligation to exercise for the public good the powers conferred upon it by its Charter to prevent nuisances and to protect persons and property. This duty may not be discharged by merely passing ordinances. A vigorous effort must be made to enforce them. Taylor v. Cumberland, 64 Md. 68, 20 Atl. 1027 (1885).

(9) The word “breaches” was apparently intended here.

(10) This section referred to in Spur Distributing Co. v. Cumberland, Case No. 1680, Miscellaneous Docket, Allegany County Circuit Court.

Injunction issued to require City to abate nuisance in form of landslide. Annandale Auto Laundry v. Cumberland, Equity Docket, Case No. 10,672.

(11) See Ord. No. 1562, December 20, 1937; Ord. No. 1566, January 19, 1938; Ord. No. 1679, October 31, 1938; Ord. No. 1763, August 3, 1942. See Cases No. 1645, 1679, and 1896, Miscellaneous Docket.

(12) Acts 1920, Sp. Sess., ch. 8, authorized the issue of $750,000 in water bonds. Acts 1922, ch. 10, authorized the issue of $500,000 in water bonds.

(13) The word "therefor" evidently intended.

(14) Section 1 of Acts 1924, ch. 69, authorized the issue of water improvement bonds for $750,000. See Ord. No. 1220, April 14, 1930.

(15) Section 1 of Acts 1929, ch. 548, authorized the issue of water improvement bonds in the amount of $200,000. See Ord. No. 1221, April 14, 1930; Ord. 1256, December 8, 1930.

Sec. 5A of said Act read as follows: "The Mayor and City Council of Cumberland shall exercise the powers herein granted, only in the event that Chapter 552 of the Acts of the General Assembly of 1929, the same being House Bill No. 313 and pertaining to the increasing of the corporate limits of the City of Cumberland, shall have become effective by a referendum vote, as therein provided." At the referendum election in November, 1930, Ch. 552 of 1929 was approved by the voters, by a vote of 3,247 For and 535 Against.

Petition for mandamus to require city under this Act to furnish water to petitioner, denied. Shriver v. Cumberland, Case No. 1432, Miscellaneous Docket, Allegany County Circuit Court. 169 Md. 286, 181 Atl. 444.

The proceeds of these bonds should be used in the new area added to the city by Acts 1929, ch. 552, except as to necessary connecting work in the old portion of the city. Myers v. Cumberland, Case No. 1318, Miscellaneous Docket, Allegany County Circuit Court.

(16) Sections 89 and 90 probably are obsolete. No action was ever taken under them.

(17) Section 1 of Acts 1931, ch. 6, authorized the issue of water improvement bonds in the amount of $900,000. See Ord. No. 1259, March 2, 1931; Ord. No. 1261, March 31, 1931; Ord. No. 1308, December 14, 1931; Ord. No. 1311, December 31, 1931.

(18) Section 1 of Acts 1933, ch. 23, authorized the issue of water improvement bonds of 1933 in the amount of $225,000. See Ord. No. 1330, March 6, 1933.

(19) Section 1 of Acts 1939, ch. 23, authorized the issue of water improvement bonds in the amount of $150,000. See Ord. No. 1689, April 17, 1939.

The title of ch. 23 of Acts 1939, authorizing the issue of water improvement bonds of 1939, held to be sufficient. Hitchins v. Cumberland, 177 Md. 72, 8 A.2d 626. For the opinion of the Allegany County Circuit Court, see Equity Case No. 15,269.

(20) Section 1 of Acts 1941, ch. 932, authorized the issue of water bonds in the amount of $500,000. It was approved by the voters by a vote of 2,763 For and 2,395 Against. See Ord. No. 1837, April 26, 1948.

(21) See Anno. Code of Md., 1957, art. 31, §§ 9 to 11.

(22) Section 1 of ch. 3 of the Special Session of 1945 authorized the issue of water improvement bonds in the amount of $250,000. See Ord. No. 1838, April 26, 1948.

(23) Section 1 of Acts 1949, ch. 496, authorized the issue of water improvement bonds in the amount of $350,000.

(24) The reference to section 390, originally found in the 1930 Code of Public Local Laws is clearly erroneous. The original reference, found in chapter 96 of Acts 1922, is to section 339, which then applied to religious corporations, which is now codified as art. 23, § 256, Anno. Code of Md., 1957. For present state law as to powers of condemnation by water companies, see Anno. Code of Md., 1957, art. 23, §§ 332, 333. As to condemnation of property by corporations generally, see Anno. Code of Md., 1957, art. 23, §§ 334 to 341.

(25) See Anno. Code of Md., 1957, art. 23, §§ 206, 207.

(26) General state law now requires the tax rate to be set not later than July 1 of each year. See Anno. Code of Md., 1957, art. 81, § 32.

(27) See Anno. Code of Md., 1957, art. 23, § 332, et seq.

(28) Although a street may have been dedicated by the owner and used by the public, the city is not liable to a person injured in consequence of its defective condition unless the dedication has been formally accepted. Ogle v. Cumberland, 90 Md. 59, 44 Atl. 1015; Kennedy v. Cumberland, 65 Md. 514, 9 Atl. 234.

In an action for injuries received by an occupant of an automobile which skidded while rounding a curve, the city was not negligent because the surface of the street was smooth and slippery, it appearing that experienced engineers had selected the material for surfacing the street, and it not appearing that the operator of the vehicle was driving within the speed limit. Cumberland v. Turney, 177 Md. 297, 9A, 2d 561.

(29) The reference to section 848 is obviously erroneous, since no such section has ever existed in article 23. For present state law as to condemnation by corporations, see Anno. Code of Md., 1957, art. 23, §§ 334 to 341.

(30) This section was applied in a case of injury caused by water connection or appliance installed by the city and projecting upwards from the sidewalk. Engle v. Cumberland, 180 Md. 465, 25 A.2d 446.

(31) See Anno. Code of Md., 1957, art. 81, § 32.

(32) For state law as to uniform fiscal year for all cities, see Anno. Code of Md., 1957, art. 81, § 29A.

(33) As such sections existed when Acts 1922, ch. 96, was enacted.

(34) Now Anno. Code of Md., 1957, art. 33A.

(35) See now, Anno. Code of Md., 1957, art. 23, §§ 334 to 340.

(36) The reference is to sections 116 and 128 of the City Charter in the 1930 Code of Public Local Laws. Both of these sections were repealed by Acts 1937, ch. 388.

(37) Repealed.

(38) This section was adopted at an election held May 21, 1963, by a vote of 3,827 For and 1,503 Against.

(39) Unnumbered Resolution 1, effective July 22, 1994, provided for the annexation of 27,321.68 square feet, more or less, Unnumbered Resolution 2, effective May 19, 1995, provided for the annexation of 39,958 square feet, more or less, Unnumbered Resolution 3, effective October 24, 2002, provided for the annexation of 43.458 acres of land, more or less, and Unnumbered Resolution 1, effective August 1, 2003, provided for the annexation of certain parcels of land. Unnumbered Resolution 3, effective November 5, 2004, provided for the annexation of 183.12 acres of land, more or less. Unnumbered Resolution 4, effective September 22, 2006, provided for the annexation of 15.09 acres of land, more or less, and Unnumbered Resolution 5, effective September 22, 2006, provided for the annexation of 23.75 acres of land, more or less. Unumbered Resolution 6, effective June 13, 2008, provided for the annexation of 5 acres of land, more or less. Resolution Number 2008–02, effective July 25, 2008, provided for the annexation of 32.14 acres of land, more or less. Resolution Number R2009–09, effective August 21, 2009, provided for the annexation of 7.45 acres of land, more or less. These Resolutions, however, failed to provide for the change in the boundary description that is contained in this charter. Accordingly, these annexations are simply noted pursuant to the municipal general powers section.

(40) Pursuant to Article III, Section 61 of the Maryland Constitution, the General Assembly of Maryland granted urban renewal powers for slum clearance to the City of Cumberland in Chapter 758 of the Acts of the General Assembly of 1961.

Starting with the 1997 Supplement to the *Public Local Laws of Maryland – Compilation of Municipal Charters*, the urban renewal powers for slum clearance for the City of Cumberland appear as this appendix in accordance with 80 *Opinions of the Attorney General* _____ (1995) Opinion No. 95–037 (September 21, 1995) and Sections 10 and 11 of Chapter 14 of the Acts of the General Assembly of 1997.

Formerly, the urban renewal powers appeared as Sections 215 through 225, inclusive, of this charter. Resolutions passed by the City of Cumberland concerning these powers are Charter Amendment Resolution No. 61, effective June 20, 1973 and Charter Amendment Resolution No. 118, effective January 1, 1997.

(41) Resolution 125, effective March 30, 2002 enacted an unnumbered section. The town indicated in correspondence to the Department that it be numbered Section 11A.

(42) Resolution 130, effective February 4, 2004, enacted an unnumbered section. The town indicated in correspondence to the Department that it be numbered Section 33.

(43) Unnumbered Resolution 2, effective May 24, 2002, which provided for the annexation of 294.18 acres of land, was declared invalid by the Circuit Court for Allegany County in Case No. 01–C–02–20680–L. Unnumbered Resolution 2, effective May 21, 2004, which provided for the annexation of 294.18 acres of land, was declared invalid by the Circuit Court for Allegany County in Civil Action No. C–04–23570.