

# City of Salisbury



MARYLAND

## SALISBURY CITY COUNCIL WORK SESSION AGENDA

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**SEPTEMBER 16, 2013**  
**COUNCIL CHAMBERS, ROOM 301**  
**GOVERNMENT OFFICE BUILDING**

- 1:30 p.m. Habitual Offenders Ordinance – Susan Phillips/Mark Tilghman
- 2:00 p.m. Charter Change – Advertising requirements – Mark Tilghman
- 2:30 p.m. Police Substation at 511 Decatur Avenue – Chief Duncan/Mark Tilghman
- 3:00 p.m. Purchase of Electronic Control Devices from Speed Camera Funds – Chief Duncan
- 3:20 p.m. Cellebrite UFED Touch (Cellular Forensic Device) – Chief Duncan
- 3:45 p.m. Veterans Preference Policy – Council Discussion
- 4:15 p.m. City Attorney/City Clerk evaluations – Council discussion
- 4:30 p.m. General Discussion
- 4:45 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 10-508(a).*

Posted: September 11, 2013

# Memo

**To:** Tom Stevenson  
**From:** Susan Phillips   
**Date:** August 30, 2013  
**Re:** Habitual Offender (Legislative Enhancements)

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Attached you will find an ordinance that will have the effect of modifying the current Habitual Offender law. The original legislation was adopted in 2005 and was intended to provide the housing official with the necessary tools to prevent repeated calls for service to challenging properties.

Because the conditions to become a habitual offender are so uncommon; to date no property owner has received the designation. In actuality the lofty requirements have rendered the statute ineffective.

The proposed changes will address the issue by eliminating the requirement for the property owner to:

- Pay a citation issued by Neighborhood Services and Code Compliance (NSCC) on three separate occasions over a 24 (twenty four) month period; or
- Be found guilty in Wicomico County District Court on three separate occasions over a 24 (twenty four) month period

And lower the threshold to require any combination of 5 (five) of the following, during a twelve month period:

- A verified call for service from NSCC; or
- Payment of 1 (one) citation issued by NSCC; or
- Being found guilty in Wicomico County District Court

While we experience an exceptionally high voluntary compliance rate, plus or minus ninety five percent (+/- 95%), we often return to the same properties over and over again. These repeated visits are costly and use up valuable resources.

In addition to the above changes, all language referencing rental units and homeowner occupied structures have been removed. This legislation will affect all properties within the city limits.

Also, it was mentioned that the name could be changed to "Chronic Nuisance Property". I added that to the title for discussion.

The attached draft has had multiple revisions and improvements. Please accept this draft as the most recently updated version.

Unless you or the mayor has any questions please forward this information to the city council for review and consideration.



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**15.27.050 Civil offense.**

**15.27.060 Appeal.**

**15.27.070 Violations – penalties.**

**15.27.010 Scope.**

The provisions of this chapter govern procedures for owners of dwelling units in the city who violate provisions of the Housing Code repetitively in a ~~twenty-four (24)~~ twelve (12) month period.  
(Ord. 1900 (part), 2004)

**15.27.020 Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

“Call for Service” means an inspection (upon receipt of a complaint or discovered during routine patrol) performed by the Department of Neighborhood Services and Code Compliance (NSCC) which results in the issuance of a notice of violation, corrective action letter or municipal citation.

"Dwelling unit" means a single unit providing living facilities for one or more persons, including permanent provision for living, sleeping and sanitation.

~~"Habitual offender" means any person owning a dwelling unit, who shall pay a fine assessed by the department of building, housing and zoning or be found guilty of violating Chapter 15.24 or Title 17 on three separate occasions within a twenty-four (24) month period. that generates five (5) or more calls for service from the Department of Neighborhood Services and Code Compliance (NSCC) within a twelve (12) month period or who shall pay a fine assessed by NSCC or be found guilty of violating Chapter 15.24, 15.26 or Title 17 on two (2) separate occasions within a twelve (12) month period with regard to that one dwelling unit.~~

~~"Person" means any individual, partnership, firm, corporation, association or other legal entity of whatsoever kind and nature.~~

~~"Property" means the owner's legal interest in the real property on which the dwelling unit is located.~~

**15.27.030 Dwelling Units.**

~~A. The owner of a dwelling unit who becomes an habitual offender shall be subject to inside and outside inspection of the dwelling unit by the housing official required to permit the~~

80 housing official to perform a full comprehensive inspection of the unit at least two (2) times  
81 during the twelve (12) months following the habitual offender designation and shall be assessed  
82 a fee to be set by ordinance. ~~The dwelling unit shall receive an annual inspection, at a minimum,~~  
83 ~~during each of the next five years for a fee to be determined by resolution of the council from~~  
84 ~~time to time.~~

85  
86 B. After an owner of a dwelling unit becomes an habitual offender for a particular  
87 dwelling unit, all fines levied under Chapter 15.24, 15.26 or Title 17 for that dwelling unit shall  
88 may be tripled until the habitual offender designation is removed.

89  
90 C. After completion of ~~five consecutive annual~~ two (2) inspections with no violations  
91 under Chapter 15.24, 15.26 or Title 17, the habitual offender designation shall terminate for the  
92 owner of that dwelling unit. If violations under Chapter 15.24, 15.26 or Title 17 continue, the  
93 habitual offender designation shall continue for the owner of the dwelling unit until such time as  
94 a twelve (12) month period with no violations occurs.

95  
96 D. If ownership of the dwelling unit changes during the period when the owner has been  
97 designated as an habitual offender, the designation will be removed after the new owner corrects  
98 all violations of Chapter 15.24, 15.26, and Title 17 of the City code, and the dwelling unit is  
99 inspected and found to have no violations. The new owner must also pay the inspection fee set  
100 by ordinance.

101  
102 E. If the full amount of the inspection fees due to the city regarding a particular property  
103 are not paid by the owner within thirty (30) days after billing, the housing official shall cause to  
104 be recorded in the finance office for the city a sworn statement showing the amount of fees due.  
105 All fees shall be a lien on the property, collectible in the same manner as city taxes.  
106 (Ord. 1974 (part), 2005; Ord. 1900 (part), 2004)

#### 107 108 109 **15.27.040 Transfer of Ownership.**

110  
111 In the event the habitual offender transfers ownership of the subject dwelling unit(s) to  
112 another person, the habitual offender shall inform the housing official, in writing, within five (5)  
113 business days after the transfer has occurred.

#### 114 115 **15.27.050 Civil offense.**

116  
117 Designation as an habitual offender shall be a civil offense and not a criminal offense.  
118 (Ord. 1900 (part), 2004)

#### 119 **15.27.060 Appeal.**

120  
121 A. Any person wishing to appeal a determination of the director of the department of  
122 neighborhood services and code compliance regarding the provisions of this chapter shall file a  
123 written notice of appeal with the department of neighborhood services and code compliance  
124 within twenty-one (21) days after receipt of a notice sent pursuant to the provisions of this

125 chapter. The notice of appeal shall contain a statement of grounds for the appeal. The notice of  
126 appeal shall be accompanied by a fee of one hundred dollars (\$100.00).

127

128 B. The director of the department of neighborhood services and code compliance shall  
129 refer the appeal to the housing board of adjustments and appeals. The board shall meet monthly,  
130 or more frequently at the call of the chair, to hear appeals. The board shall notify the owner in  
131 writing of the time and place of the hearing.

132

133 C. When hearing appeals under this chapter, the board shall follow the procedures set  
134 forth in Chapter 15.24 of the Salisbury Municipal Code.

135

136 **15.27.070 Violations – Penalties.**

137 Any person found in violation of the provisions of this chapter shall be guilty of a  
138 municipal infraction and shall be subject to a fine not to exceed five hundred dollars (\$500.00)  
139 per violation. Each day a violation remains uncorrected is a separate violation subject to an  
140 additional citation and fine.

141 (Ord. No. 2163, 7-25-11)

142

143

144 AND BE IT FURTHER ENACTED AND ORDAINED BY THE CITY OF SALISBURY,  
145 MARYLAND, that the Ordinance shall take effect upon final passage.

146

147 THIS ORDINANCE was introduced and read at a meeting of the Council of the City of

148 Salisbury held on the \_\_\_\_\_ day of \_\_\_\_\_, 2013 and thereafter, a statement of the

149 substance of the ordinance having been published as required by law, in the meantime, was

150 finally passed by the Council on the \_\_\_ day of \_\_\_\_\_, 2013.

151 ATTEST:

152

153

154 \_\_\_\_\_

155 Kimberly R. Nichols, City Clerk

156

157

\_\_\_\_\_  
Jake Day, President of the  
of the City of Salisbury Council

158  
159 Approved by me, this \_\_\_\_\_  
160 day of \_\_\_\_\_, 2013.  
161  
162  
163  
164 \_\_\_\_\_  
165 James Ireton, Jr.,  
166 Mayor of the City of Salisbury

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INTER

OFFICE

# MEMO

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## Office of the Mayor

**To:** All City Council Members  
**From:** Tom Stevenson, Interim City Administrator  
**Subject:** Charter Changes  
**Date:** September 11, 2013

During a recent council work session discussion, a request was made to require enhanced notification of proposed Charter changes to ensure that the public is afforded sufficient time to provide input. Attached, please find a Resolution which will amend Article 2 of Section SC2-11 of the Salisbury City Charter.



30 **§ SC2-11. Ordinances.**

31 When any ordinance is introduced for passage by the Council, it shall be  
32 read but not passed at the meeting at which it is introduced. As soon thereafter  
33 as conveniently may be, a statement of the substance of the ordinance shall be  
34 published by posting the same at some public place in the city of Salisbury (or by  
35 printing the same in some newspaper of general circulation printed in the city of  
36 Salisbury). Ordinances/Resolutions introduced to change the Charter of the City  
37 of Salisbury shall be printed in some newspaper of general circulation printed in  
38 the City of Salisbury and posted at some public place in the City of Salisbury in  
39 advance of consideration for adoption. At any regular or special meeting of the  
40 Council held not more than sixty (60) nor less than six days after the meeting at  
41 which the ordinance was introduced and first read, the ordinance shall be read  
42 for a second time and passed, or amended and passed, or rejected, or its  
43 consideration deferred to some specified future date by the Council, provided  
44 that no ordinance shall be passed until it has been published as required by this  
45 section for at least five days.

46 *[1959 Code, sec. 296. 1951, ch. 534, sec. 15]*

47  
48 **AND BE IT FURTHER ENACTED** by the City Council of the City of Salisbury that  
49 this Resolution take effect fifty (50) days from and after the date of its final passage, subject to  
50 the right of referendum, and that its provisions shall be implemented on the \_\_\_\_ day of  
51 \_\_\_\_\_, 2013. The City Clerk is hereby authorized to proceed with the posting and  
52 publication of this Resolution pursuant to the requirements of Article 23A of the Annotated Code  
53 of Maryland.

54 This Resolution was introduced and read at a meeting of the Salisbury City Council held  
55 on the \_\_\_\_\_ day of \_\_\_\_\_, 2013, and, passed for Second Reading.

56 The Resolution was finally passed and signed and approved by the Mayor and Council of  
57 the City of Salisbury on the \_\_\_\_ day of \_\_\_\_\_, 2013.

58  
59 ATTEST:  
60 \_\_\_\_\_  
61 \_\_\_\_\_

62 Kimberly R. Nichols, City Clerk

Jacob R. Day, City Council President

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66 APPROVED BY ME THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 2013.

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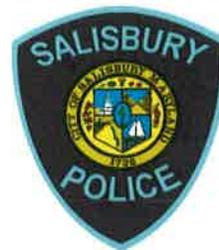
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70 \_\_\_\_\_  
James Ireton, Jr., Mayor

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JAMES IRETON, JR.  
MAYOR  
TOM STEVENSON  
ACTING CITY ADMINISTRATOR

**MARYLAND**  
699 W. SALISBURY PARKWAY  
SALISBURY, MD 21801  
TEL: 410-548-3165  
August 1, 2013

BARBARA DUNCAN  
CHIEF OF POLICE

TO: Tom Stevenson

FROM: Major David Meienschein

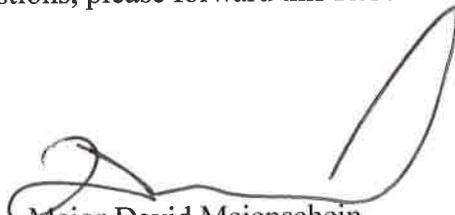
SUBJECT: Resolution – Memorandum of Understanding – 511 Decatur Ave

Attached, please find a Resolution to enter into a Memorandum of Understanding with The Wicomico Housing Authority to utilize the property located at 511 Decatur Ave as a city service center. The MOU is for a period of 3 years. The city of Salisbury will invest in the property by refurbishing the exterior and interior of the property. These improvements are necessary in order to inhabit the building which has sat vacant for some time and is in need of repair. An estimated cost of these repair are \$10,000.

The investment in and use of this property will greatly enhance the capability of Salisbury public services such as police, code compliance, and public works by providing a satellite location to conduct city business, provide additional workspace, and provide a location to have community meetings in an area of the city that is in need of enhanced services.

At the end of the 3 year MOU the property may be returned to The Wicomico Housing Authority with repairs in place at no cost to the housing authority unless the city and the housing authority both agree to reenter into another MOU extending use of the property to the city.

Unless you, or the Mayor, have further questions, please forward this Resolution to the City Council.



Major David Meienschein  
Administrative Commander

Attachment

1 RESOLUTION NO. 2323

2  
3 A RESOLUTION OF THE CITY OF SALISBURY TO ENTER INTO A MEMORANDUM  
4 OF UNDERSTANDING ACCEPTING USE OF AND AUTHORIZATION TO CONDUCT  
5 REPAIR ON 511 DECATUR AVENUE FOR THE PURPOSE OF UTILIZING THE PROPERTY  
6 AS A CITY SERVICE CENTER.

7  
8 WHEREAS, The City of Salisbury will enter into a 3 year MOU agreement with The  
9 Wicomico Housing Authority for the use of 511 Decatur Ave as a city service center; and,

10  
11 WHEREAS, the city of Salisbury will invest in refurbishment to the exterior and interior of  
12 the property for suitable accommodations so the property may be utilized as a city service center;  
13 and,

14  
15 WHEREAS, the refurbishment to the property will be at the expense of the city of Salisbury  
16 which is estimated at \$10,000; and,

17  
18 WHEREAS, the police department currently has funds available in the police services  
19 building maintenance account to cover the estimated cost of the refurbishment of the property.

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22 NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF  
23 SALISBURY, MARYLAND authorizes the city to enter into a 3 year MOU with the Wicomico  
24 Housing Authority for the use of 511 Decatur Ave as a city service center.

25  
26 THIS RESOLUTION was duly passed at a meeting of the Council of the City of Salisbury  
27 held on \_\_\_\_\_, and is to become effective immediately upon adoption.

28  
29 ATTEST:

30  
31 \_\_\_\_\_  
32 Kimberly R. Nichols  
33 City Clerk

34 \_\_\_\_\_  
35 Jacob R. Day, President  
36 Salisbury City Council

37 APPROVED BY ME THIS:

38  
39 \_\_\_\_\_ day of \_\_\_\_\_, 2013

40  
41  
42  
43 \_\_\_\_\_  
44 James Ireton, Jr., Mayor

Wicomico County Housing Authority  
911 Booth Street  
Salisbury, Maryland 21801-3005  
(410) 749-1383  
Fax (410) 749-8792  
TDD 1-800-545-1833

JUNE 18, 2013

## MEMORANDUM OF UNDERSTANDING

WITH SALISBURY POLICE DEPARTMENT  
511 DECATUR AVE  
SALISBURY, MARYLAND 21801

PLEASE BE ADVISED THAT THE WICOMICO COUNTY HOUSING AUTHORITY AND THE SALISBURY POLICE DEPARTMENT HAVE ENTERED INTO AGREEMENT THAT THE DEPARTMENT WILL OCCUPY THE PREMISES KNOWN AS 511 DECATUR AVENUE FOR THE PURPOSE OF A POLICE SUBSTATION, WITH AN APPROVAL EFFECTIVE DATE OF JUNE 18, 2013 UNTIL NOVEMBER 23, 2015. AFTER THE 3 YEARS, YOU CAN JUST REQUEST ANOTHER 3 YEAR APPROVAL. THIS SUBSTATION WILL BE MAINTAINED SOLELY BY THE CITY OF SALISBURY BUT NOT LIMITED TO THE FOLLOWING:

1. ALL UTILITIES WILL BE MAINTAINED BY THE CITY OF SALISBURY. THE CITY OF SALISBURY WILL REIMBURSE WICOMICO COUNTY HOUSING AUTHORITY FOR WATER, SEWER AND TRASH.
2. THE CITY OF SALISBURY WILL MAINTAIN THE EXTERIOR LANDSCAPING.
3. ALL REPAIRS DURING LEASING WILL BE THE CITY OF SALISBURY RESPONSIBILITY AND COST.
4. ANY UPGRADES OR CHANGES WILL BE DONE AT THE EXPENSE OF THE CITY, I.E. REMOVAL OF THE WALLS OR STRUCTURE CHANGES.
5. AT THEIR REQUEST WICOMICO COUNTY HOUSING AUTHORITY WILL SCHEDULE AN INSPECTION AT LEAST ONCE A YEAR.
6. AT THE END OF THE APPROVAL TIME THE CITY WILL BE RESPONSIBLE FOR RESTORING THE RESIDENCE TO ITS ORIGINAL STATE. AFTER INSPECTION OF THE PROPERTY THE FOLLOWING OBSERVATIONS WERE MADE. THE WINDOW FRAMES AND WINDOWS IN AT LEAST THREE LOCATIONS NEED TO

REPLACED DUE TO WATER DAMAGE, AND ROTTING WOOD. THERE WILL BE SOME LEAD PAINT ABATEMENT NECESSARY. ALL UTILITIES INCLUDING THE REFRIGERATOR, WATER HEATER, AND STOVE NEED TO BE REPAIRABLE. THE HEATING SYSTEM, PLUMBING, AND ELECTRICAL SYSTEM NEED TO BE INSPECTED AND BROUGHT BACK INTO CODE. THE PROPERTY AS IT STANDS AT THE MOMENT NEEDS TO BE COMPLETELY GUTTED OUT. THE OLD APPLIANCES BROKEN GLASS, CLOTHING NEED TO BE REMOVED AND THE ENTIRE PROPERTY CLEANED, DISINFECTED, AND TREATED BY A PEST CONTROL SERVICE. THE FRONT DOOR AND STORM DOOR NEEDS TO BE REPLACED. THE FRONT AND SIDE STEPS NEED TO BE LEVELED AND STABILIZED. LASTLY, THE BLACK MOLD UNDERNEATH THE HOUSE NEEDS TO BE ABATED, ALONG WITH REPLACEMENT OF MISSING INSULATION.

SO AS YOU CAN SEE, THE CITY WILL HAVE QUITE THE INVESTMENT IN THE PROPERTY TO TURN IT INTO A SAFE AND FUNCTIONAL PROPERTY. THE CITY IS WILLING TO ACCOMPLISH THIS TASK BECAUSE WE BELIEVE IT IS IN THE BEST INTEREST ON THE COMMUNITY NOT ONLY TO MAKE THE REPAIRS BUT ALSO TO ESTABLISH A LOCATION FOR ADDITIONAL POLICE PRESENCE.

IN RETURN WE WOULD ASK FOR A COMMITMENT BUILT INTO THE MOU ALLOWING THE PROPERTY TO REMAIN UNDER CITY CONTROL FOR A PERIOD OF 3 YEARS. AT THE END OF THIS PERIOD THE CITY WOULD RELINQUISH THE PROPERTY BACK TO THE OWNER OR COULD REMAIN AT THE LOCATION AT THE DISCRETION OF THE OWNER AND CITY ON A YEAR TO YEAR BASIS. THE CITY RETAINS THE RIGHT TO END THE CONTRACT AT ANY TIME WITH 30 DAYS' NOTICE; HOWEVER, THE OWNER OF THE PROPERTY WOULD STILL RETAIN POSSESSION OF ALL OF THE UP- GRADES.

WHEN THE DECISION TO RETURN CONTROL OF THE PROPERTY BACK TO THE OWNER THE PROPERTY WILL BE RETURNED WITH NORMAL WEAR AND TEAR. ALL UPGRADES INCLUDING APPLIANCES WILL REMAIN. THE WALL THAT HAS BEEN IDENTIFIED FOR REMOVAL WILL ALSO BE REPLACED.

7. THE WICOMICO HOUSING AUTHORITY WILL NOT BE LIABLE FOR WHATEVER OCCURS IN THE DWELLING BEYOND THE STRUCTURE ITSELF.
8. THE CITY OF SALISBURY WILL BE RESPONSIBLE FOR THE DAY TO DAY OPERATIONS OF DWELLING AND WILL BE COVERED UNDER THE CITY INSURANCE POLICY.
9. THE INCLUSIVE DATES OF THIS 3 YEAR MOU WOULD GO INTO EFFECT ON THE DATE THAT THIS MEMORANDUM IS SIGNED BY THE PROPERTY OWNER OR AUTHORIZED DESIGNEE AND AN AUTHORIZED PERSON ON BEHALF OF THE CITY OF SALISBURY, MD.

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**Representative City of Salisbury**

**Date**

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**Narcinda Church – Director**

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**Date**

# City of Salisbury



JAMES IRETON JR.  
MAYOR

TOM STEVENSON  
ACTING CITY ADMINISTRATOR



Maryland

699 W. SALISBURY PARKWAY  
SALISBURY, MD 21801  
TEL: 410-548-3165



BARBARA DUNCAN  
CHIEF OF POLICE

August 20, 2013

TO: Mr. Tom Stevenson  
Acting City Administrator

FROM: Major David Meienschein

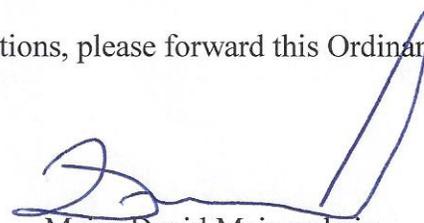
SUBJECT: Ordinance – Requesting Speed Camera Funds for Purchase of Electronic Control Devices, (ECD).

The Salisbury Police Department respectfully requests a transfer from the General Fund - Speed Camera sub-account, to the Police Services – operating account in the amount of \$12,500.00. This transfer is for the purchase of nine, (9) Electronic Control Devices, (ECD) manufactured by Taser, Incorporated. The cost also includes High Definition Video recording devices for each unit along with all necessary supplies for initial implementation.

This equipment will be deployed within the police departments patrol squads and become part of the use of force continuum as part of a less than deadly force option to subdue non-compliant or combative offenders.

The benefit of this technology is such that police officers will have a use of force tool to gain offender compliance without have to put hands on the offender which risks injury to the police officer as well as workman compensation claims.

Unless you or the Mayor has further questions, please forward this Ordinance to the Salisbury City Council.



Major David Meienschein  
Administrative Commander

Attachment



# City of Salisbury



JAMES IRETON JR.  
MAYOR

TOM STEVENSON  
ACTING CITY ADMINISTRATOR



Maryland  
699 W. SALISBURY PARKWAY  
SALISBURY, MD 21801  
TEL: 410-548-3165



BARBARA DUNCAN  
CHIEF OF POLICE

September 5, 2013

TO: Mr. Tom Stevenson  
Acting City Administrator

FROM: Major David Meienschein

SUBJECT: Ordinance – Cellebrite UFED Touch

The Salisbury Police Department maintains a cellular forensic device known as Cellebrite. Through technical advancements in cellular products this equipment has become obsolete and the software cannot be up-graded any further.

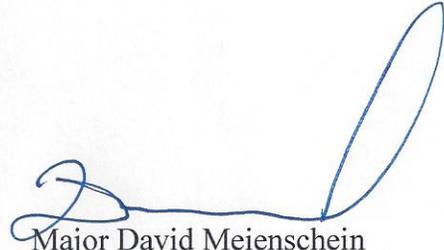
The manufacturer has a program in place to trade older versions for a \$4,000 credit towards an up-grade to the most up to date technology. The up-grade will allow police investigators to pull data from the most technically advanced cell phones & tablets.

The Cellebrite UFED Touch is a device that is used to perform data extractions from cell phones, tablets, I Pads, GPS, and other electronic devices. Investigators have been able to obtain stored and deleted data files to include but not limited to: text messages, photographs, videos, and contact lists. The device has been used in assault, robbery, and homicide investigations to obtain information that has been used as evidence and led to successful prosecution. The company that manufactures the cellebrite has notified the police department that the current equipment (UFED Classic) in use will become obsolete and not supported with any upgrades. The current equipment would need to be surplused and traded in to purchase the new equipment at the price quoted. Upgrading to the new equipment will allow the investigators to obtain information from devices (new technology) that are being used by subjects involved in criminal activity.

The cost to the city after the \$4,000 trade in allowance will be \$8,083. SPD respectfully requests a transfer in the amount of \$8,083.00 to the Police Services-Equipment account, 21021-534302, from General funds, surplus account 01000-469810.

The Salisbury Police Department is requesting a budget amendment to appropriate these funds and make payment to Celebrite USA, Inc. the approved vendor.

Unless you or the Mayor has further questions, please forward this Ordinance to the Salisbury City Council.

A handwritten signature in blue ink, consisting of a stylized 'D' followed by a horizontal line and a large, vertical loop on the right side.

Major David Meienschein  
Administrative Commander



47 APPROVED BY ME THIS: \_\_\_\_\_ day of \_\_\_\_\_, 2013

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50 \_\_\_\_\_  
James Ireton Jr., Mayor

# Memo

To: Tom Stevenson  
**Cc:** Keith Cordrey  
From: Tom Tengman, Acting Assistant Director of Internal Services-Procurement D9/10/13ivision  
Date: 9/11/2013  
Re: Veterans preference

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Purpose: To establish a Veterans procurement preference.

The State of Maryland has enacted a Veteran-Owned and a Disabled Veteran-Owned Small business procurement preference.

Under the State Procurement Preference Program for Veteran-Owned Small Businesses (VOSBs) and Service-Disabled Veteran-Owned Small Businesses (SDVOSBs) are allowed a price preference of up to 7% for certified VOSBs and up to 8% for SDVOSBs.

Example: If a non-preference business submits the low bid, ca certified VOSB would nonetheless be awarded the contract if its bid does not exceed the low bid by more than 7% (or 8% for a SDVOSB).

We should require the same certifications as the State to verify Veterans small business status.

Low bid price would not be the only determining factor. We should maintain our “lowest most responsible and responsive” bid factors in determining bid award or rejection.

We would need to pass a Resolution to add a Veterans preference to Section 2.32.050 Procedure for competitive bidding.

I have attached copies of FAQs and BPW Advisory No. 2009-3 to explain the State of Maryland Veteran Procurement Preference.

I have also attached a copy of our “responsible & responsive” section currently included in all of our bid documents.



## **BPW Advisory No.: 2009-3**

**Date:** December 16, 2009

**Subject:** PROCUREMENT – SMALL BUSINESS PRICE  
PREFERENCE INCLUDING VETERAN-OWNED  
SMALL BUSINESSES

**Effective:** Immediately

*Martin O'Malley*  
Governor

*Nancy K. Kopp*  
Treasurer

*Peter Franchot*  
Comptroller

*Sheila McDonald*  
Executive Secretary

---

**Purpose:** To explain the Veteran-Owned and the Disabled Veteran-Owned Small Business procurement preferences.

**Authority:** State Finance and Procurement Article, §§14-201 and 14-206, Annotated Code of Maryland; COMAR 21.11.01.05.

**Procurement Agencies That May Use the Preference:** Agencies authorized to conduct small business preference procurements are the Department of Transportation, the Department of General Services, the Department of Public Safety and Correctional Services (only in connection with construction of a State correctional facility), the University System of Maryland and Morgan State University. When these agencies designate a procurement as a “small business preference,” the following applies.

**Businesses That May Benefit From the Preferences:** Small businesses are defined in COMAR 21.01.02.01. A small business must be certified by the Department of General Services to be eligible for award of small business preference procurements and small business reserve procurements. [This Advisory pertains to small business *preference* procurements; *see* BPW Advisory 2005-1 for information on small business *reserve* procurements.] A veteran-owned small business is a small business that is at least 51% owned and controlled by veterans. A disabled veteran-owned small business is a small business that is at least 51% owned and controlled by disabled veterans.

**Note:** State Law defines a veteran as one “who is domiciled in Maryland.” § 14-201, State Finance and Procurement Article. Veteran small business owners whose state of residence is other than Maryland may participate in a preference procurement only as a small business not as a veteran-owned or a disabled-veteran-owned small business.

**The Preference:** The using agencies may designate a procurement as a small business preference procurement. When that designation is made, the using agency must also establish the percentage preference to be applied. A certified small business is given up to a 5% base percentage preference. In addition to that base percentage preference, a veteran-owned small business receives up to another 2% preference, and a disabled-veteran-owned small business receives up

to 3%. In other words, the maximum percentage price preferences for designated small business preference procurements are 5% for certified small businesses; 7% for veteran-owned certified small businesses; and 8% for disabled veteran-owned certified small businesses.

***Procedure:***

*Designation.* Using agencies have discretion to designate which procurements will be conducted as small business preference procurements taking into account the availability of qualified, certified small businesses.

*Solicitation.* Once a using agency designates a small business preference procurement, the agency should directly solicit businesses listed in the DGS Small Business Directory, the federal VetBiz Registry ([www.vip.vetbiz.gov](http://www.vip.vetbiz.gov)), and the MDOT MBE Directory. Solicitation notices on *eMaryland Marketplace* must clearly state that the procurement is designated as “small business preference.”

*Bid Evaluation.* In a designated small business preference procurement, the procurement officer must accept the most favorable, responsive bid from a:

- ◆ Responsible, certified small business if the bid does not exceed the most favorable responsive bid price from a responsible bidder who is NOT a certified small business by more than 5% (or other price preference set by the agency).
- ◆ Responsible, certified veteran-owned small business if the bid does not exceed the most favorable responsive bid price from a responsible bidder who is NOT a certified small business by more than 7% (or other price preference set by the agency).
- ◆ Responsible, disabled-veteran-owned certified small business if the bid does not exceed the most favorable responsive bid price from a responsible bidder who is NOT a certified small business by more than 8% (or other price preference set by the agency).

*Note:* If the most favorable, responsive bid is submitted by a certified small business, and the second most favorable bid is from a veteran-owned or disabled-veteran-owned small business, the procurement officer applies the difference between the percentages (*i.e.*, 2% for veteran-owned small business and 3% for disabled veteran-owned small business).

***Reporting Requirements:*** By September 30<sup>th</sup> annually, the Departments of General Services and Transportation and Morgan State University must report to the Board of Public Works and to the Legislative Policy Committee on the operation and effectiveness of the Preference Program in the previous fiscal year. The report must include data on participation by veteran-owned and disabled-veteran-owned small businesses.

- **Veteran-owned certified small business:** Provide the DGS small business certification number **AND** a copy of the business owner's DD Form 214 attesting to discharge or release under conditions other than dishonorable.
- **Disabled-veteran-owned small business that is currently verified and registered on *www.VetBiz.gov*:** Provide the DGS small business certification number **AND** a copy of the letter from the U.S. Department of Veterans Affairs Verification Program showing your verification is current.
- **Disabled-veteran-owned small business that is NOT currently verified and registered on *www.VetBiz.gov*:** Provide the DGS small business certification number **AND** a copy of your DD Form 214 showing discharge or release under conditions other than dishonorable **AND** a copy of your Adjudication Letter from the U.S. Veterans Administration.



## Attachment to BPW Advisory 2009-3

The following language is recommended for the notice of solicitations designated as a Small Business Preference:



**\*Designation\*** This procurement has been designated as a Small Business Preference in accordance with Title 14, Subtitle 2, of the State Finance and Procurement Article of the Maryland Annotated Code. The preference percentages for this procurement are as follows:

- *State-certified, small business (not a veteran-owned or disabled-veteran-owned small business) \_\_\_\_\_% (not to exceed 5%)*
- *State-certified, veteran-owned small business \_\_\_\_\_% (not to exceed 7%)*
- *State-certified, disabled-veteran-owned small business \_\_\_\_\_% (not to exceed 8%)*

The procurement agency will accept the most favorable responsive bid from a responsible, certified small business if the bid does not exceed the most favorable responsive received from a bidder who is not a certified small business by more than the percentage(s) listed above.

**\*Eligibility\*** To be eligible for the preference, your company must have a current small business certification from the Maryland Department of General Services.

**Small business size standards in Maryland are different than federal standards. You CANNOT substitute an SBA 8(a) certification or VetBiz verification for Maryland small business certification.**

If your small business is eligible but not certified by the State, apply for certification on the Department of General Services website at [www.smallbusinessreserve.maryland.gov](http://www.smallbusinessreserve.maryland.gov) and obtain a small business certification number.

State Law requires that the veteran business owner be domiciled in Maryland. There is no Maryland residency requirement for owners of small businesses participating in the Preference as small businesses without the veteran-owned or disabled-veteran-owned designation.

**\*Required Information\*** The bidder must provide the following to the procurement officer to prove eligibility for the preference:

- **Certified small business that is not veteran-owned or disabled veteran-owned:**  
Provide the DGS small business certification number.

*Attachments:* Attached is *Sample Solicitation Language*.

***Questions concerning this Advisory may be addressed to:***

*Mary Jo Childs, Procurement Advisor  
Board of Public Works  
410.260.7335  
Fax: 410.974.5240  
mchilds@comp.state.md.us*

*Bob Sharps, Director  
Outreach and Advocacy  
Maryland Department of Veterans Affairs  
16 Francis Street, 4<sup>th</sup> Floor  
Annapolis, MD 21401  
bsharp@mdva.state.md.us*

Make sure to maintain your State small business certification. Like the Federal Program, annual recertification is required.

***How do I find out about State procurements that are subject to the Preference?***

Whether or not your business is eligible for certification as a VOSB or SDVOSB, you should register your company as a vendor on eMaryland Marketplace. It's free, and you will have access to State bidding opportunities for procurements over \$15,000. You can register at

<https://ebidmarketplace.com>

If your business is certified as a VOSB or SDVOSB, check the solicitation notices for those State agencies authorized to participate in the Preference Program. The solicitation notices will state whether the procurement is subject to the Preference.

***Who can I talk with if I have more questions?***

The Maryland Department of General Services is responsible for the small business certification program.

Department of General Services  
Small Business Reserve Program  
301 West Preston Street , Room M-3  
Baltimore , Maryland 21201  
e-mail at [sbadmin@dgs.state.md.us](mailto:sbadmin@dgs.state.md.us) .  
Phone: 410-767-4270

The Maryland Department of Veterans Affairs is available to help with questions on the many programs available to Maryland's veterans including your status as a service-disabled veteran.

Maryland Department of Veterans Affairs  
Jerry Boden, Chief of Staff  
16 Francis Street, Fourth Floor  
Annapolis, Maryland 21401  
E mail: [jboden@mdva.state.md.us](mailto:jboden@mdva.state.md.us)

General procurement questions may be directed to the Board of Public Works.

Board of Public Works of Maryland  
Mary Jo Childs, Procurement Advisor  
80 Calvert Street, Room 117  
Annapolis, Maryland 21401  
E mail: [mchilds@comp.state.md.us](mailto:mchilds@comp.state.md.us)  
Phone: (410) 260-7335; toll-free number 1-877-591-7320.



## VETERAN-OWNED SMALL BUSINESS PREFERENCE IN MARYLAND FREQUENTLY ASKED QUESTIONS

### ***What is the Veteran-Owned Business Preference?***

Governor O'Malley signed a bill into law establishing Maryland's Procurement Preference Program for Veteran-Owned Small Businesses (VOSBs) and Service-Disabled Veteran-Owned Small Businesses (SDVOSBs). The Law was effective as of October 1, 2008. The Law establishes a percentage price preference of up to 7% for certified VOSBs and up to 8% for SDVOSBs. The VOSB and SDVOSB certification is restricted to veterans domiciled in Maryland.

### ***How is Maryland's Program different from the Federal Program for service-disabled, veteran-owned small business?***

There are many differences between the Programs:

- *The small business size standards are different.*

Maryland Law defines a small business as..."a business, other than a broker, which meets the following criteria:

- (a) It is independently owned and operated;
- (b) It is not a subsidiary of another firm;
- (c) It is not dominant in its field of operation;
- (d) Its wholesale operations did not employ more than 50 persons, and its gross sales did not exceed an average of \$4,000,000 in its most recently completed 3 fiscal years;
- (e) Its retail operations did not employ more than 25 persons and its gross sales did not exceed an average of \$3,000,000 in its most recently completed 3 fiscal years;
- (f) Its manufacturing operations did not employ more than 100 persons, and its gross sales did not exceed an average of \$2,000,000 in its most recently completed 3 fiscal years;
- (g) Its service operations did not employ more than 100 persons, and its gross sales did not exceed an average of \$10,000,000 in its most recently completed 3 fiscal years;
- (h) Its construction operations did not employ more than 50 persons, and its gross sales did not exceed an average of \$7,000,000 in its most recently completed 3 fiscal years; and
- (i) Its architectural and engineering services did not employ more than 100 persons, and its gross sales did not exceed an average of \$4,500,000 in its most recently completed 3 fiscal years." COMAR 21.01.02.01(B)(80)

Maryland regulations are available online at <http://www.dsd.state.md.us/comar>.

- *Maryland expanded the Program to include veteran-owned small businesses as well as service-disabled veteran-owned small businesses.*
- *The Maryland Program is a procurement price preference unlike the Federal Program which is a procurement set-aside.*

Under Maryland's Law, certified VOSBs and SDVOSBs compete for State contracts along with businesses that are not certified small businesses (non-preference businesses). If a non-preference business submits the low bid, a certified VOSB would nonetheless be awarded the contract **if its bid does not exceed the low bid by more than 7%.**<sup>1</sup> If a non-preference business submits the low bid, a certified SDVOSB would nonetheless be awarded the contract **if its bid does not exceed the low bid by more than 8%.**

***If I am registered with the Federal Government's VETBIZ (The Center for Veterans Enterprise Web Portal), do I also have to register with the State of Maryland?***

Yes. Since Maryland's small business size standards are different than the Federal Program, you must register as a small business on the Maryland Department of General Services' website.

<https://www.smallbusinessreserve.maryland.gov>

Before you register, double check to make sure your business falls within Maryland small business size standards found in COMAR 21.01.02.01(B)(80).

It is important to note that the small business certification also enables your business to participate in the State's Small Business Reserve Program. The Reserve Program requires certain State agencies to structure their contracts so that at least 10 percent of their total procurement dollars for goods, supplies, services, maintenance, construction, construction-related services, architectural service, and engineering go to certified small businesses. The State paid \$131 million to Small Business Reserve businesses in FY 2008.<sup>2</sup>

***After I register as a small business on the DGS website, am I done? Can I start bidding on Preference Procurements immediately?***

Yes. But each time you bid, you must submit the following documentation with your bid.

*If you are currently verified and registered on [www.VetBiz.gov](http://www.VetBiz.gov) - A copy of the letter from the U.S. Department of Veterans Affairs Verification Program showing your verification is current.*

*If you are bidding as a VOSB but are not registered on VetBiz – a copy of your DD Form 214 showing discharge or release under conditions other than dishonorable.*

*If you are bidding as a SDVOSB but are not registered on VetBiz - a copy of your DD Form 214 showing discharge or release under conditions other than dishonorable AND a copy of your Adjudication Letter from the U.S. Veterans Administration.*

<sup>1</sup> Low bid is not the sole determining factor for award. See COMAR 21.05.02.13

<sup>2</sup> Fiscal Year 2008 Small Business Reserve Report, Governor's Office of Minority Affairs