



MARYLAND

**SALISBURY CITY COUNCIL
WORK SESSION AGENDA**

**FEBRUARY 2, 2015
COUNCIL CHAMBERS, ROOM 301
GOVERNMENT OFFICE BUILDING**

- 4:30 p.m. Charter Amendment to SC5 - 1. Enumeration – Jennifer Miller
- 5:00 p.m. Proposed Stormwater Utility Fee Structure – Amanda Pollack
- 5:30 p.m. MOU accepting a grant of \$40,000 from Maryland State Highway Administration recreational trails program for the Salisbury Rowing and Kayak Water Access project – Amanda Pollack
- 6:00 p.m. Land Donation for the Naylor Mill Road Athletic Complex – Council Discussion
- 6:20 p.m. Proposed Charter Changes – Council discussion/Tom Stevenson
- 7:00 p.m. Residency requirement on City Boards – Council Discussion
- 7:15 p.m. City Boards & Commissions-Council reporting – Council discussion
- 7:25 p.m. Council discussion
- 7:30 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).*

City of Salisbury



MARYLAND



125 NORTH DIVISION STREET
SALISBURY, MARYLAND 21801
Tel: 410-548-3190 Procurement
Fax: 410-548-3192 Procurement

KEITH A. CORDREY
DIRECTOR OF INTERNAL SERVICES

JENNIFER MILLER
ASST. DIRECTOR OF INTERNAL
SERVICES

JAMES IRETON, JR.
MAYOR

M. THOMAS STEVENSON, JR.
INTERIM CITY ADMINISTRATOR

TERENCE ARRINGTON
ASSISTANT CITY ADMINISTRATOR

TO: Mayor and City Council

FROM: Jennifer Miller, Asst. Director of Internal Services, Procurement & Parking

DATE: January 6, 2015

SUBJECT: Charter Amendment to SC5-1 Enumeration

Under the direction of City Administration, the Procurement and Public Works Departments have been in discussions with Solar City, a solar energy provider, to provide for a 1.7 MW solar array on City-owned property. To achieve this goal would require a Charter Amendment to SC5-1, which currently restricts procurements of lighting for the City to 3 years. Given the large upfront expense of alternative energy construction, these providers have a longer rate of return and therefore propose contracts with terms of 15 to 20 years. The current proposal from Solar City calls for a 20-year agreement.

The Procurement Department requests Council's consideration and approval of a Charter Amendment to SC5-1 to allow the City to enter into energy contracts for periods up to twenty (20) years. This length would provide the most flexibility in the Charter language, although each contract would be approached separately and vetted for optimum length depending on a cost/benefit analysis.

cc: Tom Stevenson
Terence Arrington
Keith Cordrey
Mike Moulds

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**RESOLUTION NO.
CHARTER AMENDMENT**

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A RESOLUTION OF THE CITY OF SALISBURY, MARYLAND, AMENDING THE CITY OF SALISBURY CHARTER SECTION SC5-1 (ARTICLE V GENERAL POWERS) FOR THE FOLLOWING REASONS: TO ALLOW FOR CONTRACTS FOR THE LIGHTING OF THE CITY BY MEANS DEEMED PROPER AND FOR CONTRACTS FOR WATER USE FOR PERIODS NO LONGER THAN TWENTY (20) YEARS INSTEAD OF THREE (3) YEARS.

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WHEREAS, Section SC5-1 of the City of Salisbury Charter restricts the period that the City may contract for lighting of the City or part thereof and for water for use at fires and for other city purposes to no longer than three (3) years; and

WHEREAS, the City of Salisbury needs flexibility to enter into such contracts for periods longer than three (3) years for the benefit of its citizens; and

WHEREAS, the Mayor and Council are in agreement that the City needs flexibility to enter into such contracts to secure potential energy and water sources for periods longer than three (3) years.

WHEREAS, the City shall hereafter be allowed to enter into such contracts for periods no longer than twenty (20) years; and

WHEREAS, to achieve these ends, it is necessary to amend Section SC5-1 of the City of Salisbury Charter.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Salisbury deems it to be in the best interest of the citizens of Salisbury to amend Section SC5-1 of the City of Salisbury Charter as outlined below:

26 **ARTICLE V-General Powers**

27 **§ SC5-1. Enumeration.**

28 A. The City of Salisbury shall have the power:

29 (6) Contracts. To contract with any corporation, firm or person for the lighting of the
30 city or a part thereof, either with electricity or gas or by such means as may be deemed proper;
31 and to contract for water for use at fires or for other city purposes, provided that no contract so
32 entered into shall be for a longer period than ~~three (3)~~ **twenty (20)** years.

33 AND, BE IT FURTHER RESOLVED by the City Council of Salisbury that the title of this
34 Resolution shall be deemed a fair summary of the amendment provided for herein for publication
35 and all other purposes;

36 AND, BE IT FURTHER RESOLVED by the City Council of Salisbury that this
37 Resolution shall take effect fifty (50) days from and after the date of its final passage and that its
38 provisions shall be implemented on the ____ day of _____, 2015, subject to the right of
39 petition to referendum. The City Clerk, on behalf of the Mayor, is hereby directed to proceed
40 with the posting and publication of this Resolution, and the sending of information concerning
41 the charter amendment provided for herein to the Maryland Department of Legislative Services
42 pursuant to the requirements of Local Government Article §4-304 of the Annotated Code of
43 Maryland;

44 AND, BE IT FURTHER RESOLVED that, to the extent that any Section of the City of
45 Salisbury Charter is in conflict with the provisions of this Resolution, such Section or Sections
46 be and hereby are repealed to the extent of such conflict.

47 The above Resolution was introduced, read and passed at the regular meeting of the City
48 Council of the City of Salisbury held on this ____ day of _____, 2015.

49 ATTEST:

50

51 _____
Kimberly Nichols, City Clerk

52

53 Publish:

54

Jacob R. Day, President of the
Council of the City of Salisbury

City of Salisbury



MARYLAND



JAMES IRETON, JR.
MAYOR

M. THOMAS STEVENSON, JR.
CITY ADMINISTRATOR

TERENCE ARRINGTON
ASSISTANT CITY ADMINISTRATOR

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MICHAEL S. MOULDS, P.E.
DIRECTOR OF PUBLIC WORKS

To: Tom Stevenson, City Administrator
From: Mike Moulds, Director of Public Works
Date: January 9, 2015
Re: Stormwater Utility Fee Structure

The Stormwater Utility has been created, effective July 1, 2015. The City needs to establish the fee structure for the utility. Once the fee has been established, sample invoices will be sent to all properties prior to the actual invoice being issued.

The City of Salisbury is comprised of 12,093 parcels, of which 7,094 are single family residential and 4,999 are non-single family residential. Public Works contracted with the University of Maryland Environmental Finance Center (EFC) to perform a Feasibility Study for the Stormwater Utility. As part of that study, EFC determined that the average impervious area on a single family residential parcel is 3,344 square feet. This value is the basis for establishing equivalent residential unit rates.

Additionally, Public Works contracted with the Eastern Shore Regional GIS Cooperative (ESRGC) at Salisbury University to develop the impervious area calculations for each non-single family residential parcel for the basis of the individual property fee assessment. ESRGC found that of the 4,999 non-single family residential parcels, 3,635 had less than 3,344 square feet of impervious surface, and therefore will be billed for one Equivalent Residential Unit (ERU). The other 1,364 parcels have ERU values ranging from 2 to 628. The total number of ERU from those 1,364 parcels is 19,196 ERU.

The EFC report recommended a fee of \$40/ERU with a standalone Stormwater Department. Since the Stormwater Utility has been created as part of Public Works, the fee recommendation has been reduced to \$20/ERU.

The attached table shows the projects from the Capital Improvements Plan from FY16 thru FY20. The table also identifies other Stormwater Utility expenditures, such as the Street Sweeping

program and replacement of aging stormwater mains and inlets. The analysis factors in using bond monies for large infrastructure projects as noted in the CIP, as well as assumptions for grant funding. With those funding sources accounted for, the average annual fee per ERU to be able to complete the CIP is projected to be \$23.45. This is in line with the proposed \$20/ERU fee.

At a rate of \$20/ERU, the revenue projections are as follows:

	# of Parcels	# of ERU	Annual Revenue
Residential (Single Family) Parcels	7,094	7,094	\$ 141,880.00
Non-Single Family Parcels at 1 ERU	3,635	3,635	\$ 72,700.00
Non-Single Family Parcels at >1 ERU	1,364	19,196	\$ 383,920.00
TOTAL	12,093	29,925	\$ 598,500.00

The revenue projections do not account for possible credits due to stormwater best management practices. The credits will be evaluated based on applications over the course of the first year (FY16) and will be factored in to the fee recommendation for FY17.

The bills for non-single family parcels with greater than 1 ERU range from \$40 to \$12,560, with the average bill being \$281.

In summary, Public Works recommends setting the FY16 Stormwater Utility fee at \$20/ERU. This will allow us to accomplish CIP projects, as well as fund the street sweeping program. Unless you or the Mayor have further questions, please forward a copy of this memo to the City Council.

Stormwater Utility Calculation - Fee Analysis

Total Parcels within City Boundary:	12,093
Total Single Family Residential Parcels:	7,094
Total Non-Single Family Parcels	4,999

ERU (sq ft)	3,344
Annual Fee per ERU	\$ 20.00

	# of Parcels	# of ERU	Annual Revenue	Revenue (\$/parcel)
Residential (Single Family) Parcels	7,094	7,094	\$ 141,880.00	\$ 20.00
Non-Single Family Parcels at 1 ERU	3,635	3,635	\$ 72,700.00	\$ 20.00
Non-Single Family Parcels at >1 ERU	1,364	19,196	\$ 383,920.00	\$ 281.47
TOTAL	12,093	29,925	\$ 598,500.00	

Stormwater Utility Calculation - Fee Analysis

Total Number of ERU 29,925

Fund CIP in total (no grants or bonded debt)							
Capital Improvements Plan	CIP #	FY16	FY17	FY18	FY19	FY20	Total
East Main St Storm Drain	PW0020	\$ 350,200	\$ -	\$ -	\$ -	\$ -	\$ 350,200
Beaverdam Creek Tidal Dam Repair	PW0026	\$ 1,236,000	\$ -	\$ -	\$ -	\$ -	\$ 1,236,000
Germania Circle Regional Storm Drain	PW0032	\$ 875,000	\$ 200,000	\$ -	\$ -	\$ -	\$ 1,075,000
Main Street Storm Drain Burnett-White	PW0035	\$ -	\$ 36,050	\$ 123,600	\$ -	\$ -	\$ 159,650
Citywide Inlet Hoods	PW0036	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 50,000
Total Maximum Daily Load Compliance Schedule	PW0051	\$ 400,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 500,000	\$ 2,400,000
Johnson Lake Dam Improvements	PW0052	\$ 206,000	\$ -	\$ -	\$ -	\$ -	\$ 206,000
Beaglin Park Dam Improvements	PW0054	\$ -	\$ 20,600	\$ 154,500	\$ -	\$ -	\$ 175,100
Comprehensive ESD at City Yard	PW0055	\$ 68,000	\$ -	\$ -	\$ -	\$ -	\$ 68,000
Street Sweeping	n/a	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 1,000,000
Replace existing pipes and inlets	n/a	\$ 75,000	\$ 75,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 450,000
Fiscal Year Total		\$ 3,420,200	\$ 1,041,650	\$ 1,088,100	\$ 810,000	\$ 810,000	\$ 7,169,950
Annual Fee per ERU		\$ 114.29	\$ 34.81	\$ 36.36	\$ 27.07	\$ 27.07	\$ 47.92

Average

Fund CIP (deduct grant assumptions only)							
Capital Improvements Plan	CIP #	FY16	FY17	FY18	FY19	FY20	Total
East Main St Storm Drain	PW0020	\$ 350,200	\$ -	\$ -	\$ -	\$ -	\$ 350,200
Beaverdam Creek Tidal Dam Repair	PW0026	\$ 1,136,000	\$ -	\$ -	\$ -	\$ -	\$ 1,136,000
Germania Circle Regional Storm Drain	PW0032	\$ 218,750	\$ 200,000	\$ -	\$ -	\$ -	\$ 418,750
Main Street Storm Drain Burnett-White	PW0035	\$ -	\$ 36,050	\$ 123,600	\$ -	\$ -	\$ 159,650
Citywide Inlet Hoods	PW0036	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 50,000
Total Maximum Daily Load Compliance Schedule	PW0051	\$ 200,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 1,200,000
Johnson Lake Dam Improvements	PW0052	\$ 206,000	\$ -	\$ -	\$ -	\$ -	\$ 206,000
Beaglin Park Dam Improvements	PW0054	\$ -	\$ 20,600	\$ 154,500	\$ -	\$ -	\$ 175,100
Comprehensive ESD at City Yard	PW0055	\$ 68,000	\$ -	\$ -	\$ -	\$ -	\$ 68,000
Street Sweeping	n/a	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 1,000,000
Replace existing pipes and inlets	n/a	\$ 75,000	\$ 75,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 450,000
Fiscal Year Total		\$ 2,463,950	\$ 791,650	\$ 838,100	\$ 560,000	\$ 560,000	\$ 5,213,700
Annual Fee per ERU		\$ 82.34	\$ 26.45	\$ 28.01	\$ 18.71	\$ 18.71	\$ 34.85

Average

Fund CIP (deduct bonded debt and grant assumptions)							
Capital Improvements Plan	CIP #	FY16	FY17	FY18	FY19	FY20	Total
East Main St Storm Drain	PW0020	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Beaverdam Creek Tidal Dam Repair	PW0026	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Germania Circle Regional Storm Drain	PW0032	\$ -	\$ 200,000	\$ -	\$ -	\$ -	\$ 200,000
Main Street Storm Drain Burnett-White	PW0035	\$ -	\$ 36,050	\$ 123,600	\$ -	\$ -	\$ 159,650
Citywide Inlet Hoods	PW0036	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 10,000	\$ 50,000
Total Maximum Daily Load Compliance Schedule	PW0051	\$ 200,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 250,000	\$ 1,200,000
Johnson Lake Dam Improvements	PW0052	\$ 206,000	\$ -	\$ -	\$ -	\$ -	\$ 206,000
Beaglin Park Dam Improvements	PW0054	\$ -	\$ 20,600	\$ 154,500	\$ -	\$ -	\$ 175,100
Comprehensive ESD at City Yard	PW0055	\$ 68,000	\$ -	\$ -	\$ -	\$ -	\$ 68,000
Street Sweeping	n/a	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 200,000	\$ 1,000,000
Replace existing pipes and inlets	n/a	\$ 75,000	\$ 75,000	\$ 100,000	\$ 100,000	\$ 100,000	\$ 450,000
Fiscal Year Total		\$ 759,000	\$ 791,650	\$ 838,100	\$ 560,000	\$ 560,000	\$ 3,508,750
Annual Fee per ERU		\$ 25.36	\$ 26.45	\$ 28.01	\$ 18.71	\$ 18.71	\$ 23.45

Average

City of Salisbury



JAMES IRETON, JR.
MAYOR

M. THOMAS STEVENSON, JR.
CITY ADMINISTRATOR

TERENCE ARRINGTON
ASSISTANT CITY ADMINISTRATOR

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MICHAEL S. MOULDS, P.E.
DIRECTOR OF PUBLIC WORKS

MARYLAND

To: Tom Stevenson, City Administrator
From: Mike Moulds, Director of Public Works
Date: January 13, 2015
Re: Recreational Trails Grant – Salisbury Rowing and Kayak Water Access Project

At the recommendation of the Department of Natural Resources (DNR), Salisbury Public Works applied for a grant from the Maryland State Highway Administration Recreational Trails Program. The grant will assist with the funding of a sport Rowing and Kayak Water Access project at the Salisbury Marina. SHA has awarded this grant to the City in the amount of \$40,000. The project includes the construction of a dock, gangway and floating dock for safe launching of kayaks and rowing shells. Public Works will provide matching funds in the amount of \$8,000 in the form of in kind labor for design and permitting services, in conjunction with technical assistance from DNR. The goal of the project is to create a safe recreational public water access point for the general public to access the Wicomico River. The facility also has the potential for development of team rowing activities.

The Memorandum of Understanding for the grant is attached, along with the grant application. Additionally, attached is a Resolution for the Mayor to sign the MOU with SHA to accept the Recreational Trails Grant in the amount of \$40,000.00.

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

1 RESOLUTION NO. _____

2
3 A RESOLUTION OF THE CITY OF SALISBURY AUTHORIZING THE MAYOR TO SIGN
4 THE MEMORANDUM OF UNDERSTANDING AND ACCEPT A GRANT OF \$40,000
5 FROM MARYLAND STATE HIGHWAY ADMINISTRATION'S RECREATIONAL TRAILS
6 PROGRAM FOR THE SALISBURY ROWING AND KAYAK WATER ACCESS PROJECT.
7

8 WHEREAS, the Maryland State Highway Administration has the Recreational Trails
9 Program; and

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11 WHEREAS, the Recreational Trails Program funds the development of community-
12 based, motorized and non-motorized recreational trail projects; and

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14 WHEREAS, the creation of a dock, gangway and floating dock will provide for the safe
15 launch of rowing vessels and kayaks from the Salisbury Marina; and

16
17 WHEREAS, the City of Salisbury will coordinate the design, permitting and procurement
18 of construction contracts for the project; and

19
20 WHEREAS, the project will address the safe access for the public to launch and return a
21 kayak or shell to the Wicomico River.
22

23 NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Salisbury,
24 Maryland does hereby authorize the Mayor to sign the attached Memorandum of Understanding
25 dated _____, 2015 accepting the project term, for the betterment of the City and its
26 residents, and accepts the grant of \$40,000 from Maryland State Highway Administration's
27 Recreational Trails Program for the Rowing and Kayak Waterway Access project.
28

29 THE ABOVE RESOLUTION was introduced, read and passed at the regular meeting of
30 the Council of the City of Salisbury held this ____ day of _____, 2015 and is to become
31 effective immediately upon adoption.
32

33 ATTEST:
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35

36 _____
37 Kimberly R. Nichols
38 CITY CLERK

Jacob R. Day
PRESIDENT, City Council

39
40 APPROVED by me this _____ day of _____, 2015
41
42

43 _____
44 James Ireton, Jr.
45 MAYOR, City of Salisbury

MEMORANDUM OF UNDERSTANDING

by and between

**MARYLAND STATE HIGHWAY
ADMINISTRATION**

and

**City of Salisbury
Salisbury, Maryland**

LADRT1521

**MEMORANDUM OF UNDERSTANDING
FOR
NATIONAL RECREATIONAL TRAILS PROGRAM
Rowing and Kayak Waterway Access Project**

THIS MEMORANDUM OF UNDERSTANDING (MOU) executed in duplicate, effective this ____ day, in the month of _____ of the year _____, by and between the State Highway Administration of the Maryland Department of Transportation, acting for and on behalf of the State of Maryland, hereinafter called the “**ADMINISTRATION**”, and the City of Salisbury, located in Salisbury, Maryland, hereinafter called the “**PROJECT SPONSOR**”.

WHEREAS, certain funds have been set aside in the National Recreational Trails Program, under the Federal Highway Reauthorization, for the purpose of providing funding for the development and maintenance of recreational trails and trail related projects, hereinafter called “**NRT FUNDING**”; and

WHEREAS, the ADMINISTRATION, pursuant to SAFETEA-LU, is authorized to distribute NRT FUNDING to agencies or organizations within the State of Maryland, hereinafter called the “**AWARD**”, provided the PROJECT is constructed on property owned by and/or on permanent easements held by the PROJECT SPONSOR; NRT FUNDING is used to reimburse a PROJECT SPONSOR for expenses they have paid relating to the PROJECT; and the PROJECT SPONSOR is partially responsible for expenses relating to the PROJECT; and

WHEREAS, the ADMINISTRATION has authorized a disbursement of NRT FUNDING to the PROJECT SPONSOR up to the maximum amount of **\$40,000.00**, to be used for the Rowing and Kayak Waterway Access Project located in Salisbury, Wicomico County, Maryland which includes the construction of a dock, gangway and floating dock, hereinafter called the “**PROJECT**” as further described in Exhibit “A”, the National Recreational Trails funding Application of the PROJECT SPONSOR, attached hereto and made a part hereof; and

WHEREAS, the PROJECT SPONSOR has agreed to co-finance the PROJECT with an amount equal to at least twenty percent (20%) of the PROJECT expenses, hereinafter called the MATCH; and

WHEREAS, the ADMINISTRATION and the PROJECT SPONSOR hereby agree that the PROJECT will be a benefit to all parties of this MOU and would promote the safety, health and general welfare of the citizens of the State.

NOW, THEREFORE, in consideration of the mutual promises between the ADMINISTRATION and the PROJECT SPONSOR, as set forth herein, the adequacy of which is hereby acknowledged, the parties hereby agree to the following:

I. PROJECT DESCRIPTION

The PROJECT shall include the construction of a dock, gangway and floating dock in Salisbury, Wicomico County, Maryland.

II. THE PROJECT SPONSOR SHALL:

- A. Procure all services and materials for which NRT FUNDING is being used to reimburse the PROJECT SPONSOR in accordance with State and federal laws and regulations, which include but are not limited to:
 - 1. Prepare an Invitation for Bids package, to be publicly advertised for the selection of a contractor, in accordance with all the applicable laws, and regulations of the ADMINISTRATION. This package shall include, but not limited to:
 - a. Preparation and submittal to the ADMINISTRATION for technical review and approval, all construction plans, specifications and cost estimates. The SPONSOR shall establish a schedule for the proposed design activities including review submittal dates. At a minimum, a Preliminary and Final Review will be required.
 - b. Preparation and submittal to the ADMINISTRATION for review and approval, construction bidding documents for the selection of a contractor. The documents shall be publicly advertised in conformance with all applicable State and federal laws and regulations.
 - c. Provide the ADMINISTRATION certification that all appropriate laws and regulations regarding selection of the contractor have been followed.
 - 2. Advertise for construction bids, once the ADMINISTRATION issues a Written Notice of Approval. Any advertisement for construction conducted prior to receiving written approval, shall make the project ineligible for reimbursement.
 - 3. Identify as many qualified Minority Business Enterprise (“MBE”) firms as reasonable, to afford ample opportunity to MBE firms to bid equally against other vendors.
 - 4. Publicly open bids received, (in front of a witness), prepare a list of responses as they are opened.
 - 5. Evaluate the bids to determine which bidder will receive the award. The award shall be made to the lowest responsive and responsible bidder. Submit to the ADMINISTRATION documentation of all bidders, bid costs and a recommendation of award. Award of the contract cannot be given to a prospective bidder until the ADMINISTRATION has concurred with the recommendation and issued a written Notice to Proceed.
 - 6. Comply with the other applicable requirements of 49 U.S.C. §18-36, a copy of which is marked Exhibit “B”, and attached hereto and made a part hereof.
- B. Coordinate and conduct any required public hearings or requests for public input.
- C. Provide design specifications and estimates to the ADMINISTRATION for review and comment.

- D. Construct all projects using NRT FUNDING, in accordance with applicable design standards including but not limited to:
1. National Environmental Policy Act - Prior to the commencement of PROJECT work, prepare and submit to the ADMINISTRATION environmental studies and environmental documentation required for the PROJECT under applicable State and/or federal law including, but not limited to, those required to obtain National Environmental Policy Act (NEPA) approval.
 2. Americans with Disabilities Act – Construct the PROJECT to be reasonably accessible to individuals with physical disabilities in accordance with federal and State requirements; the PROJECT design shall not include features that would make it more difficult for people with disabilities to use the dock, gangway and floating dock.
 3. Environmental Permits - Prior to the commencement of PROJECT work, apply for and obtain all permits required by federal, State or local authorities, including but not limited to, Erosion and Sediment Control, Stormwater Management, Critical Areas, and Wetlands.
 4. Construction Permits - Prior to the commencement of PROJECT work, coordinate with and resolve any conflicts with all utility companies within the PROJECT limits; purchase or obtain permanent easements to all properties within the PROJECT limits; and coordinate with any State or local agencies for the required traffic control plan approvals.
 5. Liability Insurance - Provide the ADMINISTRATION with evidence of adequate liability insurance to cover third party claims arising from the construction phase of the PROJECT, protecting both the PROJECT SPONSOR and the ADMINISTRATION in amounts and coverages as the ADMINISTRATION may reasonably determine.
- E. Invoice the ADMINISTRATION on a monthly basis for actual costs incurred and paid by the PROJECT SPONSOR in accomplishing the PROJECT as described herein, and further described in **Exhibit A**, up to the maximum AWARD amount of **\$40,000.00**. For projects with an award of \$10,000 or less, if actual costs incurred by the PROJECT SPONSOR during any one month do not amount to at least One Thousand Dollars (\$1,000.00), the PROJECT SPONSOR shall withhold its claim for payment until \$1,000.00 or more of actual incurred costs can be invoiced (with the exception of the final invoice). However, for projects with an award of more than \$10,000, if actual costs incurred by the PROJECT SPONSOR during any one month do not amount to at least Five Thousand Dollars (\$5,000.00), the PROJECT SPONSOR shall withhold its claim for payment until \$5,000.00 or more of actual incurred costs can be invoiced (with the exception of the final invoice). Each invoice shall be accompanied by sufficient documentation, in the sole discretion of the ADMINISTRATION, to evidence actual costs incurred. The final invoice for reimbursement shall include a certification signed by the project sponsor indicating that the project was completed in reasonable conformance to the advertised plans and specifications and that all advertised activities have been accomplished.

- F. Prior to the PROJECT SPONSOR submitting its final invoice to SHA for payment of the AWARD, the PROJECT SPONSOR shall certify in writing that the MATCH has been satisfied. The value of the MATCH shall be in the form of in kind services.
- G. Maintain the PROJECT both during and after completion of the PROJECT work.

III. THE ADMINISTRATION SHALL:

- A. Provide timely review and comment of the PROJECT design plans, specifications and estimates submitted by the PROJECT SPONSOR.
- B. Following receipt of the required PROJECT documents from the PROJECT SPONSOR, provide PROJECT certification of acceptance in accordance with United States Code, Title 23 federal requirements.
- C. Provide oversight inspection and review of the PROJECT to assure all obligations are being met.
- D. Coordinate monetary reimbursements to the PROJECT SPONSOR associated with the terms of this MOU.
- E. Reimburse the PROJECT SPONSOR within thirty (30) days following the receipt by the ADMINISTRATION of each PROJECT invoice. Invoices will not be reimbursed unless, and until, all three of the following circumstances are met:
 - 1. Request for reimbursement contains all necessary information for processing, including documentation that the PROJECT SPONSOR has met or exceeded its MATCH requirement for the invoice; and
 - 2. No charges are disputed by the ADMINISTRATION; and
 - 3. The invoice does not cause the maximum AWARD amount of \$40,000.00 to be exceeded.

IV. GENERAL

- A. The AWARD for the PROJECT shall be used only for the construction of a dock, gangway and floating dock, the stated purpose of this MOU. The AWARD shall not be redirected by the PROJECT SPONSOR for any other purpose.
- B. Any excess AWARD not needed for the PROJECT shall revert to the ADMINISTRATION for redistribution to other programmed projects at the sole discretion of the ADMINISTRATION. In addition, the funds for this PROJECT shall revert to the ADMINISTRATION if the PROJECT does not move forward within two (2) years of the date of this MOU.
- C. The parties hereto agree to cooperate with each other to accomplish the terms and conditions of this MOU.
- D. This MOU shall inure to and be binding upon the parties hereto, their agents, successors, and assigns. However, the PROJECT SPONSOR shall not assign its interests in this MOU without prior written consent of the ADMINISTRATION, which may be reasonably withheld.
- E. This MOU and the rights and liabilities of the parties hereto shall be governed in accordance with Maryland law.
- F. The PROJECT SPONSOR shall document and certify to the ADMINISTRATION that all PROJECT activities associated with the AWARD have been accomplished in accordance with federal law.

- G. All PROJECT documents and records are subject to audit and shall be retained by the ADMINISTRATION and PROJECT SPONSOR for a minimum of three (3) years after final acceptance of the PROJECT by the ADMINISTRATION.
- H. The PROJECT activities covered by this MOU must be completed within four (4) years of the MOU execution date.
- I. All publications, exhibits, and final products that use these funds must utilize the National Recreational Trails and State Highway Administration logos for recognition purposes.

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be executed by their respective duly authorized officers.

**MARYLAND STATE HIGHWAY
ADMINISTRATION**

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

Assistant Attorney General

Douglas H. Simmons
Deputy Administrator/Chief Engineer
For Planning, Engineering, Real Estate and Environment

Lisa B. Conners, Director
Office of Finance

Sonal Sanghavi, Director
Office of Environmental Design

City of Salisbury

Tax ID: _____

Witness

By: _____ (Seal)
Name: _____
Title: _____
Date: _____

EXHIBIT A

Project Report

SHA No. RT1521
Recreational Trails Program FY 2015

Sponsor: City of Salisbury
Mr. William Sterling
Project Manager
125 N. Division Street
Salisbury, Maryland 21801

Phone: (410) 548-3170
Fax: (410) 548-3107
Email: bsterling@ci.salisbury.md.us

Project Name: Rowing and Kayak Waterway Access Project
Description: the construction of a dock, gangway and floating dock

Award: \$40,000.00
Reimbursed:

**Procurement
Method:**

MOU:
NEPA:
PSE:
Verified:

Project Status:

**Current
Status:** Full award; contingent on getting a better budget breakdown.

FY 2015 RECREATIONAL TRAILS PROGRAM FUNDING APPLICATION



Maryland State Highway Administration / Office of Environmental Design
ATTN: Terry Maxwell
707 N. Calvert Street Baltimore, Maryland 21202 Phone: 410-545-8637

Application Submission Deadline: July 1, 2014

Please email tmaxwell@sha.state.md.us with any questions about this application.

Project Title: **ROWING AND KAYAK WATERWAY ACCESS PROJECT**

Trail Uses

Check all that apply

Diverse Motorized Recreational Non-motorized Recreational Transportation Trail

Project Types

Check only one category

Maintenance and restoration Development and rehabilitation of facilities
 Purchase and lease of equipment Construction Acquisition of easements
 Assessment Interpretive/educational programs

Project Cost:

\$40,000	\$8,000	\$48,000
RTP Funding Request	Matching Funds	Total Project Cost

Project Sponsor (Applicant)

Please provide contact information for the Project Sponsor Entity and the Project Manager.

Project Sponsor Entity	CITY OF SALISBURY
Project Manager	WILLIAM STERLING
Title	PROJECT MANAGER
Organization	PUBLIC WORKS
Address 1	125 N. DIVISION ST. SALISBURY, MD 21801
Address 2	
Telephone	410-548-3170
Cell Phone	410-251-2573
Fax	410-548-3107
E-mail	bsterling@ci.salisbury.md.us

FY 2015 RECREATIONAL TRAILS PROGRAM FUNDING APPLICATION



Maryland State Highway Administration / Office of Environmental Design
ATTN: Terry Maxwell
707 N. Calvert Street Baltimore, Maryland 21202 Phone: 410-545-8637

Application Submission Deadline: July 1, 2014

1. Project Location

**Salisbury Marina, 506 W. Main St.
Salisbury, MD 21801**

Describe the limits of the project, including the City and the County. Include a location map, as detailed in Section 10 of this application

2. Project Abstract *Complete the following sentences. Then provide additional requested information*

This project will..... Create additional opportunities for people to utilize the Wicomico waterways by constructing dock, gangway and floating dock for safe launching.

Benefits the trail user by..... *Generating safe access for the public to launch and return a kayak or shell to the Wicomico River*

- SEE ATTACHMENT

Please create a project abstract. In that document, concisely describe all of the major elements of your proposed project. Include:

- *How much planning and design has been completed for the Project?*
- *Is the project within proximity to any environmentally sensitive area?*
- *Is the project a missing link or potentially part of the State Transportation Trail network? (Visit <http://www.mdot.maryland.gov/Planning/Trails/trails.html> for more information.)*
- *Does the project provide access to a regional land or water trail system?*
- *Does the project help sustain a trail system?*
- *Does the project enhance tourism/economic development opportunities, particularly for towns?*
- *Is the project along a byway, within a heritage area, adjacent to a Chesapeake Gateway, or associated with any other tourism related area or activity?*

3. Project Summary

Task No. & Name	Task Description
PERMITTING & DESIGN	Working with D.N.R. for best options
ADMINISTRATON	Following City of Salisbury protocol for all materials and contractors
CONSTRUCTION	Construct the facility in the scheduled sequence

List by task and completely describe all the major elements of your proposed project in a concise manner. Although the program does not cover the cost of planning, design, engineering and permitting, please include these items in your summary, even if these tasks are part of the project.

4. Project Property Owner

City of Salisbury

The Project shall be constructed on property owned by and/or on permanent easements held by the Project Sponsor. If a non-profit is partnering with a Park Manager, please include an email or letter by Park Manager explaining that there is, or will be, an agreement.

5. Project length

Initial access point for future trail

Please include linear feet of the trail, width of the trail. Please note if it is new or reconstructed. Describe the proposed surface material of trail.

FY 2015 RECREATIONAL TRAILS PROGRAM FUNDING APPLICATION



Maryland State Highway Administration / Office of Environmental Design
ATTN: Terry Maxwell
707 N. Calvert Street Baltimore, Maryland 21202 Phone: 410-545-8637

Application Submission Deadline: July 1, 2014

6. Prior Projects

N/A

Describe the status of any previously funded National Recreational Trail funded projects.

- Include the year that the prior project was funded or prior project Recreational Trail number (RT#).
- If there are delays with the prior projects, please explain why they occurred.
- Describe any relationship between this project and previously funded National Recreational Trail Program projects.
- Describe how the proposed work relates to any multi-year work or comprehensive plans that may have been developed.

7. Project Work Plan

Task Number & Name	Start Date	Duration	Responsible Party	Justification
PERMITTING & DESIGN	March 2014	October 2014	CITY	Working w/ DNR
ADMINISTRATIVE	October 2014	Sept. 2014	OF	Initiate after approval
CONSTRUCTION	December 2014	March 2015	SALISBURY	Multiple phases

This table is provided as a guide to developing a realistic project schedule for implementing the tasks described in item 1. **Project Summary**. Although the program does not cover the cost of planning, design, engineering and permitting, please include these items in your schedule if they are incomplete.

8. Project Budget

Task No. & Name	Requested Funds 80%	Sponsor Match 20%	Total Task Cost 100%
1. PERMITTING & DESIGN	-0-	\$6,000	\$6,000
2. ADMINISTRATIVE a. procurement b. public information	-0-	\$2,000	\$2,000
3. CONSTRUCTION	\$40,000	\$105,000	\$145,000
Total Cost			\$153,000

Funds requested for projects cannot exceed \$40,000 for trail construction and \$30,000 for non-construction. (For the FY14 solicitation, we will consider lifting the \$40K cap for construction projects that score exceedingly high with our criteria)

9. Matching Funds (20%)

Task	Source	Type (Cash or In-kind)	Description Including Hours and Rate	Amount
PERMITTING & DESIGN	D.N.R.	IN-KIND	-	\$6,000
ADMINISTRATION a. procurement b. public inform.	CITY of SALISBURY	IN-KIND	-	\$2,000
CONSTRUCTION	P.O.S./ Waterway Improvement Fund	D.N.R.	-	\$105,000
Total				

FY 2015 RECREATIONAL TRAILS PROGRAM FUNDING APPLICATION

Maryland State Highway Administration / Office of Environmental Design
ATTN: Terry Maxwell
707 N. Calvert Street Baltimore, Maryland 21202 Phone: 410-545-8637



Application Submission Deadline: July 1, 2014

10. Location Map

Please attach 8.5 x 11 or 11x 17 map of project area showing as many details of the project as possible. The map must have a north arrow, scale and the title of the project. It should clearly show the project location, property lines, public facilities, state roads, and any other relevant information. **The Map must clearly identify the proposed project site with beginning and ending points.**

11. Submission

It is preferred that applications be submitted electronically to tmaxwell@sha.state.md.us by **2 p.m. on July 1, 2014**. Because our email server rejects most attachments larger than 6 MB, please use an FTP site or file sharing service, to transmit the application and any large attachments. Confirmation will be sent when the application is received. Please contact us at the email above with any questions about submissions or to discuss potential projects. The Recreational Trail Advisory Committee will meet to review projects in August. Awards will be announced in the October.

Options for Submission include:

Internet/E-mail (preferred)

- Complete the form on your computer and save the file on your computer.
- Email the file as an attachment to: Terry Maxwell, tmaxwell@sha.state.md.us
- Use an FTP site or file sharing service to transmit the application and any large attachments.

U.S. Mail

- Mail a completed application to:

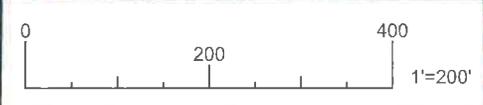
Terry Maxwell
Maryland Scenic Byways / Recreational Trails Program
Maryland State Highway Administration
707 N. Calvert Street, MS C-303
Baltimore, MD 21202

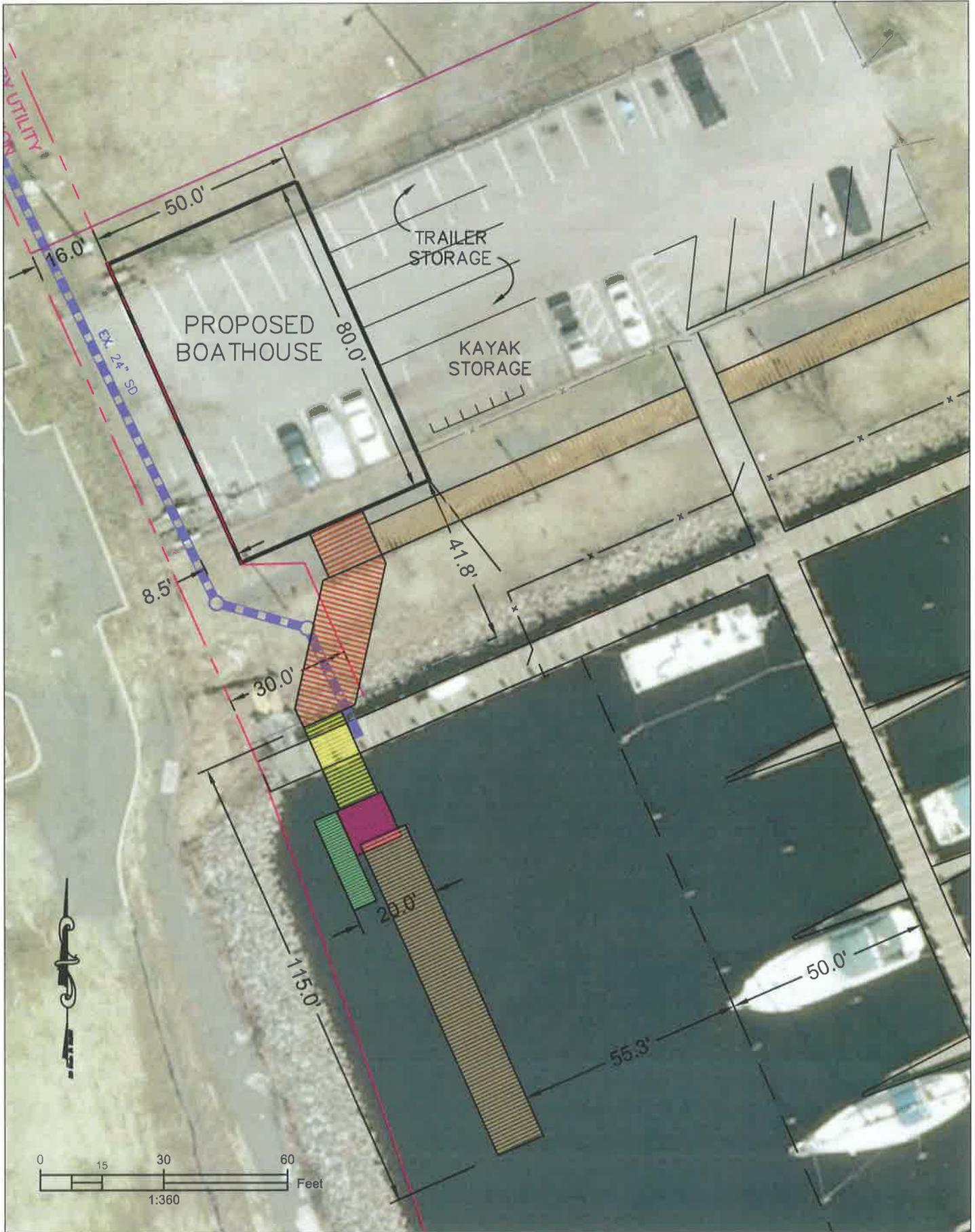
ROWING AND WATERWAY ACCESS PROJECT

- *How much planning and design has been completed for the Project?*
Most if not all of the planning and design is complete with a great deal of assistance from the Department of Natural Resources
- *Is the project within proximity to any environmentally sensitive area?*
NO
- *Is the project a missing link or potentially part of the State Transportation Trail network?*
Yes, it creates an excellent point of public water access for the Lower Wicomico River Greenways and the future Wicomico River Water Trail, this helps Maryland's progress in attaining the Chesapeake Bay achievement goals for establishing new water trails and expanding safe public access
- *Does the project provide access to a regional land or water trail system?*
YES, the project provides identified public access to the future Waterways Trail on the Wicomico River as outlined in the 1998 Wicomico County Comprehensive Plan that supports the development of greenways and trails
It also is incorporated in the BLUE CRAB SCENIC BY-WAY
- *Does the project help sustain a trail system?*
YES, this project creates an initial effort to begin developing a water trail on the Wicomico River by establishing recreational water access facilities
- *Does the project enhance tourism/economic development opportunities, particularly for towns?*
YES, by creating a safe public water access point, it enhances the opportunity for the general public. This facility can be used by canoes, kayakers and the future use by the Salisbury University Rowing Club
- *Is the project along a byway, within a heritage area, adjacent to a Chesapeake Gateway, or associated with any other tourism related area or activity?*
YES, the Lower Eastern Shore Heritage Area
Wicomico River has always been a tourist attraction, the project is looking to enhance the experience



KAYAK & ROWING
LAUNCH





PROPOSED MARINA IMPROVEMENTS

SCALE: 1" = 30'

2010 Photography

U:\CAD Files\DRAW\ALL DCAs\DCA2014\DCA14021.dwg



INTER

OFFICE

MEMO

City Clerk

To: City Council members
Mayor James Ireton, Jr.
City Administrator Tom Stevenson

From: Kim Nichols, City Clerk

Date: January 28, 2015

Subject: Land Donation for the Henry S. Parker Athletic Complex

To refresh your memories, attached are the Work Session material, maps and excerpt of minutes from July 7, 2014 when the donation of land was first discussed with Gary Mackes, and the excerpt of the minutes from the September 2, 2014 Work Session (additional material was not provided).

INTER

OFFICE

MEMO

CITY CLERK

To: City Council
From: Kim Nichols
Subject: Expansion of Henry S. Parker Sports Complex
Date: July 2, 2014

The attached donation request and maps were provided by Wicomico County Recreation & Parks Director Gary Mackes for consideration at the July 7, 2014 Work Session.

Wicomico County is seeking a donation of land consisting of 34.94 acres from the City of Salisbury to expand the Henry Parker Athletic Complex. Expansion of this facility will position the County to retain, grow and attract new events amateur sports tournaments which benefit the local economy.

Background:

Wicomico County has established a regional brand encompassing 12 Mid-Atlantic States as a venue to hold amateur sports tournaments. Last year, Wicomico hosted 13 tournaments attracting 860 teams. These events required over 18,000 hotel room nights infusing over \$11,400,000 into the local economy and an additional \$4,500,000 into the regional economy primarily in Ocean City.

One event, brought here by the United States Sports Specialty Association (USSSA) is a Girls World Series which attracted 400 teams over a 3 week period requiring. The event required 19 fields some of which were located outside the County.

Agreement with the USSSA and other event organizers will be obtained to add baseball and 3 other field sports tournaments here. This equates to 12 new tournaments to be phased in over the next 4 years. The anticipated economic impact from them is \$7,000,000.

An agreement with Ocean City to form a regional marketing partnership known as the Mid Atlantic Amateur Sports Marketing Alliance (MAASA) and a relationship with Maryland's Office of Sports Marketing to market MAASA to event organizers will aid the County's ability to grow this market. The Mid Atlantic Amateur Sports Marketing Alliance (MAASA) features a web site, published collateral and joint utilization of facilities & an established hotel booking service to offer room blocks, best available rates & event organizer rebates to accommodate events. Maryland's Office of Sports Marketing will market MAASA to event organizers. To our knowledge this is the first partnership of its kind.

The agreement with USSSA requires a host site featuring 8 softball/baseball fields and 8 soccer/lacrosse fields. The County intends to expand the Henry Parker Sports Complex (HPSC) to meet this request. A site design and estimate was prepared to construct 4 soccer & 3 baseball fields; lighting an existing softball field; and expanding parking & patron amenities. The project's estimate is \$3,000,000.

The State too benefits from the economic impact generated from these events. For every \$14.50 spent, the State generates \$1.00 in tax revenue (sales, income and corporate income tax). Utilizing this formula (source: Market & Economic Analysis Wicomico Youth & Civic Center 1/2012 by Crossroads Consulting Services; commissioned by the Maryland Stadium Authority), the State's annual tax yield would increase by 50% from \$800,000 to \$1,200,000.

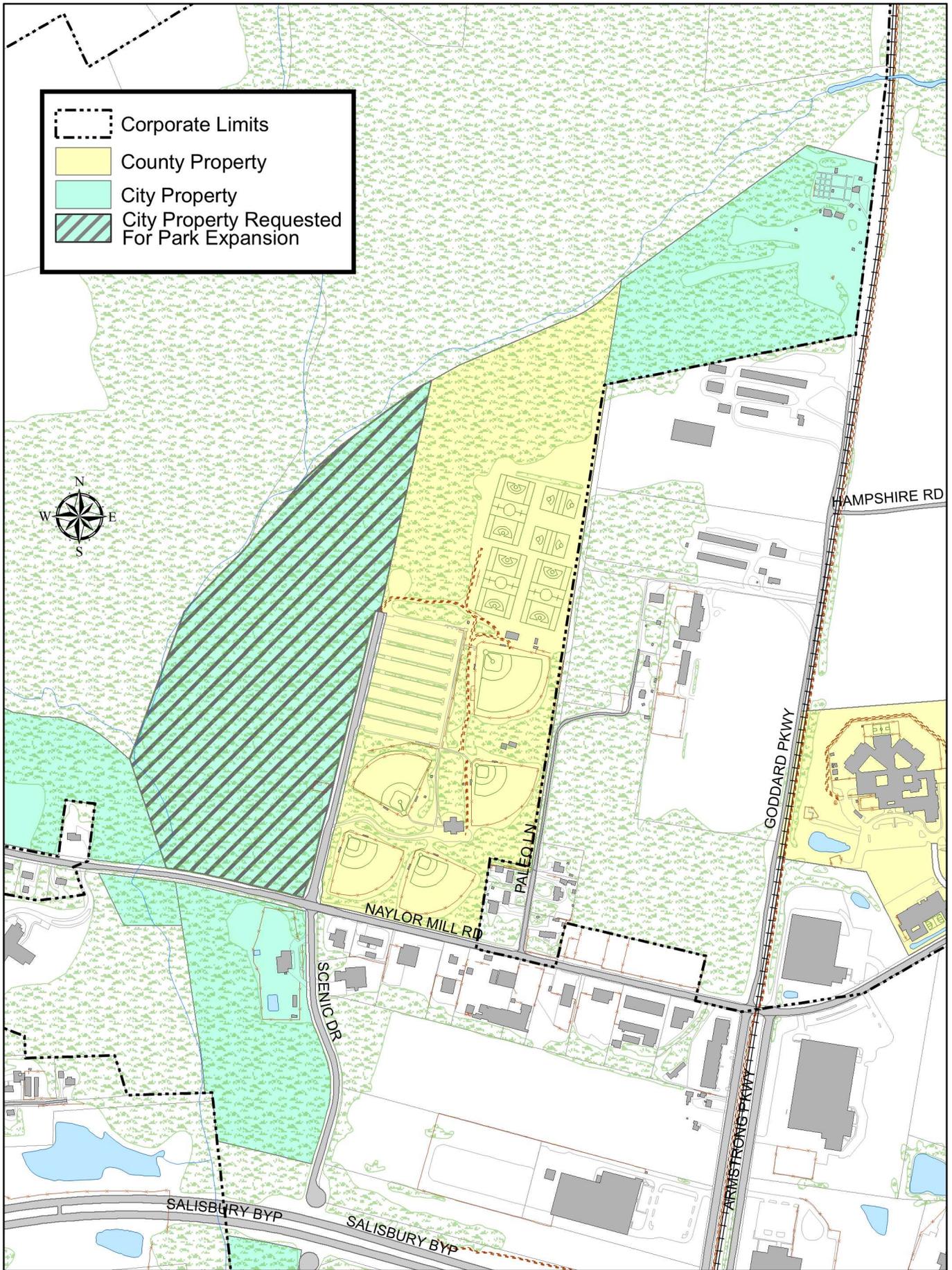
Since this project fits within Maryland's mission to retain & grow business in a very competitive market place, it allocated \$1,000,000 to expand the Parker Complex in its FY15 budget. This will be matched equally by the County. Construction will begin in November 2014. Additional funding from the State will be sought next year to complete the project. A completion date of April 2016 has been set.

The City of Salisbury equally benefits from this expansion. Benefits include room tax and increased traffic to its hotels, restaurants, retail and attractions. It also enhances its citizen's quality of life as the complex is utilized by public recreation sports leagues.



0 500 1,000 Feet

-  Corporate Limits
-  County Property
-  City Property
-  City Property Requested For Park Expansion



distribute 100 commemorative coins as a tribute to the semi-centennial anniversary (50th year in existence) of the club.

Council reached unanimous consensus to permit Salisbury Coin Club to use the City seal on their commemorative coin.

Expansion of Henry S. Parker Sports Complex

Council was joined at the table by Wicomico County Recreation, Parks & Tourism Director Gary Mackes and Wicomico County Director of Administration Wayne Strausburg to discuss the County's request for the donation of 34.94 acres from the City to expand the Henry S. Parker Athletic Complex.

Points of discussion included the following:

- Facility is needed for additional soccer, lacrosse, and softball fields all situated at one location
- Wicomico County has secured \$1 million from the State and will match the funds
- Wicomico County expects \$10 million in economic activity over the next four years after the facility is built
- Traffic challenges during tournaments and how they would be dealt with (traffic will perhaps increase by 25% to 30%)
- Required easements that would need to be executed
- Funds are included in the grant for infrastructure for restrooms and snack stands
- Possibly leasing rather than donating the land to the County
- The next steps in the process would be for the County's law office to meet with Mr. Tilghman to discuss the details
- Scenic Drive would not be altered
- There's little residential in the immediate area
- Wicomico County will have a traffic study done
- What is the actual value of the land?
- Concerns about traffic since senior housing is nearby
- How many hotels are booked in the City during tournaments?
- What will happen to the bike trails?
- Liability and maintenance will be handled by Wicomico County
- To replicate the park as it exists now would cost approximately \$5 million, and hopes are to keep as many trees in the new section as possible

Council unanimously agreed for the Legal Department, Public Works and City Administration to work with the County to develop the agreement and perform the traffic study and analysis.

Approving Revolving Loan Applicant – Echelon Restaurant

Council President Day invited Dr. Chauwan Matthews to the table to discuss the loan for his restaurant, Echelon Southern Bistro and Lounge. City Administrator Tom Stevenson presented

90 Regarding Lot #10, Council discussed allowing SAO to continue paying the \$9 rate through the
91 current fiscal year only, with the rate reverting to the normal rate for the parking lot, currently
92 \$28.

93
94 Council will again consider the removal of the meters in an upcoming Work Session after Ms.
95 Miller has revisited SAO.

96
97 **Expansion of Henry S. Parker Sports Complex (Complex)**

98
99 Wicomico County Director of Administration Wayne Strausburg, Recreation, Parks & Tourism
100 Director Gary Mackes, Public Works Director Lee Beauchamp, and Parker and Associates Vice
101 President Brock Parker joined Council to discuss the expansion of the Complex.

102
103 Mr. Beauchamp reported the results of the Naylor Mill Road traffic study, as follows:

104
105 The seven (7) day study was performed during the Complex's largest event, the USSSA
106 Fastpitch World Series. Each day during the tournament, the volume was about 2,500
107 vehicles in each direction, with 400 trips (around 200 vehicles) using the Scenic Drive
108 entrance at the Complex. Over the course of the tournament, there were approximately
109 37,000 trips on Naylor Mill Road with about 5,000 trips onto Scenic Drive off Naylor
110 Mill Road. Traffic flow going east and west was consistent, with slightly more vehicles
111 traveling down Rt. 13. Naylor Mill Road has a capacity of about 10,000 trips per day, and
112 even at the peak of the tournament, only about half of that capacity was used.

113
114 Summarizing the study, Mr. Beauchamp stated the results were well within industry standards.
115 He indicated the County would continue the study by placing the counters back out next week to
116 collect additional data now that school is back in session, but doubted that the traffic volume
117 during the tournament was higher than the traffic volume during the school year.

118
119 Additional discussion points included:

- 120
- 121 • Preservation and relocation of the bike trails
 - 122 • Two access roads
 - 123 • First things built will be baseball fields followed by soccer fields
 - 124 • Environmental impact
 - 125 • Economic development
 - 126 • Bike trails on County-owned land north of existing soccer fields are highly regarded
 - 127 • The tournament brings \$12.5 million local economic impact
 - 128 • No nearby residents have expressed concerns
 - 129 • Preservation of the tree canopy; making the best use of the timber harvested from the
130 property (furniture, firewood, etc.)
 - 131 • Debris not to block the trails
- 132

133 Council unanimously approved to advance the transfer of the City property to the County with
134 the following conditions (sent to Mr. Mackes on September 4, 2014):

135

- 136 1. Execution of a City-County-ESIMBA MOU to open new mountain biking trails on the City-
137 owned property on Naylor Mill Road to the south and west of the proposed fields. This
138 MOU should empower ESIMBA with the responsibility for trail maintenance and
139 management.
- 140 2. As part of the County's surveying, engineering and design process, the County will accept
141 responsibility for determining the most ecologically responsible, sustainable and
142 structurally logical site for future crossing of the Connelly Mill Branch.
- 143 3. As part of the County's design and engineering process, the County will document and,
144 where practical, preserve existing trails along the steep slopes to the north and west of the
145 proposed fields.
- 146 4. As part of the County's design process, older and significant trees will be preserved
147 where possible.
- 148 5. Residual debris from site development and clearing shall not be left on existing trails.

149

150 **Solar City presentation** (to be presented at Work Session at a later date)

151

152 **Youth Civics Council Presentation**

153

154 Joining Council at the table was Youth Civics Council member Aaron Davis to present his
155 project about the Wicomico County Board of Education community service requirements. He
156 suggested there should be a program developed in which students could choose the areas of
157 service they wished to participate in in order to achieve the required number of community
158 service hours in order to graduate. He indicated there would be more respect for the community
159 if all students were required to fulfill these community service hours, but Wicomico County
160 Board of Education did not currently enforce this requirement.

161

162 Council thanked Mr. Davis for bringing this observation to their attention. Mr. Day asserted that
163 the City of Salisbury could play a large role in providing direction for students who wish to
164 complete their seventy-five service hours.

165

166 **Expansion of Arts & Entertainment District**

167

168 Mr. Stevenson explained Administration's request to make application to the Maryland
169 Department of Business and Economic Development. He explained that by expanding the
170 existing boundaries, the City hopes to attract new artists, entertainers and new developers. The
171 proposed expansion would increase the Arts & Entertainment boundary by 13.8 acres. The
172 application requires prior approval from Wicomico County in order to apply.

173

174 Mr. Stevenson explained that there was a suggestion to decrease some of the area to eliminate
175 part of the roadway and sidewalk along Route 50. He and Assistant City Administrator Terence
176 Arrington plan to meet with Pamela Dunn, Connie Strott and Lee Whaley on Thursday to discuss
177 the reduction, and would know whether they would recommend the reduction or not.

178

179 Mr. Stevenson reported the letter of intent had been sent, but Administration needed Council's
180 consensus before moving forward. The deadline to apply is October 1, 2014, so depending upon
181 the other variables, they have to wait and apply in April 2015.

182

INTER

OFFICE

MEMO

Office of the Mayor

To: City Council
From: Tom Stevenson
Subject: Charter/Code Changes
Date: January 28, 2015

From time to time, it is necessary to review, amend and improve the Charter and Code of the City of Salisbury, Maryland. At my request, each department head performed a comprehensive review of each.

Recommended changes include:

- Eliminating and/or replacing outdated language;
- Correcting conflicts or contradictions;
- Correcting spelling and punctuation errors; and
- Other improvements as needed

These proposals have been compiled and organized numerically by their charter or code section number. The suggestions which we would consider substantive have been indicated with an asterisk (*). The Department Head or the Department submitting the suggestion has been identified in **Bold**.

Due to the number of changes, we anticipate that Council will want to schedule this review and discussion over several work sessions. This initial review focuses only on Article II of the City Charter.

Following Council review, it will be necessary to format those changes that the Council wishes to pursue into ordinance or resolution form as appropriate for legislative action.

If you have any questions, please let me know.

cc: Mayor Ireton
All Department Heads
Mark Tilghman
Kim Nichols

Charter

ARTICLE II - The Council

§ SC2-1. - Number; selection; term.

All legislative powers of the city shall be vested in a Council of five (5) members who shall be elected as hereinafter provided and who shall hold office for a term of four (4) years or until their successors are duly elected and qualified, except that the one (1) Councilmember from District 1 and the one (1) Councilmember from District 2 elected on the first Tuesday of April 2013 shall serve terms which expire on the second Monday after the election of their successors on the first Tuesday of November 2015. The regular term of Councilmembers shall expire on the second Monday after the election of their successors.

[1959 Code, sec. 286. 1951, ch. 534, sec. 6][Amended 6-11-12 by Res. No. 2170]

Number; selection; term

Delete outdated info –

“Councilmen holding office on January 1, 1952, shall continue to hold office for the term for which they have been elected.” **City Clerk**

§ SC2-2. - Qualifications.

Councilmembers shall have resided in Salisbury for at least one (1) year immediately preceding their election and the Councilmember or Councilmembers from District 1 and District 2 shall reside in the boundaries of the District from which they are to be elected on the date of filing for election and must continue to reside therein during the term to which they are elected, must be at least twenty-one (21) years of age and shall be qualified registered voters of the City. The Board of Supervisors of Elections shall be the judge of the qualifications of candidates for City Council.

[1959 Code, sec. 287. 1951, ch. 534, sec. 8] [Amended 7-12-65 by Res. No. 59*; 11-12-73 by Res. No. 172**;
12-14-81 by Res. No. 232; 11-8-93 by Res. No. 441; 6-11-12 by Res. No. 2170]

* Editor's Note: The preamble to Res. No. 59, adopted 7-12-65, was as follows:

"Whereas, the present salary rates of councilmen and the mayor as compensation for their services were established in Sections 8 and 22 respectively of the Charter of the City of Salisbury over thirteen years ago; and

"Whereas, during such period of time the volume and complexity of the City's business and affairs has increased greatly, and such increase is continuing, with the result that the City's demands on the councilmen and the mayor for their services and time have increased substantially and are likely to continue to increase; and

"Whereas, the rates of compensation for personal services of all kinds in the community have increased greatly during the same period; and

"Whereas, in the judgment of the Council it is both proper and equitable that the salaries aforementioned be increased to reflect the trend of the times and especially in view of the ever-increasing demand on their time in attending to matters of public business."

** Editor's Note: The preamble to Res. No. 172, adopted 11-12-73, was as follows:

"WHEREAS, the present salary rates of Councilmen and the Mayor as compensation for their services were established in Sections 8 and 22 respectively of the Charter of the City of Salisbury over five years ago; and

"WHEREAS, during such period of time the volume and complexity of the City's affairs has increased greatly, and such increase is continuing, with the result that the City's demands on the Councilmen and the Mayor for their services and time have increased substantially and are likely to continue to increase; and

"WHEREAS, the rates of compensation for personal services of all kinds in the community have increased greatly during the same period; and

"WHEREAS, in the judgment of the Council it is both proper and equitable that the salaries aforementioned be increased to reflect the trend of the times and especially in view of the ever-increasing demand on their time in attending to matters of public business."

Qualifications

"Board of Supervisors of Elections" - name of the Board needs to be consistent with §SC6-2 (City of Salisbury Election Board) City Clerk

§ SC2-3. - Salary.

Each Councilmember shall receive a salary. A Salary Review Committee comprised of five (5) members to be appointed by the Mayor is hereby created to review salaries of Councilmembers. The Committee shall make a written recommendation to the City Council six months prior to the next election for Councilmembers, with salaries to be effective in the fiscal year after all five Councilmembers' current terms have expired. Salary recommendations shall be considered by the City Council and salary shall be set forth and adopted in an Ordinance passed by the City Council. Thereafter, a Salary Review Committee shall be appointed by the Mayor every four (4) years to perform the task set forth herein with salaries to be established by the City Council by Ordinance. Councilmembers may also be eligible to participate in benefit programs by paying the full cost of participation in the employee benefit programs. Nothing herein shall permit salaries or benefits to be changed to be effective during the term for which a Councilmember is then serving. The Committee established herein shall be the same Committee established for a similar review of the salary of the Mayor.

[1959 Code, sec. 288. 1951, ch. 534, sec. 8] [Amended 7-12-65 by Res. No. 59*; 11-12-73 by Res. No. 172**;
12-14-81 by Res. No. 232; 11-8-93 by Res. No. 439; 2-22-10 by Res. No. 1890; 2-25-11 by Res. No. 2036]

* Editor's Note: See Section SC2-2 Editor's Note.

** Editor's Note: See Section SC2-2 Editor's Note.

§ SC2-4. - Meetings.

The newly elected Council shall meet on the second Monday evening following its election for the purpose of organization, after which the Council shall meet regularly at such times as may be prescribed by its rules but not less frequently than twice a month, except the Council may meet once during the months of June, July, August and December. Special meetings may be called in writing by the Mayor or by a majority of the members of the Council as often as necessary for the transaction of business.

[1959 Code, sec. 289. 1951, ch. 534, sec. 9] [Amended 12-13-99 by Res. No. 684; 1-24-05 by Res. 1186]

§ SC2-5. - Quorum.

A majority of the Council shall constitute a quorum for the transaction of business, and a majority of those present shall decide any question unless otherwise provided in this Charter.

[1959 Code, sec. 290. 1951, ch. 534, sec. 10]

§ SC2-6. - Procedure.

The Council shall organize by electing a permanent President and Vice-President of the Council. If the President is absent, the Vice-President shall preside at such meeting. The Council shall determine its own rules and order of business. It shall keep a journal of its proceedings, and the journal shall be open to public inspection.

[Repealed and reenacted 12-28-98 by Res. No. 622]

§ SC2-7. - Vacancies.

Vacancies in the Council shall be filled as provided in § SC6-12 of this Charter.

[1959 Code, sec. 292. 1951, ch. 534, sec. 12] [Amended 5-23-05 by Res. No. 1247]

§ SC2-8. - Departments.

The Council by ordinance may create, change and abolish offices, departments or agencies, other than the offices, departments and agencies established by this Charter. The Council by ordinance may assign additional functions or duties to offices, departments or agencies established by this Charter, but may not discontinue or assign to any other office, department or agency any function or duty assigned by this Charter to a particular office, department or agency.

[1959 Code, sec. 293. 1951, ch. 534, sec. 13]

§ SC2-9. - Salaries of officers and employees.

The Council shall fix the salaries of all employees and appointees of the City of Salisbury, including the salaries of all heads of offices, departments or agencies, but not including the salary of the Mayor or Councilmen or other elected officials.

[1959 Code, sec. 294. 1951, ch. 534, sec. 14]

§ SC2-10. - Procedure for discharge of certain department heads.

All department heads shall serve during good behavior and shall be dischargeable only for cause. "Cause" is hereby defined to mean either incompetency, inefficiency; neglect of duty; malfeasance, misfeasance; insubordination; habits or traits of character which render retention in employment to be against the public interests; material violation of the City's drug and/or alcohol use policies as established from time to time; a continuing mental or physical disability of such a nature as to prevent adequate performance of duties (subject to applicable federal or state laws prohibiting discrimination against disabled individuals); or any conduct tending to prejudice good government or tending to bring the City, or any agency thereof, into public disrepute.

If the Mayor decides that a department head should be terminated, then the Mayor shall serve a written notice upon the department head at least thirty (30) days in advance of the intended termination date. The written notice shall set forth a brief summary of the cause or causes upon which such termination is based. Within five (5) days after receipt of such notice, the department head may elect to have a hearing on such termination by serving a written notice of such election upon the City Administrator, in which event the department head's termination shall be deferred until a decision is rendered in connection with the hearing. A hearing before the Mayor and City Council will then be scheduled within twenty (20) days from the date of service of notice of the election by the department head. The hearing shall be closed to the public and be conducted in accordance with such rules and procedures as may be proposed by the Mayor and adopted by the Council, from time to time. Sworn testimony may be provided at that time.

After the conclusion of the hearing, the Mayor and Council may privately deliberate before rendering a decision; provided however, that a written decision must be rendered within five (5) days from the conclusion of the hearing. In order to uphold the termination of the department head, the vote of the Mayor and at least three (3) votes of the Council must be in favor of termination.

The Mayor shall have the power to suspend without pay any department head upon whom a notice of termination has been served pending the outcome of the termination hearing before the Mayor and Council. If the termination is not upheld, nothing herein shall prevent the Mayor from taking other disciplinary action with respect to the department head.

[1959 Code, sec. 295] [Added 9-9-57 by Ord. No. 765A as sec. 14A; amended 5-23-05 by Res. No. 1247]

§ SC2-11. - Ordinances.

When any ordinance is introduced for passage by the Council, it shall be read but not passed at the meeting at which it is introduced. As soon thereafter as conveniently may be, a statement of the substance of the ordinance shall be published by posting the same at some public place in the city of Salisbury (or by printing the same in some newspaper of general circulation printed in the city of Salisbury). At any regular or special meeting of the Council held not more than sixty (60) nor less than six days after the meeting at which the ordinance was introduced and first read, the ordinance shall be read for a second time and passed, or amended and passed, or rejected, or its consideration deferred to some specified future date by the Council, provided that no ordinance shall be passed until it has been published as required by this section for at least five days.

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

§ SC2-12. - Veto.

All ordinances and bylaws passed by the Council shall be delivered by the city clerk at once, or as soon as conveniently may be, to the Mayor for his approval. The Mayor shall return the same to the city clerk within six days after delivery to him (inclusive of the day of delivery and of return) with his approval or disapproval. Any ordinance or bylaw returned by the Mayor without his approval shall not become a law unless subsequently passed at a meeting by four-fifths of the whole Council within twenty (20) days from the time of the return of the ordinance. If the Mayor fails to return the ordinance or bylaw within six days of its delivery as aforesaid, then the ordinance or bylaw shall become a law without his approval.

[1959 Code, sec. 297. 1951, ch. 534, sec. 16] [Amended 3-11-02 by Res. No. 823; 6-27-02 by Res. No. 853]

Veto *

Needs clarification concerning vetoing resolutions (see Paul Wilber's opinion of October 8, 2007, Copy Included). **City Clerk**

§ SC2-13. - File of ordinances.

Ordinances, when passed and approved by the Mayor or when passed over his veto, shall be permanently filed by the city clerk in a book or books kept for that purpose.

[1959 Code, sec. 298. 1951, ch. 534, sec. 17]

File of ordinances

Since the ordinances have not been "filed in a book or books kept for that purpose" in many, many, many years, suggest ending the sentence after "permanently filed." **City Clerk**

§ SC2-14. - Ordinances to be delivered to People's Court.

The city clerk shall deliver to the Judge of the People's Court of Wicomico County a certified copy of all ordinances for the violation of which the Judge may impose a fine or imprisonment, or both, or other punishment. The Judge shall take judicial notice of all ordinances so certified to him and of the due passage thereof.

[1959 Code, sec. 299. 1951, ch. 534, sec. 18]

Ordinances to be delivered to People's Court

Change People's Court to District Court in the title and in the first line of the paragraph. **City Clerk & City Administrator**

§ SC2-15. - General powers.

The Council shall have the power to pass all such bylaws and ordinances not contrary to the Constitution, the laws of Maryland or this Charter, 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 for securing persons and property from violence, danger or destruction; and for the protection of the health, comfort and convenience of the residents of Salisbury and visitors thereto and sojourners therein.

[1959 Code, sec. 300. 1951, ch. 534, sec. 19] [Amended 4-30-01 by Res. No. 824; 6-27-02 by Res. No. 854]

General Powers. *

See Paul Wilber's opinion of October 8, 2007 (relating to resolutions, Copy Included) **City Clerk**

§ SC2-16. - Referendum.

If, before the expiration of twenty (20) calendar days following the approval of any ordinance or resolution by the Mayor or passage of any ordinance or resolution over the Mayor's veto, a petition is filed with the city clerk containing not less than twenty percent (20%) of the qualified registered voters of the city of Salisbury requesting that the ordinance or resolution, or any part thereof, be submitted to a vote of the qualified voters of the city of Salisbury for their approval or disapproval, the Council shall have the ordinance or resolution, or part thereof requested for referendum, placed on the ballot of the next regularly scheduled election, or at a special election for the sole purpose of the referendum if the Council deems such a special election warranted. Moreover, the Council, if it so chooses, may pass legislation subject to a referendum which will necessitate a vote to approve or disapprove the legislation prior to its enactment as valid law. Additionally, no ordinance or resolution shall become effective following the receipt of a petition set forth herein until and unless approved at the election by a majority (more than fifty percent (50%)) of the electorate participating in the voting on the question. However, the Council, as a stated purpose, may designate an ordinance or resolution to be emergency legislation which shall become effective at

approval by the Mayor or upon passage by the Council over Mayor's veto for a period of sixty (60) days following the receipt of a petition as set forth above. If such emergency legislation has not been submitted to the qualified voters within sixty (60) days following the receipt of the petition, the operation of the ordinance or resolution, or part thereof requested for referendum, shall be suspended until approved by a majority (more than fifty percent (50%)) of the electorate participating in the election on the question. Nothing herein shall permit the electorate to petition for referendum regarding any of the following: (1) the budget ordinance; (2) the assessment of taxes; (3) the issuance of bonds; (4) the levying of taxes to retire public indebtedness; and (5) the levying of special assessments. However, the Council may, at its discretion, submit any of the referenced issues to the public by express grant at the time of the passage of the Ordinance.

[Added 11-8-93 by Res. No. 437]

Referendum *

See Paul Wilber's opinion of October 8, 2007 (relating to resolutions, Copy Included) City Clerk

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CYNTHIA BRUBAKER MACDONALD

SUSAN K. HILL

October 8, 2007

Mayor Barrie P. Tilghman
City of Salisbury
125 North Division
Salisbury, Maryland 21801

Re: Adoption of Resolution
Our File No. 30303 - 986

Dear Barrie:

I am enclosing a legal memorandum regarding mayoral veto power. The memo answers various questions regarding veto power over resolutions.

A quick summary of the memorandum is as follows:

1. Although the Charter and Code contain instances of inconsistent language, generally speaking, a resolution which pertains to a legislative matter is in the nature of an ordinance and is subject to a mayoral veto.
2. A resolution which is purely administrative is not subject to a mayoral veto.

3. An example of an administrative resolution would be a council resolution supporting an affordable housing project.

4. An example of a legislative resolution is establishing reasonable fees and charges, since Article 23A, Section 2 (b) states: "this function is part of the ordinance making powers of the council."

5. A mayor does have the power to veto a legislative resolution, but the veto is always subject to an override vote by the council.

Mayor Barrie P. Tilghman

October 8, 2007

Page2

6. If the City chooses to amend the Charter, the distinctions set forth above between legislative resolutions and administrative resolutions could be incorporated in the Charter.

Sincerely,

A handwritten signature in black ink, appearing to read 'PDW', with a long horizontal flourish extending to the right.

Paul D. Wilber

PDW/marn

Enclosure

cc: John R. Pick

RECEIVED OCT ... 8 2007

MEMORANDUM

Date: October 8, 2007

Subj: City 986-Mayor's Power to Veto Resolutions

I. Background

*"The great problem of legislation is . . .
to organize the civil government of a community . . ."* John Quincy

Adams, 1845.

In order to determine whether the Mayor has the power to veto a resolution without a council over-ride, it is necessary to examine, broadly, some existing concepts regarding the separation of powers, the sources of the City of Salisbury's power, and, ultimately, the accepted application of the powers of a municipal corporation.

The concept of separation of powers, or the shared control of governmental power by the Executive, Legislative, and Judicial Branches of government, is instilled in us as a society and as individuals from the moment we enter the school house door-if not sooner. Our national legal history is replete with constitutional battles between the branches of government ending in a new judicial decision adding to an already robust body of law. *See, e.g., Hamdan v. Rumsfeld*, 126 S.Ct. 2749, 2800 (2006) (stating that the trial of a foreign-national by military courts raises "separation-of-powers concerns of the highest order.") (Kennedy, J. concurring); *O'Donoghue v. US.*, 289 U.S. 516, 533 (1933) (opining that "each [Branch] should be kept completely separate of the others . . . in the sense that the acts of each shall never be controlled by, or subjected, directly or indirectly, to, the coercive influence of either of the other departments."); *Marbury v. Madison*, 5

U.S. 26 (1803) (applying, for the first time in the United States, the doctrine of judicial review).

Much like the federal government, the State of Maryland has long recognized the doctrine of separation of powers. In Maryland's Constitution of 1776, Article 6 of the Bill of Rights required that "the Legislative, Executive and Judicial powers of government ought to be forever separate and distinct from each other." *Board of Supervisors of Elections v. Todd*, 97 Md. 247,262-63, 54 A 963,965 (1903) (quoting Const. of Maryland, 1776, Bill of Rights, Art. 6). Each subsequent version of Maryland's Constitution contained the above language and added the following: "[A]nd no person exercising the functions of one of the departments shall assume or discharge the duties of any other." *Todd*, 97 Md. at 263, 54 A. 963, 965. The combined language of Maryland's original Bill of Rights and the subsequent addition can be found in Article 8 of Maryland's present Declaration of Rights.¹

When it comes to the operation of government in the United States, most of society enters discussions of government with the above federal and state concepts of constitutional separation of powers etched into its collective understanding. With respect to local governments, however, this understanding is not applicable. Maryland Courts

¹For a thorough discussion of Maryland's constitutional history in relation to the separation-of-powers doctrine *see Schisler v. State*, 394 Md. 519, 907 A.2d 175 (2006) (holding that the General Assembly's firing of the Public Service Commissioners violated various provisions of the Maryland Constitution designed to ensure the separation of power).

have held that the "constitutional concept of separation of powers does not apply to local government." *Sugarloaf Citizens Ass'n, Inc. v. Gudis*, 319 Md. 558,572, 573 A.2d 1325, 1332-33 (1990); *Pressman v. D'Alesandro*, 193 Md. 672,679,69 A.2d453, 454 (1949); McQuillin, *The Law of Municipal Corporations*, 2A § 10:3 (3rd ed.) (relating that, in a historical sense, the constitutional principle of separation of powers has not been applied to the government of cities.); see *Barranca v. Prince George's County*, 264 Md. 562, 571, 287 A.2d 286,291 (1972) (power of removal of a Prince George's County County Commissioner lies in the hands of both the county executive and the county council). Although there is no constitutional requirement that the doctrine of separation of powers apply to local governments, the local government may, through its charter, establish an executive and legislative branch that are similar in some respects to the federal and state systems our society is more familiar with.

Typically, a municipality's legislative body and its interaction with the executive is defined by its charter. The charter of a municipal corporation is, generally, thought of in two ways. First, the charter is thought of as delegation of a portion of the state's powers. McQuillin, 2A § 9:1. The charter defines and limits the objects and powers with which the municipal authorities are entrusted. *!d.* In *River Walk Apartments, LLC v. Twigg*, 396 Md. 527, 914 A.2d 770 (2006), Maryland's highest Court stated this fundamental tenant of municipal law: "Municipalities possess only such powers as have been conferred upon them by the Legislature." *!d.* at 543, 914 A.2d at 779 (citing *Jewel*

Tea Co. V. Town of Bel Air, 172 Md. 536, 539, 192 A. 417,418 (1937)); *see* McQuillin, 2A § 10:3 (stating that "municipalities have no inherent powers and possess only such powers as are expressly conferred by statute or implied as necessary in aid of those powers which have been expressly conferred."). In *Mayor and Council of Hagerstown v. Sehner*, 37 Md. 180, 193 (1872), the Court said that municipal corporations are "instruments of the government subject at all times to the control of the Legislature with respect to their duration, powers, rights and property." Thus, a municipality only has a finite amount of power with which to govern and that power is delegated to it by the State.

Second, and, in some respects, conceptually inconsistent with the delegation of power theory, the charter of a municipal corporation is the equivalent of its organic law; it is to the municipal corporation what a constitution is to the state in that it provides the structure for the municipalities government. McQuillin, 2A § 9:1. The two theories are inconsistent because a document that embodies the delegation of the State's power, such as a charter, cannot be organic law in the sense that it is the document from which the power originates. This is because a charter's power originates from the State's Constitution and is passed to the municipal corporation via enactments of the General Assembly. A charter is organic law, however, in that it provides "'a broad organizational framework establishing the form and structure of government in pursuance of which the political subdivision is to be governed and local laws enacted.'" *Mayor and City Council*

of *Ocean City v. Bunting*, 168 Md.App. 134, 146, 895 A.2d 1068, 1075 (2006) (quoting *Cheeks v. Cedlair Corp.*, 287 Md. 595, 606, 415 A.2d 255, 261 (1980)). In other words, a charter does not have inherent power, but it embodies the power conveyed to the municipal corporation by the State and it details the organizational structure that will exercise that power on behalf of the State.

II. The City of Salisbury

A. Source of Power

Maryland's municipal corporations, like the City of Salisbury, derive their power from Article XI-E of the Constitution of Maryland: "[T]he General Assembly shall act in relation to the incorporation, organization, government, or affairs of any such municipal corporation only by general laws It shall be the duty of the General Assembly to provide by law the method by which new municipal corporations shall be formed." Md. Const., Art. XI-E, § 1. The General Assembly provided for this Constitutional mandate by enacting Article 23A of the Maryland Code.²

Maryland Code, Article 23A, § 1, allows a municipal corporation to "pass and adopt all ordinances, resolutions or bylaws necessary or proper to exercise the powers granted herein or elsewhere." Section 2(a) enumerates the express ordinance-making

² Article XI-E, § 3, gives a municipal corporation the power to amend or repeal its charter and to adopt a new a new charter and § 4 of that same Article requires the General Assembly to enact legislation that will outline the procedures for adopting, amending, or repealing a charter. See *Blackwell v. City Council for City of Seat Pleasant*, 94 Md.App. 393,398,617 A.2d 1110,1112 (1993).

powers conferred in § 1, *J.P. Delphey Limited Partnership v. Mayor and City of Frederick*, 396 Md. 180, 192, 913 A.2d 28, 35 (2006), and provides, in relevant part, that a:

"[L}egislative body of every incorporated municipality in this State . . . shall have general power to pass such ordinances not contrary to the Constitution of Maryland, public general law, or . . . public local law as they may deem necessary in order to assure the good government of the municipality, to protect and preserve the municipality's rights, property, and privileges, to preserve peace and good order, to secure persons and property from dander and destruction and to protect the health, comfort and convenience fo the citizens of the municipality"

Md. Code, Art. 23A, § 2(a) (emphasis added). Section 2(b) then lists 37 additional "express ordinance-making powers" granted to the "*legislative body*" of the incorporated municipality. (Emphasis added). With respect to the meaning of "legislative body," the Court of Appeals has determined that the plain language of Art. 23A, § 2 is controlling. *J.P. Delphey Limited Partnership*, 396 Md. at 193, 913 A.2d at 35. Thus, the power to perform acts under§ 2 is vested only in a municipality's *legislative body*.

B. Salisbury's Charter

The City of Salisbury Charter, consistent with the power delegated to it from Maryland's Constitution via Article 23A, provides that: "All legislative powers of the city shall be vested in a Council of five (5) members" Art. II, SC2-1. Therefore, Salisbury's legislative authority is vested only in the City Council. The Charter then outlines the general powers of the Council:

"The Council shall have the power to pass all such *bylaws and*

ordinances not contrary to the Constitution, the laws of Maryland or this Charter, as it may deem necessary for the good of the government of the city; for the protection and preservation for the city's property, rights and privileges; for the preservation for peace and good order and for securing persons and property from violence, danger or destruction; and for the protection of the health, comfort and convenience of the residents of Salisbury and visitors thereto and sojourners therein."³

Art. II, SC2-15 (emphasis added). Article II, SC2-15 only permits the Council to exercise the power granted to it by the State by enacting bylaws and ordinances. Exercising this power by any other means, including resolution, would be contrary to the Charter and, therefore, impermissible.

The Mayor of Salisbury's veto power is expressed in Article III, § SC3-4(D): "The Mayor shall have the power to veto *ordinances and bylaws* passed by the Council as provided in § SC 2-12." (Emphasis added). Article II, § SC 2-12 provides:

"All *ordinances and bylaws* passed by the Council shall be delivered by the city clerk at once, or as soon as conveniently may be, to the Mayor for his approval. The Mayor shall return the same to the city clerk within six days after delivery to him (inclusive fo the day of delivery and of return) with his approval or disapproval. *Any ordinance or bylaw* returned by the Mayor without his approval shall not become a law unless subsequently passed at a meeting by four-fifths of the whole Council within twenty (20) days from the time of the return of the ordinance. If the Mayor fails to return the *ordinance or bylaw* within six days of its delivery as aforesaid, then the *ordinance or bylaw* shall become a law without his approval." (Emphasis added).

The plain language of the City of Salisbury Charter very clearly expresses that the Mayor

³ The term "bylaw" is often used interchangeably with the term "ordinance" in statutes and charters. McQuillin, *The Law of Municipal Corporations*, § 15:1, (3rd ed.).

only has the power to veto ordinances and bylaws. There is no ambiguity in this section of the Charter. Generally, the Charter does not provide the Mayor with the power to veto a resolution. This reading is consistent with the Court of Appeals general statement to the effect that only ordinances need be signed by the mayor or passed over his veto. *See Inlet Assoc. 's, supra.* Moreover, when reading this provision in conjunction with the Charter's expression of the Council's power, which embodies the grant of power from the State to the City's legislative body, common sense and logic demand that Mayor may not exercise veto power over anything that is not legislation. Thus, one is inclined to conclude that the Mayor may not ever veto a resolution-an act that is not legislation. What then, is the difference between an ordinance and a resolution? An ordinance is generally defined as a "local law of a municipal corporation, duly enacted by the proper authorities, prescribing general, uniform, and permanent rules of conduct, relating to the corporate affairs of the municipality. McQuillin, § 15:1. *Black's Law Dictionary*, 901 (abridged 7th ed. 2000), defines ordinance as: "An authoritative law or decree; esp., a municipal regulation. . . . Also termed *bylaw; municipal ordinance.*" (Emphasis added).⁴ An ordinance is "distinctively a legislative act; it prescribes 'some permanent rule of conduct or government, to continue in force until the ordinance is repealed.'" *Inlet Associates v. Assateague House*, 313 Md. 413, 428 545 A.2d 1296, 1303 (1981) (quoting

⁴ The term "bylaw" is often used interchangeably with the term "ordinance" in statutes and charters. McQuillin, § 15:1.

McQuillin, § 15:2). In most circumstances, an ordinance "is the equivalent of legislative action, and hence its employment in a constitution, statute, or charter may carry with it by natural, if not necessary, implication the usual incidents of such action." McQuillin, § 15:1.

Conversely, a resolution "is not an 'ordinance,' and there is distinction between the two terms as they are commonly used in charters." McQuillin, § 15:2. Resolution is defined as: "A formal expression of an opinion, intention, or decision by an official body or assembly (esp. a legislature). *Black's Law Dictionary*, 1052 (abridged 7th ed. 2000). The Court of Appeals, again relying on McQuillin, has said that a resolution is "simply an expression of opinion or mind concerning some particular item of business coming within the legislative body's official cognizance, ordinarily ministerial in character and relating to the administrative business of the municipality." *Inlet Assoc.'s*, 313 Md. at 428, 545 A.2d at 1303 (quoting McQuillen, § 15:2). Additionally, all "administrative or ministerial powers possessed by the governing body of a municipality may be exercised by resolution." *Inlet Assoc.'s*, 313 Md. at 428, 545 A.2d at 1303 (citing 1 C. Antieau, *Municipal Corporation Law*, § 414 (1988)). The Court of Appeals pointed out in *Inlet Assoc.'s*, that "a common distinction between a resolution and an ordinance is that only the latter need be *signed by the Mayor or passed over his veto*." *Inlet Assoc.'s*, 313 Md. at 428, 545 A.2d at 1303-04 (emphasis added).

C. *Inconsistent Language in the Salisbury's Charter and Code*

Article II, § SC2-16, confuses the issue because the words ordinance and resolution are used together seven times when discussing the procedures for referendums. The language of § SC2-16, indicates that the Mayor has signatory and veto power over resolutions used in this context. For example, the first sentence contains the language: "following the approval of any ordinance or resolution by the Mayor or passage of any ordinance or resolution over the Mayor's veto" Additional language used in § SC2-16 indicates that a resolution, in emergency situations, may have the effect of legislation: "the Council, as a stated purpose, may designate an ordinance or resolution to be emergency legislation which shall become effective at approval by the Mayor or upon passage by the Council over the Mayor's veto" ⁵ The word resolution does not appear in any other section of Articles II and III of the City of Salisbury Charter. The word ordinance is used 196 times and the word resolution is used 56 times in the Salisbury Municipal Code. Of those uses, there are two places where the word resolution is used in a way that cause inconsistency.

⁵ This particular language is probably an exception to the general rule regarding resolutions because Art. II, § SC2-II does not permit an ordinance to be passed at the meeting in which it is introduced. Thus, it is logical to require that money be appropriated by resolution in emergency situations when time is a factor. Additionally, this section gives the Mayor veto power over the emergency legislation. Expressly giving the Mayor veto power over the resolution is an implied acknowledgment that the emergency resolution is (1) a legislative act, and (2) if the emergency resolution was not a legislative act, the Mayor would not have the power to veto it.

The first instance is in Title I of the Code, General Provisions, where it is said that "the Charter, the ordinances and certain resolutions, of a general and permanent nature" are adopted as the Salisbury Municipal Code. SMC I, 1.04.010. This provision as implies that certain resolutions have the characteristics of ordinances in that they are of a general and permanent in nature, and, because they are placed in the Salisbury Municipal Code, they are legislative acts. Consistent with Professor McQuillin's position that any legislative act, regardless of what it is called, is to be treated as an ordinance, the Mayor can veto resolutions that are general and permanent.⁶

The second instance is language found in Title 13, Public Services, where it is provided that: "The mayor and council may adopt a policy by separate resolution" to permit discounts for sewer connection charges. SMC, 13.02.070. This language plainly states that *both the Mayor and Council* are required to adopt a discount policy by resolution. **It** is difficult to conceive of a situation in which the Mayor would have an interaction with the Council in this context unless it were to sign or veto a resolution, which is legislative in nature.

D. Interpretation

But what of that unusual type of resolution that is actually a legislative act? Does the Mayor have veto power over such a resolution? The answer is yes.

⁶ **It** is not clear from this provision of the Code, or from the rest of the Code, which specific resolutions are being referred to in 1.04.010.

If it is necessary to interpret the Charter or the Code to determine this answer, Maryland's highest court has stated that "local ordinances and charters are interpreted under the same canons of construction that apply to the interpretation of statutes." *Kane v. The Board of Appeals of Prince George's County*, 390 Md. 145, 887 A.2d 1060, (2005) (quoting *O'Connor v. Baltimore County*, 382 Md. 102, 113, 854 A.2d 1191, 1198 (2004)). The principles of statutory interpretation are too numerous to recite here and such a recitation would be meaningless without a specific section of the Charter or Code to interpret. In addition, anyone familiar with judicial application of the principles of statutory interpretation is aware that courts often seem to apply them in a random way. Thus, predicting how a court would interpret any particular provision would be a guess. Perhaps it would be more helpful to follow four general principles gleaned from the decisions of the Court of Appeals and the writings of Professor McQuillin when determining whether the Mayor of Salisbury may exercise her veto. First, when the municipality's charter expresses that a specific action must take place by ordinance or resolution the charter controls. *Inlet Assoc.'s*, 313 Md. at 428, 545 A.2d at 1304; McQuillin, § 15:2. Second, the provisions of Article 23A, § 2, when taken in their entirety, demonstrate the General Assembly's intention that a municipality enact ordinances when performing its legislative functions. *Inlet Assoc.'s*, 313 Md. at 430, 545 A.2d at 1304. Third, the Mayor does not have veto power over resolutions when resolutions are the exercise of the council's administrative or ministerial powers. *Inlet*

Assoc.'s, 313 Md. at 428, 545 A.2d at 1303-04. Fourth, regardless of what the action is called by the legislative body, if a resolution is in substance and effect a legislative act, it is an ordinance. *McQuillin*, § 15:2. Therefore, one may conclude that the Mayor may only exercise her veto when presented with an ordinance or when the City Council passes a resolution that is not administrative or ministerial in nature, but is, in fact, legislative in nature.

III. Conclusion

The Mayor of Salisbury does not have the power to veto a resolution passed by the City Council in its administrative or ministerial capacity. The Mayor has the power to veto a resolution passed by the Council acting in its legislative capacity regardless of what the Council calls it.

Perhaps the best solution to the problem is to amend Salisbury's Charter and Code in order to reflect the above discussed definitions and principles of law.

INTER

OFFICE

MEMO

City Clerk

To: City Council members
From: Kim Nichols, City Clerk
Date: January 28, 2015
Subject: Council Reporting Form on City Boards & Commissions

Attached is the draft form Vice President Mitchell circulated in December for Council to try out and check for functionality issues or to make suggestions for enhancement.

This form should help keep everyone informed of what is happening in the various groups on which you serve as representative of the City. Much of the details can be conveyed by attaching meeting minutes but there is also space to convey other information that the Council should be aware of (upcoming events, situations that may need Council attention in the future, etc.).

There have been no comments, questions or suggestions on the draft form.



City of Salisbury

Elected/Appointed Official's Meeting Content Report

Board or Commission [Name of Board or Commission Being Reported]

Participant Name OT

Participant's Email OT

Location OT

Meeting Date [Date]

Your feedback is important in helping all City Council members to stay informed of activities and events that may impact the City of Salisbury. Please return this form to the City Clerk for distribution to all Council members within 7 days of the meeting. Thank you!

OT

[Are there any issues that Council should be aware of or will need to consider?]

[When does this Board/Commission meet next?]

ADDITIONAL QUESTIONS

The greatest strengths of the Board/Commission are

[Response]

The Board/Commission could be improved by

[Response]

Other Comments

[Response]