



**SALISBURY CITY COUNCIL
WORK SESSION AGENDA**

WEDNESDAY, JULY 5, 2023

Government Office Building, Conference Room 306 and Zoom Video Conferencing

4:30 p.m. Discussion- Labor Code- Administration, City Attorney Ashley Bosché

5:10 p.m. Administration and Council Comments

5:20 p.m. Adjournment

*Times shown are approximate. Council reserves the right to adjust the agenda as circumstances warrant.
The Council reserves the right to convene in Closed Session as permitted under the Annotated Code of Maryland 3-305(b).*

Join Zoom Meeting

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Meeting ID: 881 6325 3286

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Phone: 1.301.715.8592

**AN ORDINANCE OF THE CITY OF SALISBURY TO AMEND THE
SALISBURY CITY CODE TO ADD CHAPTER 2.25 ENTITLED
“LABOR CODE” IN FURTHERANCE OF CHARTER AMENDMENT
RESOLUTION 2022-4, WHICH AUTHORIZED COLLECTIVE
BARGAINING FOR CERTAIN EMPLOYEES OF THE CITY.**

WHEREAS, by Charter Amendment Resolution 2022-4 Mayor and Council publicly declared there exists a need for harmony and cooperation between a public employer and its employees and recognized the benefit of allowing certain employees to organize and bargain collectively; and

WHEREAS, the City of Salisbury amended its Charter to add Article XXIII to grant certain employees the right to organize and bargain collectively through representative employee organizations of their own choosing and to submit to binding arbitration certain labor disputes that may arise during negotiations, as subsequently defined and established by the City’s “Labor Code,” which was to be passed by ordinance of Mayor and Council; and

WHEREAS, Mayor and Council hereby adopt this Labor Code, which is to be codified in Chapter 2.25 of the Code to define and establish, *inter alia*, the scope and subjects of bargaining, including negotiable and non-negotiable times, or both; the rights of the employer and employee; the units appropriate and inappropriate for collective bargaining; unfair labor practices; permissible and impermissible union activities; and the scope and method of binding arbitration and the disputes to be submitted to binding arbitration; and

WHEREAS, the City of Salisbury recognizes the need to protect the public by assuring uninterrupted, effective, and orderly service and, consequently, this Labor Code shall prohibit strikes or work stoppages for all employees; and

NOW, THEREFORE, BE IT ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 1. The Salisbury City Code be and is hereby amended by adding Chapter 2.25 as set forth below:

2.25.010 Title and Legislative Findings.

(a) *Title of Chapter.* This Chapter shall be referred to as the City’s “Labor Code.”

(b) *Legislative findings.* It is the public policy of the City and the purpose of this Labor Code to promote a fair, harmonious, peaceful and cooperative relationship between the management of the City and those employees of the City who are covered by this Labor Code, and to ensure the public health, welfare and safety of the City will be maintained at all times.

2.25.020 Definitions.

For the purposes of this Labor Code, the following words and phrases shall have the meanings respectively ascribed to them:

- (a) *Budget submission date*. "Budget submission date" means the date not later than 60 days before the end of the fiscal year on which the Mayor submits to the City Council the proposed City budget for the following fiscal year.
- (b) *City administration*. "City administration" means the Mayor, the City Administrator, Deputy City Administrator and all department and deputy department heads or their designees.
- (c) *Confidential employee*. "Confidential employee" means an employee who:
1. Has access to confidential information, including budgetary and fiscal data, subject to use by the City administration in collective bargaining; or
 2. Works in a close and continuing confidential relationship assisting or aiding the City Administration.
- (d) *Employee*.
1. "Employee" means a person employed by the City full-time or part-time, who is not a confidential employee or management employee as defined by this Labor Code.
 2. "Employee" does not include any seasonal employees.
- (e) *Employee organization*.
1. "Employee organization" means an association, labor organization, federation, council, or brotherhood, a purpose of which is to represent employees of a public employer in matters authorized by Article XXIII of the City's Charter and this Labor Code.
 2. "Employee organization" does not include an association, labor organization, federation, council, or brotherhood, that discriminates with regard to the terms or conditions of membership because of race, color, creed, sex, age, national origin, political affiliation, religion, marital status, sexual orientation, gender identity, genetic information, disability, or any other protected class.
- (f) *Employer*. "Employer" means the City of Salisbury, Maryland body corporate.
- (g) *Exclusive representative*. "Exclusive representative" means an employee organization that is certified as the exclusive negotiating agent for employees within a representation unit.
- (h) *Impasse*. "Impasse" means the failure of the employer and the exclusive representative to reach a collective bargaining agreement despite good faith efforts to do so.
- (i) *Grievance*. "Grievance" is a complaint as defined by the City's Employee Handbook.
- (j) *Management employee*. "Management employee" means an employee who has a significant role in the preparation and administration of budgets for a City Department and may reasonably be required to assist directly in the preparation for and conduct of collective bargaining negotiations on behalf of the City administration or have a significant role in the administration of collective bargaining agreements.

For purposes of this Labor Code, an employee holding the rank of Captain or above within the Fire Department and rank of Lieutenant or above within the Police Department is deemed to be a "management employee."

- (k) *Collective bargaining agreement.* "Collective bargaining agreement" means a written collective bargaining agreement signed by the Mayor and the exclusive representative, covering all items agreed to by both parties and ratified by City Council.
- (l) *Representation unit.* "Representation unit" means a grouping of positions in the City recognized as appropriate for representation by an employee organization into a unit described under this Labor Code for the purpose of representation in negotiations.
- (m) *Third-party agency.* "Third-party agency" means an independent agency like the American Arbitration Association, Federal Mediation Conciliation Service, or JAMS, all of which offer panels of qualified labor arbitrators.

2.25.030 Director of Human Resources.

- (a) *General.* The Director of Human Resources shall carry out certain duties and functions of this Labor Code and, to ensure impartiality, shall refer certain duties and functions to a third-party agency, including supervising the conduct of representation elections and granting or revoking certification of employee organizations as the exclusive representative.
- (b) *Authority.* The Director of Human Resources shall be charged with the administration of the Labor Code and is authorized and empowered to take any rules and regulations as may be necessary or proper to put into operation and effect the provisions of this Code.

2.25.040 Management and Confidential Employees.

- (a) *Exclusion from collective bargaining.* All management and confidential employees are excluded from participation in a representation unit, and thus prohibited from engagement in collective bargaining.
- (b) *Authority to meet with the City administration.* Nothing in this Labor Code may be construed to preclude management and confidential employees from meeting and conferring with the City administration.

2.25.050 Representation Units.

- (a) *Exception.* This section does not apply to confidential or management employees.
- (b) *In general.* Employees who are not confidential or management employees shall constitute the following separate representation units:
 - 1. Fire;

144
145 2. Police; or

146
147 3. General Government.
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149
150 **2.25.060 Employee rights.**
151

- 152 (a) Employees shall have the right of self-organization; to form, join, or assist employee
153 organizations; and to bargain collectively through representatives of their own choosing as
154 provided by Article XXIII of the Charter and this Labor Code. Employees shall also have
155 the right to refrain from any or all such activities.
156
157 (b) Employees shall be free from retaliation for the exercise of any rights set forth herein, or
158 for participating in any proceeding established pursuant to this Labor Code.
159
160 (c) Employees are expected to communicate any concerns or suggestions to their Department
161 Head or to the Mayor's Office. The Department Head will meet with any employee upon
162 request at a convenient time.
163
164 (d) Nothing in this Labor Code shall prohibit an employee from presenting, discussing or
165 resolving any concern or dispute directly with the employer and without the intervention
166 of the exclusive representative, provided any adjustment or resolution shall not be
167 inconsistent with the terms of any applicable collective bargaining agreement.
168
169

170 **2.25.070 Employer rights.**
171

- 172 (a) The employer shall have the following rights:
173
174 1. To determine the budget of the City, including all financial obligations and
175 expenditures, and to exercise its taxing authority;
176
177 2. To determine the ways and means to allocate funds to its various departments and
178 projects;
179
180 3. To exercise control and discretion over its organization and operations;
181
182 4. To determine how and when to deploy its personnel;
183
184 5. To establish, suspend, relocate or discontinue operations, facilities, stations, or services
185 and to reduce personnel;
186
187 6. To determine the way personnel will be used to ensure public safety;
188

- 189 7. To adopt reasonable rules, regulations and general orders pertaining to the City's
190 purpose, operation, techniques, efficiency and management which are not inconsistent
191 with the terms of the collective bargaining agreement;
192
 - 193 8. To determine staffing, including, but not limited to, the use of full and part-time
194 employees and the number of such employees;
195
 - 196 9. To suspend, demote, discharge or take disciplinary action against employees, and in
197 the case of sworn police officers to do so subject to the provisions of the Maryland
198 Police Accountability Act; and
199
 - 200 10. To discharge employees it reasonably believes to be involved in a strike, and in the
201 case of sworn police officers to do so subject to the provisions of the Maryland Police
202 Accountability Act.
203
- 204 (b) The employer shall not enter into or become bound by any collective bargaining agreement
205 pursuant to this Labor Code that contains terms that infringe upon or limit the rights set
206 forth in this section or otherwise provided by law.
207
208

209 **2.25.080 Collective bargaining.** 210

- 211 (a) *Bargaining in good faith.* Upon certification of an employee organization as the exclusive
212 representative, the employer and the exclusive representative shall have the duty, through
213 their designated representatives, to negotiate collectively and in good faith with respect to
214 the subjects of bargaining enumerated in this Labor Code and to reduce to writing the
215 matters agreed upon as a result of such negotiations.
216
- 217 (b) *Negotiations deferred.*
218
- 219 1. If an employee organization is certified after March 1 of any fiscal year, negotiations
220 shall be deferred until the appropriate time in the budget preparation process in the
221 following fiscal year.
222
- 223 (c) *Employer/employee organization representative.*
224
- 225 1. The employer shall appoint the employer's representative or representatives for the
226 purpose of conducting any bargaining with the exclusive representative of a
227 representation unit.
228
 - 229 2. The exclusive representative of a representation unit shall appoint a representative or
230 representatives for the purpose of conducting any bargaining with the employer.
231
- 232 (d) *Subjects of bargaining.* The employer and exclusive representative may bargain
233 collectively and reach agreement on the following subjects of bargaining:
234
1. Wages;

- 235
236 2. Hours;
237
238 3. Uniform and dress code; and
239
240 4. Promotional schedules and training.
241

242 (e) *Scope of bargaining.* The employer shall not enter into, or be bound by, any collective
243 bargaining agreement, amendment thereto or other agreement that covers a subject of
244 bargaining not specifically enumerated in this section, or which alters, amends, deletes,
245 modifies or infringes upon any of the employer rights enumerated in this Labor Code.
246

247 (f) *Duration of collective bargaining agreement.* The employer shall not enter into, or be
248 bound by, any collective bargaining agreement that is in effective for fewer than two years.
249

250 (g) *Retroactivity.* No retroactivity shall be allowed in any collective bargaining agreement or
251 in any appropriation or legislation that is required to affect any collective bargaining
252 agreement.
253

254
255 **2.25.090 Representation.**
256

257 (a) *Certification of representative.* No collective bargaining agreement shall be valid or
258 enforceable unless it is between the employer and an employee organization that is certified
259 as the exclusive bargaining representative for employees in the bargaining unit.
260

261 (b) *Majority of employees.* Certification of an employee organization shall only occur if the
262 employee organization has been selected or designated by a majority of employees in the
263 bargaining unit.
264

265 (c) *Procedure.*
266

- 267 1. *Certification election.* An employee organization seeking exclusive representative
268 status for employees in the representation unit shall file a petition with the Director of
269 Human Resources accompanied by evidence that at least thirty (30) percent of the
270 employees in the representation unit have designated the employee organization as their
271 exclusive representative. A petition may not be accepted by the Director of Human
272 Resources unless filed by the employee organization prior to September 1. Within thirty
273 (30) days of filing a petition for certification, the Director of Human Resources shall
274 retain a third party agency to conduct a secret ballot election. If the results of the secret
275 ballot election establish that a majority of those employees voting in the election
276 designate the petitioning employee organization as their exclusive representative, then
277 the thirty-party agency shall certify the employee organization as the exclusive
278 representative and the Director of Human Resources shall authorize the employer to
279 bargain collectively as provided for in this Chapter.
280

- 281 2. *Voluntary recognition.* In the event a petition filed by an employee organization is
282 accompanied by valid evidence that more than fifty (50) percent of the employees in
283 the representation unit have designated the employee organization as their exclusive
284 representative for purposes of collective bargaining, the Director of Human Resources
285 shall voluntarily recognize the employee organization without first conducting a
286 certification election. Upon voluntary recognition pursuant to this section, the Director
287 of Human Resources shall certify the employee organization as the exclusive
288 representative and shall authorize the employer to bargain collectively as provided for
289 in this Chapter.
290
- 291 3. *Decertification election.* Any employee seeking to terminate the certification of an
292 employee organization as the exclusive representative of employees in the
293 representation unit may file a petition with the Director of Human Resources
294 accompanied by evidence that at least thirty (30) percent of the employees in the
295 representation unit have expressed their desire to remove the employee organization as
296 their exclusive representative. Within thirty (30) days of the filing of a petition for
297 decertification, the Director of Human Resources shall retain a third party to conduct a
298 secret ballot election. If the results of the secret ballot election establish that a majority
299 of those employees in the representation unit no longer wish to have the employee
300 organization as their exclusive representative, then the third-party agency shall
301 decertify the employee organization as the exclusive representative of the employees
302 in the petitioned-for unit. The decertification of an employee organization does not
303 void or moot any agreement currently then in effect.
304
- 305 4. No election under this section may be conducted more frequently than once every
306 twenty-four (24) months.
307

308 **2.25.100 Unfair labor practices.**

- 309
- 310 (a) *Employer unfair labor practices.* It shall be an unfair labor practice for the employer to
311 engage in the following conduct:
312
- 313 1. Interfere with, restrain or coerce employees in the exercise of their rights guaranteed
314 under this Labor Code;
315
 - 316 2. Encourage or discourage membership in any employee organization;
317
 - 318 3. Fail or refuse to negotiate in good faith with an exclusive representative;
319
 - 320 4. Retaliate against an employee because of that employee's exercise of rights guaranteed
321 under this Labor Code; or
322
 - 323 5. Control or dominate an employee organization or contribute financial or other support
324 to it.
325

(b) *Employee organization unfair labor practices.* It shall be an unfair labor practice for an employee organization by and through its officers, agents and representatives to engage in the following conduct:

1. Interfere with, restrain or coerce employees in the exercise of their rights guaranteed under this Labor Code;
2. Induce the employer or its representatives to commit any unfair labor practice;
3. Directly or indirectly, cause, instigate, encourage, condone, initiate, sponsor, support, direct or engage in any strike;
4. Fail or refuse to negotiate in good faith with the employer; or
5. Retaliate against an employee because of that employee's exercise of rights guaranteed under this Labor Code.

2.25.110 Checkoff.

(a) *Dues checkoff.* When an employee organization has been certified as the exclusive representative of the employees in the bargaining unit, it shall be the only employee organization eligible to obtain an agreement from the employer to deduct dues or service fees of the employee organization from the pay of those employees in the unit who provide a written, signed and dated authorization, and to remit said dues to the employee organization without cost. All authorizations shall be in effect for one (1) year and shall be automatically renewable from year to year unless written notice of termination by the employee is received by the Director of Human Resources. An employee may terminate an authorization at any time by giving thirty-days written notice to the Director of Human Resources.

(b) *Indemnification.* The employer shall not have the authority to enter into a collective bargaining agreement that authorizes the deduction of dues from pay unless the agreement contains a provision whereby the employee organization agrees to indemnify the employer for any and all claims arising out of the deduction of dues and/or fees pursuant to this section.

(c) *No compulsory union membership.* No agreement between the employer and an employee organization shall compel any employee to become and remain a member of the employee organization and/or pay dues.

2.25.120 Permissible union activities.

Solicitation of members and dues may be conducted during work hours provided it is not disruptive to work. Employer-requested or approved consultations and meetings between the employer and

representatives of the exclusive representative shall, whenever practicable, be conducted on official time. Negotiations between the employer and representatives of the exclusive representative for the purpose of negotiating a collective bargaining agreement shall be conducted during work hours.

2.25.130 Work actions prohibited.

(a) *Definitions.* In this section, the following words have the meanings indicated.

1. "Lockout" means the temporary withholding of work, by means of shutting down an operation or function in order to bring pressure on employees or on their representatives to accept a change in compensation or rights, privileges, obligations, or other terms and conditions of employment.
2. "Strike" means the refusal or failure by an employee or group of employees to perform their duties of employment as assigned if a purpose of the refusal or failure is to induce, force, or require the City to act or refrain from acting with regard to any matter.
3. "Work stoppage" means: (i) The willful absence of a group of employees from their positions; (ii) The engaging in a slow-down by employees; or (iii) The refusal of employees to perform job duties.

(b) *In general.* Strikes, work stoppages, and lockouts are prohibited.

(c) *Prohibited employee actions.* Employees and employee organizations may not engage in, sponsor, initiate, support, direct, or condone a strike or work stoppage.

(d) *Penalty for violation – Employee organization.* If an employee organization violates this section, the City Administrator shall submit the matter to arbitration for the arbitrator to determine the penalty, which can include revoking the employee organization's designation as exclusive representative or disqualifying the employee organization from participating in representation elections for a period of up to two years.

(e) *Same - Employee.* An employee who violates this section is subject to immediate disciplinary action, which may include termination of employment.

(f) *Lockouts prohibited.* The City may not direct a lockout against employees.

2.25.140 Timeline of collective bargaining and impasse.

(a) *Timeline.* Regardless of the date upon which certification is issued to the employee organization, negotiations shall be held between October 1 and December 1. Any collective bargaining agreement reached as a result of any such negotiations shall be presented to the

City Council for ratification no later than April 15 and, if ratified by Council, shall become effective July 1.

- (b) *Impasse procedure.* If no understanding has been reached between the employer and exclusive representative by December 1, it shall be deemed that an impasse has been reached, at which time the matters in dispute may be submitted to arbitration and the parties shall follow the arbitration procedures set forth in this Chapter.

2.25.150 Arbitration.

- (a) *Matters subject to arbitration.* The employer or employee may submit to arbitration any alleged unfair labor practice, dispute regarding the application or interpretation of a collective bargaining agreement, or an impasse.
- (b) *Matters not subject to arbitration.* No grievance as defined by the City Employee Handbook shall be submitted to arbitration. Rather, all grievances shall follow the procedures set forth in the City's Employee Handbook, although an employee within a representation unit may elect to have representation from his/her exclusive representative at all steps in the grievance process.
- (c) *Mediation.* Before any dispute subject to arbitration proceeds to arbitration, the parties may mutually agree to first submit the dispute to mediation.
- (d) *Arbitrator selection.* The arbitrator shall be chosen by mutual agreement of the parties. If the parties are unable to agree, the parties, will ask the American Arbitration Association, Federal Mediation Conciliation Service, or JAMS to provide a list of 5 arbitrators from Maryland, who are familiar with public labor issues. Within seven days after receipt of the list, the parties shall alternately strike names and keep track of the order of the strikes. The party striking first shall be agreed to or determined by a coin toss. The last arbitrator remaining shall be arbitrator for that fiscal year.
- (e) *Powers and duties of arbitrator.* The arbitrator may:
1. Convene and adjourn a hearing;
 2. Administer oaths;
 3. Call and examine witnesses;
 4. Issue subpoenas to compel the presence of witnesses and the production of documents;
 5. Hear the evidence; and
 6. Issue a final and binding decision.

- (f) *Hearings*. Arbitration hearings shall be conducted in Salisbury, Maryland unless otherwise agreed in writing by the parties. The arbitrator shall designate a time and place for the hearing and notify the parties not less than 20 days before the hearing.
- (g) *Rights at hearing*. At the arbitration hearing, each party has the right to be heard, to present evidence material to the controversy, and to examine and cross-examine witnesses. Arbitrators are not bound by the technical rules of evidence.
- (h) *Time Limits*. Unless otherwise agreed, each party has up to four hours to present its case to the arbitrator so that the arbitration shall conclude within one day.
- (i) *Written decision*. The arbitrator shall make findings of fact and shall issue a written decision within 30 days after declaring the record closed, unless the parties otherwise agree in writing.
- (j) *Consideration of pertinent factors by arbitrator*. In making findings, the arbitrator shall take into consideration all pertinent factors, including, but not limited to:
1. Wages and all other benefits of employment of other similarly situated local government employees;
 2. The value of all benefits available to or received by City employees as compared with private sector employees on the Delmarva Peninsula;
 3. Cost-of-living information;
 4. The availability of funds; and
 5. Any agreement reached between the employer and any other City representation unit.
- (k) *Costs shared*. Each party shall bear its own expenses in connection with the arbitration proceedings. The parties shall share equally the fees and expenses of the arbitrator.

2.25.160 Review of collective bargaining agreement.

The City Council shall vote on the ratification of any collective bargaining agreement. Prior to voting on the ratification of any collective bargaining agreement, the Director of Finance shall submit to the City Council a fiscal impact note addressing, at a minimum, the annual cost of the contract to the City, the increase or decrease in costs compared to the current or preceding contract, and how the costs of the agreement are to be funded.

BE IT FURTHER ENACTED AND ORDAINED BY THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND, as follows:

Section 2. It is the intention of the Mayor and Council of the City of Salisbury that each provision of this Ordinance shall be deemed independent of all other provisions herein.

Section 3. It is further the intention of the Mayor and Council of the City of Salisbury that if any section, paragraph, subsection, clause or provision of this Ordinance shall be adjudged invalid, unconstitutional or otherwise unenforceable under applicable Maryland or federal law, such adjudication shall apply only to the section, paragraph, subsection, clause or provision so adjudged and all other provisions of this Ordinance shall remain and shall be deemed valid and enforceable.

Section 4. The recitals set forth hereinabove are incorporated into this section of the Ordinance as if such recitals were specifically set forth at length in this Section 4.

Section 5. This Ordinance shall take effect from and after the date of its final passage.

THIS ORDINANCE was introduced and read at a Meeting of the Mayor and Council of the City of Salisbury held on the _____ day of _____, 2023 and thereafter, a statement of the substance of the Ordinance having been published as required by law, in the meantime, was finally passed by the Council of the City of Salisbury on the _____ day of _____, 2023.

ATTEST:

Kimberly R. Nichols, City Clerk

Muir W. Boda, City Council President

Approved by me, this _____ day of _____, 2023.

John R. Heath, Acting Mayor