

The Town of Upper Marlboro
CHARTER AMENDMENT RESOLUTION NO. 01-2022

A CHARTER AMENDMENT RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF UPPER MARLBORO, MARYLAND AMENDING SECTION 82-45 (LAPSE OF APPROPRIATIONS), OF THE CHARTER OF THE TOWN OF UPPER MARLBORO, MARYLAND THEREBY AUTHORIZING THE CREATION OF CERTAIN RESERVE OR OTHER NON-LAPSING FUNDS TO BE MADE AVAILABLE FOR UNANTICIPATED OR EXTRAORDINARY EXPENSES THAT MAY BE INCURRED, OR FOR ANY OTHER SPECIFIC INTENDED PURPOSE AS AUTHORIZED BY STATE STATUTE OR ORDINANCE; AND AUTHORIZING THE BOARD TO APPROPRIATE FUNDS FROM ANY RESERVE ESTABLISHED FOR UNANTICIPATED, EMERGENCY OR EXTRAORDINARY EXPENSES PROVIDED IN THE BUDGET OR OTHER ORDINANCE TO MEET EXTRAORDINARY OR UNANTICIPATED EXPENDITURES; AND PROVIDING THAT RESERVE FUNDS SHALL NOT LAPSE AT THE END OF THE BUDGET YEAR BUT SHALL REMAIN AVAILABLE UNTIL APPROPRIATED AND EXPENDED; AND AMENDING SECTION 82-56 (PURCHASING AND CONTRACTS) OF THE CHARTER OF THE TOWN OF UPPER MARLBORO, MARYLAND TO AUTHORIZE THE PRESIDENT OF THE TOWN BOARD OF COMMISSIONERS TO MAKE CERTAIN PURCHASES AND EXECUTE CERTAIN CONTRACTS AT OR BELOW \$10,000.00 WITHOUT BOARD APPROVAL; AND BY PRESCRIBING THAT THE BOARD BY SUPERMAJORITY VOTE MAY DETERMINE A DIFFERENT METHOD OF COMPETITIVE PROCUREMENT AND SHALL PROVIDE BY ORDINANCE FOR CERTAIN RULES AND REGULATIONS TO CONDUCT COMPETITIVE PROCUREMENT THROUGH REQUESTS FOR PROPOSALS, NEGOTIATED BIDS AND PROPOSALS, AND OTHER FORMS OF PURCHASING; AND BY SUBJECTING ALL CONTRACTS AND PURCHASES EXCEEDING \$75,000 TO BE APPROVED IN WRITING AND MADE USING COMPETITIVE OR OTHER PROCUREMENT METHODS; AND GENERALLY RELATING TO PURCHASING AND CONTRACTS, RESERVE FUNDS AND MUNICIPAL FINANCE

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE TOWN OF UPPER MARLBORO, MARYLAND adopted pursuant to the authority of Article XI-E, § 4 of the Constitution of the State of Maryland and the Local Government Article, § 4-301 *et seq.* of the Annotated Code of Maryland, to amend Sections 82–45 (Appropriations Lapse After One Year), and 82-56, (Purchasing and Contracts) of the Charter of The Town of Upper Marlboro to authorize the creation by ordinance of certain non-lapsing reserve funds by the Board of Commissioners and to further authorize the Board of Commissioners and the President to make

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certain purchases and enter into certain contracts, and to provide that certain alternative forms of competitive bidding or other procurement methods including sealed bids and requests for proposals be used when procuring goods and services for the Town.

WHEREAS, currently the Town Charter states in Section 82-45 that all appropriations shall lapse at the end of the budget year to the extent that they have not been expended or lawfully encumbered and that any unexpended and unencumbered funds shall be considered a surplus at the end of the budget year and shall be included among the anticipated revenues for the next succeeding budget year; and

WHEREAS, the Government Finance Officers Association (“GFOA”) recommends, at a minimum, that general-purpose governments, regardless of size, maintain unrestricted budgetary fund balances in their general funds of no less than two months of regular general fund operating revenues or regular general fund operating expenditures; and

WHEREAS, the Board further finds that a reasonable level of unreserved, unappropriated fund balance or a reserve consistent with prudent budgeting practices, necessary to ensure the orderly operation of the government, provides a cushion for unforeseen expenditures or revenue shortfalls and helps to ensure that adequate cash flow is available to meet the cost of operations; and

WHEREAS, the Board further finds that reserve funds having specific intended purposes may provide a mechanism for legally saving money to finance all or part of future infrastructure, equipment, emergency relief, and other requirements; and

WHEREAS, the Maryland Municipal League in a paper entitled “Municipal Government Finances” published in 2012 regarding municipal financing of capital projects states that:

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Several strategies can be implemented to provide adequate funding under the pay-as-you-go approach. For example, a municipality could allocate several years' appropriations to a reserve fund, usually a capital projects fund, to accumulate sufficient resources for costly projects. In addition, some jurisdictions earmark a certain percentage of property tax proceeds or other specific revenues to fund capital activities. For example, the municipality may accumulate the proceeds from one cent of the property tax rate in a capital fund or reserve revenues from the sale of fixed assets. Finally, some municipalities may dedicate a specific annual appropriation for a capital projects fund, such as \$100,000 for a smaller municipality or \$1,000,000 for a larger city and treat the allocation as a routine expense. Capital projects reserves also provide an additional source of interest revenue to the municipality; and

WHEREAS, the Board further finds that the Town would benefit from enacting this Charter amendment to conform the Town Charter and future financial and budgetary practices with sound financial and procurement practices as recommended by MML and GFOA, and to modify and make more efficient the purchasing and contracting requirements of the Town Charter.

Section 1. NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE TOWN OF UPPER MARLBORO on this ____ day of October 2022, that Section 82-45 (Appropriations Lapse After One Year), and Section 82-56, (Purchasing and Contracts) of the Charter of The Town of Upper Marlboro, Maryland shall be and are hereby amended to read as follows:

Finance

Section 82–45. (Appropriations Lapse After One Year; RESERVE FUNDS).

(A) **EXCEPT FOR APPROPRIATIONS FOR ANY RESERVE FUND CREATED PURSUANT TO THIS SECTION, ~~[[A#]]~~ ALL** appropriations shall lapse at the end of the budget year to the extent that they have not been expended or lawfully encumbered. **EXCEPT AS STATED HEREIN, ~~[[Any]]~~ ANY** unexpended and unencumbered funds shall be considered a surplus at the end of the budget year and shall be included among the anticipated revenues for the next succeeding budget year. **AN APPROPRIATION FOR A RESERVE FUND OR SIMILAR NON-LAPSING**

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FUND SHALL CONTINUE IN FORCE UNTIL EXPENDED, REVISED OR REPEALED, OR THE ENTIRE FUND IS DISSOLVED WITH ANY SURPLUS OR UNEXPENDED FUNDS TO BE TRANSFERRED TO THE GENERAL FUND.

(B) A RESERVE FUND OR FUNDS MAY BE ESTABLISHED BY ORDINANCE. SUCH RESERVE FUNDS MAY BE USED FROM TIME TO TIME FOR SUCH PURPOSES AS (I) CAPITAL EXPENDITURES, I.E., EQUIPMENT, FACILITIES, LAND ACQUISITION, STREET CONSTRUCTION AND THE LIKE, (II) TO GUARANTEE THE TEMPORARY CONTINUATION OF SERVICES DIRECTLY AFFECTED BY A LOSS OF SUPPORTING BUDGETED REVENUES, (III) TO PROVIDE FOR LONG TERM INVESTMENTS, AND (IV) TO PROVIDE DISASTER OR EMERGENCY RELIEF FOR RESIDENTS, PROPERTY OWNERS, AND BUSINESSES OF THE TOWN OF UPPER MARLBORO. A FAVORABLE VOTE OF AT LEAST A MAJORITY OF THE ENTIRE BOARD SHALL BE NECESSARY FOR THE ADOPTION OR REPEAL OF AN ORDINANCE CREATING SUCH A RESERVE FUND.

Section 82-56. (Purchasing and Contracts).

All purchases and contracts for the Town government shall be authorized by the Board or the President as provided herein. The President, as prescribed by ordinance, may be authorized to make individual purchases and execute contracts up to \$~~[[2,000]]~~ **10,000** in cost so long as the duration of the purchase or contract is one year or less without prior Board approval if such contracts or purchases were previously authorized by a budget ordinance or approved within any detailed budget documents supporting said budget ordinance. The Board shall provide by ordinance for rules and regulations regarding the use of sealed competitive bidding, request for proposals, negotiated proposals, negotiated bids and other forms of bids or offers, **AND ANY OTHER CONTRACTUAL MATTERS** as appropriate, for all Town purchases and contracts in keeping with good procurement practices and fiscal responsibility. All expenditures for contracts and purchases with an anticipated cost of more than ~~[[ten thousand dollars (\$10,000)]]~~ **\$75,000** shall be subject to **A competitive** ~~[[sealed bidding]]~~ **PROCUREMENT PROCESS DETERMINED BY THE BOARD** unless the Board, by ~~[[unanimous]]~~ **SUPERMAJORITY** vote of the full Board, finds another method of procurement, **AS PRESCRIBED BY ORDINANCE**, to be more advantageous. The Board shall ~~[[advertise]]~~ **ADVERTISE** for competitive sealed bids **OR ANOTHER METHOD OF PROCUREMENT** in such manner as shall be prescribed by ordinance for all such competitive ~~[[sealed bids]]~~ **OR OTHER METHODS OF PROCUREMENT**. ~~[[Competitive sealed bidding]]~~ **COMPETITIVELY PROCURED** contracts shall be awarded to the bidder **OR OFFEROR** who offers the lowest or best bid **OR OFFER**, quality of goods and work, time of delivery or completion, and responsibility of bidders **OR OFFERORS** being considered. All such ~~[[competitive sealed bidding]]~~ **COMPETITIVELY PROCURED AND OTHER CONTRACTS EXCEEDING \$75,000** shall **BE IN WRITING AND** approved by the Board before becoming effective. The Board shall have the right to reject all bids, **PROPOSALS OR OFFERS** and re-advertise. The Town, at any time in its discretion, may employ its own force for the construction or reconstruction of public improvements without advertising for (or re-advertising for) or receiving bids **OR**

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OFFERS. All contracts may be protected by such bonds, penalties and conditions as the Town may require. ~~[[For each fiscal year ending in a five or zero, the Board may adjust by ordinance the dollar amount the President is authorized to contract for or the dollar amount subject to competitive sealed bidding in an amount that may not exceed the cumulative Consumer Price Index for all urban consumers published by the United States Department of Labor for the preceding five or ten year period, or since the last adjustment was otherwise established by ordinance pursuant to this section.]]~~

* * *

Section 2. **BE IT FURTHER RESOLVED** that the Board finds that in addition to the other procedural charter adoption provisions found in State law, the General Assembly of Maryland passed HB 615 during the 2018 session effective July 1, 2018, requiring the legislative body of a municipality to hold a public hearing and give at least 21-days' notice by posting the notice in a public place before adopting a resolution initiated by the legislative body that proposes an amendment to the municipal charter; and

Section 3. **BE IT FURTHER RESOLVED** that this Charter Amendment Resolution is adopted on the aforementioned date, and that upon adoption by the Board of Commissioners of The Town of Upper Marlboro, Maryland a complete and exact copy of this Charter Amendment Resolution shall be posted in the Town Office for a period of at least forty (40) days following the date of its adoption. Additionally, a fair summary of the proposed Amendment shall be published in a newspaper of general circulation in The Town of Upper Marlboro not less than four (4) times at weekly intervals within the forty (40) days following the adoption of this Charter Amendment Resolution.

Section 4. **BE IT FURTHER RESOLVED** that the Amendment initiated in this Charter Amendment Resolution shall take effect and shall become and be considered the Charter of The Town of Upper Marlboro, upon the fiftieth day after being so ordained or passed unless on or before the fortieth day after being so adopted and passed a referendum petition meeting the

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requirements of State law shall be presented to the Board of Commissioners of The Town of Upper Marlboro, Maryland or mailed to it by certified mail, return receipt requested, bearing a postmark from the United States Postal Service.

Section 5. **BE IT FURTHER RESOLVED** that when the Charter Amendment hereby initiated becomes effective, as provided herein, or following a referendum election, the Town Clerk shall send separately, by certified mail, return receipt requested, to the Department of Legislative Services within 10 days after the charter resolution becomes effective, the following information concerning the Charter Amendment: (i) the complete text of this Charter Amendment Resolution; (ii) the date of the referendum election, if any held with respect thereto; (iii) the number of votes cast for and against this Charter Amendment Resolution by the Board of Commissioners of The Town of Upper Marlboro, Maryland or a referendum election; and (iv) the effective date of the Charter Amendment.

Section 6. **BE IT FURTHER RESOLVED** that the Town Clerk of The Town of Upper Marlboro is specifically instructed to carry out the provisions of Sections 2, 3, 4 and 5 hereof, as evidence of compliance herewith, the Town Clerk shall cause to be affixed to this Charter Amendment Resolution and to the Minutes of the Board of Commissioners Meeting in which it is adopted (i) an appropriate certificate of publication of the newspaper in which the summary of the Charter Amendment Resolution shall have been published and (ii) return receipts of the mailing referred to in Section 5, and shall further complete and execute the Certificate of Effect attached hereto.

INTRODUCED by the Board of Commissioners of the Town of Upper Marlboro, Maryland at a regular meeting on the _____ day of _____, 2022.

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PASSED by the Board of Commissioners of the Town of Upper Marlboro, Maryland at a regular meeting on the _____ day of _____, 2022.

Attest:

THE TOWN OF UPPER MARLBORO
BOARD OF COMMISSIONERS

Sarah Franklin, President

Janice Duckett, Commissioner

Charles Colbert, Commissioner

Karen Lott, Commissioner

John Hoatson, Town Clerk

Thomas Hatchett, Commissioner

CHARTER RESOLUTION CERTIFICATE

I, JOHN HOATSON, the duly appointed, and qualified Clerk to the Board of Commissioners of the Town of Upper Marlboro, a municipal corporation of the State of Maryland, do hereby certify that (i) the attached copy of Charter Amendment Resolution 01-2022 is true, correct and complete; (ii) Charter Amendment Resolution 01-2022 was duly adopted by the Board of Commissioners of the Town of Upper Marlboro at a regular meeting held on the ____ day of _____, 2022; (iii) said meeting was duly convened and a quorum was present and acting throughout; (iv) Charter Amendment Resolution 01-2022, after having been introduced and fully discussed, was duly adopted, by a majority of Commissioners elected to the body and voting in the affirmative; and (v) Charter Amendment Resolution 01-2022 has not been subsequently amended, modified or repealed and remains in full force and effect as of the date hereof.

IN WITNESS WHEREOF, I have hereunto set my hand and the seal of Town of Upper Marlboro this ____ day of _____, 2022.

(SEAL)

John Hoatson, Town Clerk
The Town of Upper Marlboro

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CHARTER AMENDMENT TIMELINE

DATE 21-DAY HEARING NOTICE POSTED: _____
DATE OF HEARING: _____
DATE OF INTRODUCTION: _____ (May be same as hearing)
DATE PASSED/POSTED: _____ (May be same as introduction)
40-DAY POSTING END DATE: _____
FAIR SUMMARY NEWSPAPER (x 4)
WEEKLY PUBLICATION DATES: _____

EFFECTIVE (50TH DAY) DATE: _____

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