



## Board of Aldermen Request for Action

**MEETING DATE:** 5/2/2023

**DEPARTMENT:** Police Department

**AGENDA ITEM:** Bill No. 2994-23, repealing Ordinance Section 200 regarding provisions for collective bargaining with law enforcement personnel. 2<sup>nd</sup> Reading

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### **REQUESTED BOARD ACTION:**

A motion to approve Bill No. 2994-23, repealing Ordinance Section 200 regarding provisions for collective bargaining with law enforcement personnel and enacting in its place new Ordinance Section 200. Second reading by title only.

### **SUMMARY:**

In mid-January, Chief Jason Lockridge was contacted by a number of Smithville Police Officers and informed of their desire to petition the City to recognize the Fraternal Order of Police (FOP) as their exclusive bargaining unit. At the February 7, 2023 Board of Aldermen meeting, Smithville Police Officers, and a representative from the FOP spoke during public comment reaffirming their desires and asking the Board to consider changing ordinances related to collective bargaining.

Staff met with labor attorney Jeff Place to discuss recommended ordinance changes. These proposed amendments represent case law changes, statutory changes and best practices.

### **PREVIOUS ACTION:**

The original ordinance was approved in 2015, following a Missouri Western District Court of Appeals ruling. A resolution approving an agreement with Jeff Place, with the firm of Jackson Lewis PC, to serve as labor attorney was approved on February 21, 2023.

### **POLICY ISSUE:**

### **FINANCIAL CONSIDERATIONS:**

N/A

### **ATTACHMENTS:**

- |                                                      |                                   |
|------------------------------------------------------|-----------------------------------|
| <input checked="" type="checkbox"/> Ordinance        | <input type="checkbox"/> Contract |
| <input type="checkbox"/> Resolution                  | <input type="checkbox"/> Plans    |
| <input type="checkbox"/> Staff Report                | <input type="checkbox"/> Minutes  |
| <input checked="" type="checkbox"/> Other: Exhibit A |                                   |

**AN ORDINANCE REPEALING ORDINANCE SECTION 200 REGARDING PROVISIONS FOR COLLECTIVE BARGAINING WITH LAW ENFORCEMENT PERSONNEL AND ENACTING IN ITS PLACE NEW ORDINANCE SECTION 200**

WHEREAS, the Board of Aldermen adopted Ordinance 2921-15 on April 21, 2015 outlining provisions for collective bargaining with the City's law enforcement personnel; and

WHEREAS, the Board of Aldermen conducted a work session on February 7, 2023 and the Police Officers and representative from the FOP expressed their desire for change the Ordinances related to collective bargaining; and

WHEREAS, in consultation with legal representation, changes have been drafted.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI, AS FOLLOWS:

Section 1. Section 200.070 through Section 200.130 of the Code of Ordinances is hereby repealed in its entirety and replaced with new Section 200.070 through 200.130 of Collective Bargaining Provisions. Collective bargaining with law enforcement personnel in the form attached hereto as "**Exhibit A**" are hereby adopted.

Section 2. Effective Date. This Ordinance and the attached provisions for collective bargaining with law enforcement personnel shall be effective immediately upon approval of this Ordinance.

PASSED AND ADOPTED by the Board of Aldermen and APPROVED by the Mayor of the City of Smithville, Missouri, the 16<sup>th</sup> of May, 2023

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Damien Boley, Mayor

ATTEST:

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Linda Drummond, City Clerk

First Reading: 05/02/2023

Second Reading: 05/16/2023

**EXHIBIT A**

**City of SMITHVILLE**

**Provisions for Collective Bargaining with Law Enforcement Personnel**

**ARTICLE 1  
PURPOSE**

1.1 These provisions are adopted for the purpose of providing a framework within which law enforcement personnel employed by the City of Smithville can exercise their right under Article I, Section 29 of the Constitution of the State of Missouri to bargain collectively with the City, through representatives of their own choosing.

**ARTICLE 2  
COVERAGE**

2.1 These provisions shall apply to all regular full-time personnel employed in the Police Department.

2.2 It is the City's determination that all regular full-time non-supervisory employees employed within the Police Department constitute the most appropriate unit for the purpose of collective bargaining. Any election conducted for the purpose of allowing employees to designate an exclusive bargaining representative, as provided below, shall take place within this unit, subject to the following exclusions:

2.2.1 To avoid the division of loyalties and conflicts of interest, supervisory personnel shall not be included within the same bargaining unit as employees they supervise. ~~Further, the same labor organization shall not represent both non-supervisory and supervisory employees within the Police Department.~~ For the purposes of this subsection, ~~Sergeants, Captains, Majors, and the Chief of Police~~ all employees at or above the rank of Sergeant, shall be considered supervisory employees.

2.2.2 Confidential and/or Command Staff employees shall not be included within the same bargaining unit as non-supervisory employees, nor shall they be represented by the same labor organization as represents any ~~non-supervisory~~ other employees within the Police Department. ~~For the purposes of this subsection,~~ the Departmental Administrative Assistant/Secretary shall be considered a confidential employee, and all sworn officers at or above the rank of Captain shall be considered Command Staff employees.

**ARTICLE 3**  
**DESIGNATION OF EXCLUSIVE BARGAINING REPRESENTATIVE**

3.1 Any labor organization wishing to represent employees employed in the City's Police Department, ~~in either a supervisory or non-supervisory bargaining unit,~~ shall present to the ~~City Clerk~~Assistant City Administrator cards containing the signatures of at least thirty percent (30%) of the employees in ~~the each appropriate~~ the labor organization seeks to represent, indicating that they wish to select the labor organization in question as their exclusive bargaining representative for the purpose of collective bargaining. For purposes of this sub-section, the City finds that a bargaining unit consisting of all sworn personnel below the rank of sergeant is an appropriate bargaining unit, as is a unit consisting of all sergeants within the department.

3.2 Upon receiving such cards, the ~~City Clerk~~Assistant City Administrator shall validate the signatures on the cards, and confirm that at least thirty percent of the employees in the bargaining unit(s) have signed cards. If the ~~Clerk~~Assistant City Administrator determines that at least thirty percent of the employees in the unit(s) have signed valid cards, the ~~Assistant City Administrator~~Clerk shall consult with the Chief of Police and the representative of the labor organization that has presented the cards, and together they shall select a mutually agreeable date for a secret ballot election(s) to take place. The election(s) shall be held at City Hall, and shall be set for a date falling no less than four and no more than six weeks after the day upon which the ~~Assistant City Administrator~~Clerk first receives the cards from the labor organization's representative, unless the ~~Assistant City Administrator~~Clerk, the Chief of Police, and the representative of the labor organization all agree upon an earlier date.

3.3 Once an election date has been set, the ~~Assistant City Administrator~~City Clerk shall issue a notice informing all eligible voters of the date, time, and place of the election. Such notice shall be distributed to all employees and shall be posted within the Department.

3.4 From the time the election notice is first posted until the date of the election, all employees of the City shall have the right to freely express their opinions about whether or not the labor organization should be selected as the exclusive bargaining representative of the employees in the bargaining unit. However, no employee of the City and no representative of the labor organization shall attempt to threaten, intimidate, coerce, or otherwise restrain any eligible voter in the free exercise of his or her

individual choice to support or oppose the selection of the labor organization in question as the exclusive bargaining representative of the employees in the bargaining unit.

3.5 The election shall be conducted by secret ballot, using such procedures as the ~~Assistant City Administrator City Clerk~~ shall determine are appropriate for ensuring the privacy and security of each employee's vote. Once the poll is closed, the ~~Assistant City Administrator City Clerk~~ shall oversee the counting of the ballots. One representative of the Police Department ~~management team~~ Command Staff and one representative of the labor organization shall have the right to be present during the counting of the ballots.

3.5.1 The ballots shall read "Do you wish to select [labor organization] as the exclusive bargaining representative for [description of bargaining unit] employed within the City of Smithville Police Department?" The ballot will include check boxes for marking "yes" or "no" in response to this question.

3.5.2 In the event that more than one labor organization seeks to represent employees in the unit, and in the event both labor organizations have obtained signatures from at least thirty percent (30%) of the employees in the unit stating that they wish to designate the labor organization as their exclusive bargaining representative, then the ballot shall read "Do you wish to select [labor organization A], [labor organization B], or no labor organization as the exclusive bargaining representative for [description of bargaining unit] employed within the City of Smithville Police Department?" The ballot will then include check boxes for marking "I wish to select [labor organization A] as my exclusive bargaining representative," "I wish to select [labor organization B] as my exclusive bargaining representative," and "I do not wish to select any labor organization as my exclusive bargaining representative."

3.5.3 Any labor organization receiving more than fifty percent (50%) of the votes of all eligible voters shall be designated and recognized by the City as the exclusive bargaining representative for all employees in the bargaining unit.

3.6 Employees within the bargaining unit shall have the right to seek to decertify the labor organization as their exclusive bargaining representative at any time. If any employee within the bargaining unit presents to the ~~Assistant City Administrator City Clerk~~ cards bearing the signatures of at least thirty percent of the employees within the bargaining unit stating that those employees no longer wish to be represented by the labor organization in question, the ~~Assistant City Administrator City Clerk~~

shall first validate the signatures on the cards.

3.6.1 If the ~~Assistant City Administrator City Clerk~~ confirms that at least thirty percent of the employees in the bargaining unit have signed decertification cards, the ~~Assistant City Administrator City Clerk~~ shall consult with the Chief of Police and the designated representative of the labor organization to select a date for a decertification election. Such election shall take place at least four weeks after the ~~Assistant City Administrator City Clerk~~ receives the decertification cards, and no later than six weeks after the City Clerk receives the decertification cards. Notice of such election shall be distributed to all employees within the bargaining unit and posted within the Police Department.

3.6.2 If more than fifty percent of the employees in the bargaining unit cast votes to terminate the labor organization's representation of the employees in the bargaining unit, the labor organization shall immediately cease to represent the employees in the bargaining unit.

3.6.3 In the event of the decertification of the exclusive bargaining representative of the employees in any bargaining unit within the Police Department, all terms and conditions of employment existing at the time of decertification shall remain in place until such time as those terms or conditions of employment are altered by the City's Board of Aldermen.

3.7 No more than one election shall take place in any bargaining unit within the same twelve-month period. Once an election takes place, the ~~Assistant City Administrator City Clerk~~ shall not accept cards from labor organizations or employees within the bargaining unit seeking another election for one full calendar year after the date of the election.

#### **ARTICLE 4 COLLECTIVE BARGAINING PROCESS**

4.1 Within four weeks after a labor organization is certified as the exclusive bargaining representative for the employees in a bargaining unit as set out above, representatives of the City, designated by the City Administrator, and representatives of the labor organization, selected by the labor organization, shall meet and begin bargaining for an agreement covering the wages, benefits, and other terms and conditions of employment for the employees within the bargaining unit.

4.2 Both sides shall bargain in good faith, and make an earnest effort to reach a mutually acceptable agreement, but neither side shall be required to offer any particular concession or withdraw any particular

proposal.

4.3 The City shall not pay any union representative for time spent participating in collective bargaining or preparing for collective bargaining, except to the extent the person in question is an employee of the City and elects to use accrued paid time off to cover the time so spent.

4.4 If the parties reach an agreement, management shall present the agreement to the Board of Aldermen for approval or rejection. The Board may approve the entire agreement or any part(s) thereof. If the Board rejects any portion of the agreement, the Board may return the rejected portion(s) of the agreement to the parties for further bargaining, or the Board may adopt a replacement provision of its own design, or the Board may state that no provision covering the topic in question shall be adopted.

~~4.5 After the first agreement between the City and the labor organization is adopted, bargaining for renewal agreements shall take place annually. Such bargaining must be completed by July 31 of each calendar year. The parties may elect to bargain non-economic terms for longer periods (e.g. three years or five years), but all economic provisions of the agreement shall be adopted on a year-to-year basis only. During any year in which a collective bargaining agreement is up for renegotiation, the City and the labor organization shall make every effort to complete negotiations no later than July 31 in order to allow sufficient time for the Board of Aldermen to consider any tentative agreement reached between the parties in conjunction with the establishment of the City's next upcoming annual budget.~~

## **ARTICLE 5 CONTENT OF LABOR AGREEMENTS**

5.1 Labor agreements negotiated between the parties may cover wages, benefits, and all other terms and conditions of employment for employees within the bargaining unit, subject to the following limitations.

5.1.1 Every labor agreement shall include a provision reserving to management the right to hire, promote, assign, direct, transfer, schedule, discipline, and discharge employees, so long as those rights are not exercised in a way that conflicts with any express provision of the labor agreement. Every labor agreement shall also include a provision reserving to management the right to make, amend, and rescind reasonable work rules and standard operating procedures, so long as such

work rules and standard operating procedures do not conflict with any express provision of the labor agreement.

5.1.2 Every labor agreement shall expressly prohibit all strikes ~~and picketing or work stoppage~~ of any kind. Every labor agreement shall include a provision acknowledging that any employee who engages in any strike or concerted refusal to work, or who pickets over any personnel matter shall be subject to immediate termination of employment.

## **ARTICLE 6 EFFECT OF LABOR AGREEMENT**

6.1 In the event of a budget shortfall or other financial emergency, the Board of Aldermen shall have the right to require the modification of the economic terms of any labor agreement. Every labor agreement shall include a clause allowing the City to reopen wage and benefit provisions for renegotiation in the event of such budget shortfall or other financial emergency.

6.2 Should the Board deem it necessary to modify the economic terms of any labor agreement, it shall so notify the relevant labor organization, and shall provide a period of thirty (30) days during which the City and the labor organization shall bargain in good faith over any necessary adjustments to the economic terms of the agreement.

6.3 If, at the end of the thirty-day period, the parties have been unable to agree upon modifications that meet the Board's requirements, the Board shall have the right to make necessary adjustments on its own authority.

## **ARTICLE 7 VALIDITY AND ENFORCEMENT**

7.1 If the State of Missouri passes any law governing collective bargaining for law enforcement personnel, then to the extent any of the provisions established herein are inconsistent with the Missouri statute, the inconsistent provisions shall be superseded in whole or in part by such statute.

7.2 If any court of competent jurisdiction shall declare any of the provisions established herein to be unenforceable under any state or federal statute, regulation, or other authority, the unenforceable portion of the provisions shall be removed, but all other provisions contained herein shall remain in

effect.

[4861-1050-7092, v. 1](#)