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P.Hrngs. \_\_\_\_\_  
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Sponsored by: Rushefsky

First Reading: November 18, 2013

Second Reading: December 16, 2013

AMENDED

COUNCIL BILL NO. 2013-297

GENERAL ORDINANCE NO. 6090

### AN ORDINANCE

1 AMENDING the Code of Ordinances ("City Code") of the City of Springfield,  
2 Missouri ("City") by repealing Merit System Rule and Regulation 11.1,  
3 in its entirety, and enacting in lieu thereof a new City Code Section  
4 numbered and titled "Sec. 2-94. Collective Bargaining" in order to state  
5 the City's framework for certain City employees to engage in collective  
6 bargaining.  
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9 WHEREAS, in light of the Missouri Supreme Court's rulings in *Independence*  
10 *National Education Association v. Independence School District*, 223 S.W.3d 131 (Mo.  
11 banc 2007); *American Federation of Teachers v. Ledbetter*, 387 S.W.3d 360 (Mo. en  
12 banc 2012); and *Eastern Missouri Coalition of Police Fraternal Order of Police, Lodge 15*  
13 *v. City of Chesterfield*, 386 S.W.3d 755 (Mo. en banc 2012), the City believes it is  
14 necessary to establish a framework for certain regular employees to engage in collective  
15 bargaining; and  
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17 WHEREAS, Merit System Rule and Regulation 11.1, which provides the  
18 framework for creation of an Employee Advisory Committee, is unnecessary in light of  
19 the framework being established for collective bargaining; and  
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21 WHEREAS, while not required by law to reach a collective bargaining agreement,  
22 the City believes it is necessary to engage in discussions with recognized bargaining  
23 unit(s) for the purpose of development of collective bargaining agreement(s) between the  
24 City and the labor organization(s) representing recognized bargaining unit(s); and  
25

26 WHEREAS, when entering into discussions with any recognized labor  
27 organization, the City will do so with the understanding that any recognized labor  
28 organization will be the sole and exclusive collective bargaining representative for the  
29 eligible positions in any recognized bargaining unit for the purpose of collective  
30 bargaining on matters relating to wages, hours, and other terms and conditions of  
31 employment.  
32

33 NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF  
34 SPRINGFIELD, MISSOURI, as follows, that:  
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36 NOTE: Language to be added is underlined. Language to be deleted is ~~stricken~~.

37           Section 1 – Merit System Rule and Regulation 11.1 of the City, titled “Employee’s  
38 Advisory Committee,” is repealed, in its entirety, including repealing each of its subparts  
39 (a) through (c), and is hereby repealed as set forth in “Exhibit A”.  
40

41           Section 2 – The City Code at Chapter 2 – Administration, Article III – Officers and  
42 Employees, Division 1 – Generally, is hereby amended by enacting a new Section  
43 numbered and titled “Sec. 2-94. Collective Bargaining” to be known as Section 2-94(a)  
44 through 2-94(q), which new Section shall read as follows:  
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46           Sec. 2-94. Collective Bargaining.  
47

48           (a) The City has a framework for collective bargaining, set forth in Section 2-94(b)  
49 through 2-94(q) herein (“Section”), and this framework applies to certain  
50 regular employees of the City holding certain eligible positions (“eligible  
51 employees”).  
52

53           (b) The City has established a team (“team”) for the purposes of collective  
54 bargaining and the team will be the exclusive agent for the City for collective  
55 bargaining negotiations.  
56

57           (c) As provided for by Special Ordinance, the City voluntarily recognizes certain  
58 labor organizations as being the sole collective bargaining representative for  
59 certain bargaining units.  
60

61           (d) If there is not a procedure established by existing law, with the exception of  
62 the labor organizations specifically listed and recognized by Special  
63 Ordinance, the City will not recognize any organization, association, employee  
64 group, union, professional group, or otherwise (“labor organization”) as a  
65 collective bargaining unit of any eligible employees of the City unless there is:  
66

67           (1) a presentation by the labor organization of the adequacy of their  
68 representation by verifiable evidence and the appropriateness of the  
69 requested bargaining unit as set forth in Section 2-94(e) herein; and  
70

71           (2) an election determining and verifying whether the majority of the voting  
72 eligible employees in the bargaining unit want to be represented by the  
73 labor organization for the purposes of collective bargaining as set forth in  
74 Section 2-94(g) herein.  
75

76           (e) For a labor organization to show the adequacy of their representation by  
77 verifiable evidence and the appropriateness of the requested bargaining unit  
78 of eligible employees, the following must occur:  
79

80           (1) The labor organization must submit a request for representative status  
81 containing (i) a specific written description of the bargaining unit sought, (ii)  
82 any proposed specific exclusions to the bargaining unit, and (iii) verifiable  
83 evidence in the form of a petition, or cards, containing verifiable signatures  
84 from the eligible employees showing that it represents no fewer than fifty  
85 percent (50%) of the eligible employees of the proposed bargaining unit

- 86 (collectively "description") to the City Manager via certified mail addressed  
87 to the City Manager.  
88
- 89 (2) Within thirty (30) days of receipt of the description, the City Manager will  
90 appoint a Committee to consider the adequacy of the evidence of  
91 representation presented by the labor organization and the  
92 appropriateness of the requested bargaining unit.  
93
- 94 (3) Within thirty (30) days of being appointed, the Committee will determine  
95 whether sufficient information has been presented by the description to  
96 determine the adequacy of the evidence of the labor organization's  
97 representation.  
98
- 99 (4) If the Committee finds that sufficient information has not been presented  
100 for a determination of the adequacy of the evidence of representation, the  
101 Committee will send the description back to the labor organization for  
102 further specificity and request that the labor organization present additional  
103 information within thirty (30) days.  
104
- 105 (5) Once, and if, the Committee finds that sufficient information has been  
106 presented by the description for a determination of the adequacy of the  
107 evidence of representation, the Committee will recommend that the City  
108 Manager either:  
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- 110 (i) reject the evidence of representation and deny the request;  
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- 112 (ii) reject the bargaining unit as being inappropriate with specific written  
113 reasons for the rejection; or  
114
- 115 (iii) accept the adequacy of the evidence of representation, agree to the  
116 bargaining unit, and proceed with an election as set forth in Section  
117 2-94(g) herein.  
118
- 119 (f) In evaluating the adequacy of the evidence of representation and the  
120 appropriateness of the proposed bargaining unit under Section 2-94(e) herein,  
121 the City Manager may consider, but is not bound by, precedent from other  
122 cities, other states, or under the National Labor Relations Act. The City  
123 Manager's decision with respect to the adequacy of the evidence of  
124 representation and the appropriateness of the bargaining unit will be final and  
125 binding.  
126
- 127 (g) If under Section 2-94(e) herein the City Manager accepts the adequacy of the  
128 evidence of representation of the labor organization and the appropriateness  
129 of the bargaining unit, the representative status of the labor organization will  
130 be determined as follows:  
131
- 132 (1) Within sixty (60) days of the City Manager's acceptance, the City will hold  
133 a secret ballot election to determine whether the majority of the voting  
134 eligible employees in the proposed bargaining unit desire to be  
135 represented by the labor organization for purposes of collective bargaining.

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No labor organization which has not been previously recognized by the City by means of voluntary recognition or Missouri State Board of Mediation procedures will be recognized as representing any eligible employee by any other means.

- (2) The election will be held by secret ballot. The secret ballot will be on a form substantially similar to the form utilized by the National Labor Relations Board for conducting union elections. Any labor organization that seeks to represent the proposed bargaining unit and that can provide verifiable evidence that it represents at least fifty percent (50%) of the eligible employees of the proposed bargaining unit will be included on the secret ballot.
- (3) The election will be conducted by either the Federal Mediation and Conciliation Service or the Missouri Department of Labor (or their designee). In the event that both the Federal Mediation and Conciliation Service and the Missouri Department of Labor decline to conduct the election, the City Manager will select an arbitrator to conduct the election by requesting a panel of five (5) arbitrators from the Federal Mediation and Conciliation Service and then selecting one of the arbitrators from the list to conduct the election.
- (4) After the election has concluded, the person conducting the election will immediately and publicly count the ballots and issue a report on election ("report on election") indicating how many ballots were cast for representation by the labor organization and how many votes were cast against representation.
- (5) Any disputes concerning the election must be referred for decision to the City Manager for consideration within seven (7) calendar days of the date of the election. The decision of the City Manager on such disputes will be final and binding.
- (6) If there is no dispute concerning the election, then the results of the election will become final seven (7) days after the report on election is issued.
- (7) After the results of the election become final, if a majority of the voting eligible employees of the bargaining unit voted to be represented by the labor organization, the City will consider the labor organization as representing the eligible employees of the bargaining unit ("members").
- (h) No labor organization, recognized or otherwise, may seek to represent any single bargaining unit (or portion of any bargaining unit) by secret ballot more than once in any consecutive, twelve (12) month period.
- (i) In the event that the majority of voting members of the bargaining unit vote to be represented by the labor organization for purposes of collective bargaining, the City's team will meet with the labor organization to confer and discuss wages, benefits and other terms and conditions of employment with the goal

186 of reaching a mutually satisfactory proposed collective bargaining agreement  
187 to be submitted to City Council for approval.

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189 (j) The labor organizations recognized by the City as representatives of any  
190 bargaining unit will be recognized by the City as the sole and exclusive  
191 collective bargaining representative for the purpose of collective bargaining on  
192 matters relating to wages, hours, and other terms and conditions of  
193 employment of the members in the recognized bargaining unit.

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195 (k) The City is committed to participating in good faith negotiations with any  
196 recognized labor organization representing any recognized bargaining unit  
197 and will abide by a collective bargaining agreement, in both letter and spirit,  
198 should one be signed by City Council and the labor organization and be  
199 ratified by the bargaining unit. Notwithstanding, and as set forth by the  
200 Missouri Supreme Court, the obligation to collectively bargain in good faith  
201 does not require that an agreement be reached or that a concession be made.  
202 See, e.g., American Federation of Teachers v. Ledbetter, 387 S.W.3d 360  
203 (Mo. en banc 2012).

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205 (l) If the City and the labor organization reach an agreement on a proposed  
206 collective bargaining agreement, the proposed agreement will be submitted to  
207 City Council for consideration. At that meeting, City Council will approve,  
208 reject, or hold the proposed collective bargaining agreement open for further  
209 discussion.

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211 (m) The decision of City Council with regard to approving or rejecting a proposed  
212 collective bargaining agreement will be final and binding. A collective  
213 bargaining agreement that has been signed and ratified will have a finite  
214 duration within the terms of the agreement.

215  
216 (n) If after substantial negotiations the City and the labor organization mutually  
217 agree that they are unable to reach agreement as to certain open items for  
218 which there is no tentative agreement ("open items") in a proposed initial  
219 collective bargaining agreement, and if there is not a procedure established by  
220 existing law, the City and the labor organization will submit their respective  
221 versions of the open items to non-binding advisory arbitration for the purpose  
222 of providing guidance to City Council from an experienced third party neutral  
223 ("arbitrator") regarding the relative merits of the proposed open items at issue.  
224 The arbitrator will either be mutually agreed to by the parties or will be  
225 selected from a list of seven arbitrators from the Springfield region provided by  
226 the Federal Mediation and Conciliation Service. The arbitrator's compensation  
227 shall be divided equally between the City and the labor organization. The  
228 arbitrator's written opinion will be submitted to City Council for consideration  
229 together with the proposed open items from both the City and the labor  
230 organization. City Council will either:

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232 (1) Accept the arbitrator's recommendation with regard to all of the open  
233 items; or

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- 235 (2) Instruct the parties to continue negotiations as to the open items in order to  
236 arrive at a mutually agreeable collective bargaining agreement.  
237
- 238 (o) If there is not a procedure established by existing law, in the event that the  
239 majority of the voting members in a designated bargaining unit determine that  
240 they no longer wish to be represented by a recognized labor organization, they  
241 may revoke their designation of the labor organization as follows:  
242
- 243 (1) The City will hold a secret ballot election to determine whether the majority  
244 of the voting members in the bargaining unit desire to revoke their  
245 designation of the labor organization.  
246
- 247 (2) The election will be held by secret ballot. The secret ballot will be on a  
248 form substantially similar to the form utilized by the National Labor  
249 Relations Board for conducting union elections.  
250
- 251 (3) The election will be conducted by either the Federal Mediation and  
252 Conciliation Service or the Missouri Department of Labor (or their  
253 designee). In the event that both the Federal Mediation and Conciliation  
254 Service and the Missouri Department of Labor decline to conduct the  
255 election, the City Manager will select an arbitrator to conduct the election  
256 by requesting a panel of five (5) arbitrators from the Federal Mediation and  
257 Conciliation Service and then selecting one of the arbitrators from the list  
258 to conduct the election.  
259
- 260 (4) After the election has concluded, the person conducting the election will  
261 immediately and publicly count the ballots and issue a report on election  
262 ("report on election") indicating how many ballots were cast for revocation  
263 of designation of the labor organization and how many votes were cast  
264 against revocation.  
265
- 266 (5) Any disputes concerning the election must be referred for decision to the  
267 City Manager for consideration within seven (7) calendar days of the date  
268 of the election. The decision of the City Manager on such disputes will be  
269 final and binding.  
270
- 271 (6) If there is no dispute concerning the election, then the results of the  
272 election will become final seven (7) days after the report on election is  
273 issued.  
274
- 275 (7) After the results of the election become final, if a majority of the voting  
276 members in a designated bargaining unit vote to no longer be represented  
277 by the labor organization, the City will consider the designation of the labor  
278 organization revoked and the labor organization will no longer represent  
279 the members.  
280
- 281 (p) In accordance with R.S. Mo. § 105.530, strikes and other unlawful conduct by  
282 any City employee, whether individually or in concert with others, including  
283 sympathy or wildcat strikes, sit downs, slow downs, and work stoppages, are  
284 prohibited.

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(g) Nothing in this Section shall be construed to affect or supersede the authority of the Missouri State Board of Mediation.

Section 3 - This ordinance shall inure to the benefit of the City and any recognized labor organization and bargaining unit and their respective successors and assigns.

Section 4 - Savings Clause. Nothing in this ordinance shall be construed to affect any suit or proceeding now pending in any court or any rights acquired or liability incurred nor any cause or causes of action occurred or existing, under any act or ordinance repealed hereby. Nor shall any right or remedy of any character be lost, impaired, or affected by this ordinance.

Section 5 - Severability Clause. If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid, such decision shall not affect the validity of the remaining portions of this ordinance. City Council hereby declares that it would have adopted the ordinance and each section, subsection, sentence, clause, or phrase thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, or phrases be declared invalid.

Section 6 - This ordinance shall be in full force and effect from and after passage.

Passed at meeting: December 16, 2013

  
\_\_\_\_\_  
Mayor

Attest: \_\_\_\_\_, City Clerk

Filed as Ordinance: December 16, 2013

Approved as to form: \_\_\_\_\_, Assistant City Attorney

Approved for Council action: \_\_\_\_\_, City Manager

**EXPLANATION TO COUNCIL BILL NO: 2013- 297**

FILED: 11-12-13

ORIGINATING DEPARTMENT: Law Department

**PURPOSE:** To amend the Code of Ordinances ("City Code") of the City of Springfield, Missouri ("City") by repealing Merit System Rule and Regulation 11.1, in its entirety, and enacting in lieu thereof a new City Code Section numbered and titled "Sec. 2-94. Collective Bargaining" in order to state the City's framework for certain City employees to engage in collective bargaining.

**BACKGROUND INFORMATION:** In light of the Missouri Supreme Court's rulings in *Independence National Education Association v. Independence School District*, 223 S.W.3d 131 (Mo. banc 2007); *American Federation of Teachers v. Ledbetter*, 387 S.W.3d 360 (Mo. en banc 2012); and *Eastern Missouri Coalition of Police Fraternal Order of Police, Lodge 15 v. City of Chesterfield*, 386 S.W.3d 755 (Mo. en banc 2012), the City should, without affecting or superseding the authority of the Missouri State Board of Mediation, establish a framework for certain regular employees of the City to engage in collective bargaining. This framework should, in accordance with R.S. Mo. § 105.530, prohibit strikes and other unlawful conduct by any City employee.

It is recommended that the established framework, or process, set forth how the City will recognize an organization, association, employee group, union, professional group, or otherwise ("labor organization") as a collective bargaining unit of any eligible employees of the City. It is recommended that the process require the labor organization to: (1) demonstrate the adequacy of their representation, and the appropriateness of the requested bargaining unit, by verifiable evidence showing that it represents no fewer than fifty percent (50%) of the eligible employees of the proposed bargaining unit; and (2) if shown, to require a secret ballot election determining and verifying whether the majority of the voting eligible employees in the bargaining unit want to be represented by the labor organization for the purposes of collective bargaining.

It is recommended that if under the established process that the majority of voting members of the bargaining unit vote to be represented by the labor organization, that the City, although not required to reach an agreement, meet in good faith with the labor organization to confer and discuss wages, benefits, and other terms and conditions of employment with the goal of reaching a mutually satisfactory proposed collective bargaining agreement to be submitted to City Council for approval. If after substantial negotiations the City and the labor organization mutually agree that they are unable to reach agreement as to open items, it is recommended that the open items be submitted to non-binding advisory arbitration and that City Council either accept the advisory arbitrator's recommendation regarding all open items or instruct the parties to continue negotiations as to the open items in order to arrive at a mutually agreeable collective bargaining agreement.



In the event that the majority of the voting members in a designated bargaining unit determine that they no longer wish to be represented by a recognized labor organization, it is recommended that a process be established whereby they may revoke their designation of the labor organization. It is recommended that this process be established by secret ballot election.


Once the City establishes a framework for certain regular employees of the City to engage in collective bargaining, it is recommended that Merit System Rule and Regulation 11.1, which provides the framework for creation of an Employee Advisory Committee, be repealed. Merit Rule 11.1 will no longer be necessary in light of the collective bargaining framework. Thus, this ordinance will also simultaneously repeal the Merit System Rule and Regulation 11.1.

REMARKS: Both the Law Department and the Human Resources Department recommend approval of this ordinance.

Submitted by:

  
\_\_\_\_\_  
Tina Fowler, Assistant City Attorney

Recommended by:

  
\_\_\_\_\_  
Sheila Maerz, Director of Human Resources

Approved by:

  
\_\_\_\_\_  
Greg Burris, City Manager

***11.1 Employees' Advisory Committee (Repealed by G.O. \_\_\_\_\_)***

~~City employees may by petition, signed by 10% of the regular City employees, initiate an election among the employees for the purpose of establishing an Employees' Advisory Committee. It shall be the responsibility of the Human Resources Department to conduct such an election. A majority vote of all regular City employees in favor shall result in the establishment of said Committee. The membership of said Committee shall be composed of regular non-supervisory employees of the City. Said Committee shall establish by laws, rules, regulations, etc., for the governing of its action which must meet with the approval of the City Manager. The purpose of said Committee shall be:~~

- ~~(a) To establish and maintain an effective line of communication between the employees and the administration with the objective of improving and furthering the working relationship necessary to satisfactorily carry out the principle and functions of municipal government.~~
- ~~(b) To provide a media for the interchange of ideas concerning the well being of all City employees. Further, to study these ideas with full consideration given to all pertinent factors.~~
- ~~(c) To provide an outlet for free discussion on matters of general interest relative to the interpretation and implementation of established and/or proposed policies and programs of administration. Further, to carry forth said policies and programs to all employees and aid in securing their successful operation.~~