

**SUBSTITUTE ORDINANCE NO. 5969**

**AN ORDINANCE TO AMEND ARTICLE VIII, § 2-370 OF THE CODE OF ORDINANCES RELATIVE TO ARBITRATION OF LABOR DISPUTES, IMPASSE PROCEDURES AND PRESERVATION OF CHARTER POWERS OF CITY COUNCIL**

**WHEREAS**, Referendum Ordinance No. 2766 authorized a referendum election on the question “Shall the Home Rule Charter of the City of Memphis, Tennessee be amended by including a section relating to ‘Disciplinary Action Against Striking Employees?’”;

**WHEREAS**, Referendum Ordinance No. 2766 included a separate provision authorizing the Council to set up, by Ordinance, procedures for arbitration of economic issues of municipal labor disputes, but only if there has occurred a deadlock or impasse between the Mayor and City employees on a total economic package and such deadlock or impasse continues for seven (7) consecutive days;

**WHEREAS**, Referendum Ordinance No. 2766 did not alter the provisions of the Home Rule Charter that prohibits the City Council from interfering with the operation of City administrative departments and employees under the control of the Mayor or from requesting or requiring the Mayor to make contracts with any specific organization; and

**WHEREAS**, Article VIII, § 2-370 of the Code of Ordinances was amended last by Ordinance No. 5639 on March 21, 2017; and

**WHEREAS**, the Council desires to amend Article VIII, § 2-370 of the Code of Ordinances to redefine and restate the procedures for arbitration of any deadlock or impasse between the Mayor and City

employees on a total economic package and to clarify the scope of and the limitations on the Council to arbitrate such labor disputes;

**NOW, THEREFORE, BE IT ORDAINED AS FOLLOWS:**

**Section 1. *Express Repeal.*** Article VIII, Section 2-370 is hereby repealed in its entirety and the following Total Impasse procedures are substituted in lieu thereof:

**Section 2. *Definitions.***

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

*Impasse Arbitrator* shall mean any person selected by the Council, who is a mediator or arbitrator associated with the Federal Mediation and Conciliation Service, a Tennessee Supreme Court Rule 31A Neutral preferably with judicial experience or experience as an administrative law judge.

*Business day* means a day other than a Saturday, Sunday or legal holiday under the laws of Tennessee.

*Direct Economic items* shall be defined as any economic items that provide to City employees direct economic benefits, such as all compensation for services rendered including but not limited to normal pay, shift premium pay, hazardous premium pay, holiday pay, incentive pay and overtime pay and excluding economic items such as employee's contributions to pension benefits, social security or health insurance, and any other items excluded by the Charter of the City, or other state laws.

*Minimum Impasse Information* is the minimum information to be included by the City and by each employee bargaining unit in their respective Total Economic Packages as specified in Section 4 of this Ordinance or as may be modified or supplemented from time to time by resolution of the Council before March 1 of any year.

*Non-Economic items* shall not include economic items as described above.

*Total Economic Package* shall be defined as the last, best and final offers of the parties regarding the Direct Economic Items as defined herein.

*Impasse on Direct Economic Items* means that point at which any employee organization declares its Total Economic Package, and that offer is either not captured or insufficiently captured in the Total Economic Package of the City proposed by the Mayor to the City Council in his operating budget for the ensuing fiscal year, which package represents the last best offer of the City.

### ***Section 3. Council's Authority Under Charter to Set up Procedures to Arbitrate Labor Disputes on Economic Issues***

**Section 3.1.** Referendum Ordinance No. 2766 expressly directed the Council to set up, by Ordinance, procedures for the arbitration of economic issues of municipal labor disputes between the City and its employees by the Council or a committee of the Council but did not require or authorize the Council or the Administration to arbitrate labor disputes between the City of Memphis and its employees over non-economic items.

**Section 3.2.** The Council observes that it is the prerogative of the Mayor under the City's Charter to determine the timing of and procedures pursuant to which the City Administration and City Employee Associations will engage in good faith discussions with the intent of reaching equitable memoranda of understanding regarding employment related matters.

**Section 3.3.** The Council further observes that then Mayor Richard Hackett issued an executive order on April 19, 1984 that established the policy of the City for the recognition of representatives approved by certain groups of City employees to engage in discussions with the City Administration on behalf of such employees that are intended lead to a memorandum of understanding with the City.

**Section 3.4.** Since the Hackett 1984 Executive Order, all subsequent Mayors have engaged in discussions each year with employee associations that had been so recognized by the Administration for the purpose of reaching a memorandum of understanding with the City regarding employment-related matters.

**Section 3.5.** While the employee organizations and the City administration may confer in such manner and at such times as the Mayor and the employee organizations shall mutually determine in an attempt to reach a memorandum of understanding, the provisions of this Impasse Ordinance shall only govern the Minimum Impasse Information to be presented to the Council regarding any dispute or impasse between the City Administration and a employee association over Direct Economic Items, the procedures for arbitration of such disputes as expressly authorized by Referendum Ordinance Nos. 2766 and 3236 and the process for adoption of the City’s budgets by the Council.

#### **Section 4. *Pre-Impasse Procedure***

**Section 4.1.** The employee organizations and the City administration may confer in such manner and at such times as the Mayor and the employee organizations shall mutually determine in an attempt to reach a memorandum of understanding on any matters that they deem appropriate, except that all discussions concerning Direct Economic Items shall be concluded before the Mayor presents his budgets to the Council in any year.

**Section 4.2.** To facilitate an expedited resolution of any dispute or impasse over Direct Economic Items for the ensuing fiscal year, the City shall present to all general fund employee bargaining units by March 24 of any year (i) its tentative general fund revenue forecast for the ensuing fiscal year with legal level detail by major categories and projected unrestricted fund balances at the beginning of the ensuing fiscal year, (ii) its tentative proposal for each general fund bargaining unit’s City Division with legal level detail for each major general fund expense category, (iii) in each case a comparison of each detailed entry in subparagraphs (i) and (ii) for the ensuing fiscal year with the corresponding approved budget entries for the current fiscal year and (iv) the City’s projected unrestricted general fund balances as of the end of the ensuing fiscal year that would result from its full year proposals (the “City’s Tentative General Fund Offer”).

**Section 4.3.** Then, after the City presents its Total General Fund Offer, each general fund employee bargaining unit shall indicate in writing its acceptance of the City’s Total General Fund Offer in its entirety or its final position on each general fund legal level economic item in the City’s Tentative General Fund Offer that it does not accept.

This response of the organization(s) shall be made at least two (2) Business Days before the Mayor presents his budget.

**Section 4.4.** The City shall present to each enterprise fund employee bargaining unit (“Sewer, Storm Water and Solid Waste) by March 24 of any year (i) its tentative enterprise fund revenue forecast for the ensuing fiscal year with legal level detail by major categories and projected unrestricted enterprise fund balances at the beginning of the ensuing fiscal year and (ii) its tentative proposal for each enterprise fund’s personnel expenditure line item proposed for each bargaining unit’s City Division with legal level detail by major expense category (iii) in each case a comparison of each detailed entry in subparagraphs (i) and (ii) for the ensuing fiscal year with the corresponding approved budget entries for the current fiscal year and (iv) the City’s projected unrestricted applicable enterprise fund balances as of the end of the ensuing fiscal year that would result from its full year proposals (“City’s Tentative Enterprise Fund Offer”).

**Section 4.5.** Then, after the City presents City’s Tentative Enterprise Fund Offer, each enterprise fund employee bargaining unit shall indicate in writing its acceptance of the City’s Tentative Enterprise Fund Offer in its entirety or its final position on each enterprise fund legal level economic item proposed by the City that it does not accept. This response of an enterprise fund employee bargaining unit shall be made at least two (2) Business Days before the Mayor presents his budget.

**Section 4.6.** For the purposes of this section AFSCME Main and AFSCME Solid Waste shall each be considered one (1) bargaining unit; unless either bargaining unit elects not to invoke the arbitration process hereunder.

## ***Section 5. Arbitration Procedures for Resolving Impasses over a Total Economic Package***

**Section 5.1.** The Mayor shall present his proposed Budget for the ensuing fiscal year during the first Council Meeting in April of any calendar year, which shall include City’s Final Total General Fund Offer and all the City’s Final Total Enterprise Fund Offers.

**Section 5.2.** If any employee bargaining unit shall determine that the Final Total Economic Package of the City for employees in such bargaining included in the proposed budget(s) presented by the Mayor to the City Council is not acceptable, such organization(s) may deliver a notice in writing to the Chairman of the City Council not later than 5:00 p.m. Central Time on the third (3rd) Business Date after the Mayor's Budget presentation that such employee bargaining unit elects to invoke arbitration procedures, hereunder, for resolving impasse over the City's Final Total Economic Package between the City and the electing employee bargaining unit ("Impasse Notice").

**Section 5.3.** A copy of the Final Total Economic Package of the electing employee bargaining unit shall be attached to the Impasse Notice and served on the City. Any bargaining unit that does not elect to invoke impasse hereunder or that fails to make a timely election in the manner required by this ordinance shall be deemed to have waived any right to have the Final Total Economic Package of such bargaining unit considered under the Impasse Arbitration Process. On or before 5:00 p.m. Central Time on the fourth (4th) Business Date after the Mayor's Budget presentation the City shall submit to the Chairman of the City Council a copy of the City's Final Total Economic Package for any employee bargaining unit invoking the impasse procedure.

**Section 5.4.** Once this impasse resolution procedure has been implemented by notification to the Chairman of the City Council as provided for in subsection 5.1, the Chairman of the Council shall receive written nominations from the City, the Employee Associations and Council members for the appointment of an arbitrator. The Council shall appoint an arbitrator by the tenth (10th) Business Day next following the Mayor's Budget presentation.

**Section 5.5.** The parties may mutually agree upon some or all items at impasse any time before the commencement of a bargaining unit's arbitration hearing at positions the same or different than their final position. Such mutually agreed upon items will be deemed removed from the Impasse Notice and the Total Economic Package of both parties by notification to the chairperson of the Council and the members of the Impasse Arbitrator.

**Section 5.6.** Except as provided in subsection 5.5, once this impasse resolution procedure has been implemented by notification of

the chairperson as provided for in subsection 5.1, neither party may alter their final position as defined in subsection 5.2 or discuss, confer or seek the aid of any member of the City Council to gain support or assistance from such member(s) regarding their Total Economic Package. City Council members are strictly prohibited from interfering with the Impasse Arbitration Process once it has been invoked hereunder.

**Section 5.7.** Each party may submit written documentation to the arbitrator, which shall include the Final Total Economic Package and any other information that such party(s) desires to support their respective positions. Such submissions shall be submitted to the Arbitrator on or before the close of Business on the second Friday in May.

**Section 5.8.** Based only on the submissions of the parties, the Impasse Arbitrator must make and submit his or her recommendations to the Council on each arbitration proceeding for its consideration, which recommendation shall include the Final Total Economic Package of one of the parties at impasse together with a summary of the Impasse Arbitrator's reasons for its decisions, which shall include at a minimum:

- (A) The Total Economic Package of one of the parties; and
- (B) A side by side comparison of the Total Economic Package selected by the panel with the Total Economic Package not selected by the panel.

The Impasse Arbitrator shall submit his or her recommendations to the Chairman of the City Council with copies to the parties at impasse at least four (4) Business Days before third reading of the Budget Ordinance.

**Section 5.9.** Any party dissatisfied with the recommendation of the Impasse Arbitrator may request to be heard before the Council makes its final decision. The Council shall provide any party dissatisfied with the recommendation of the Impasse Arbitrator and the opposing party a hearing before the final vote on third reading of the proposed fiscal year operating budget. Each party shall be allowed up to fifteen (15) minutes, or longer at the discretion of the Council, to present their position to full Council before the final vote on the budget ordinance.

**Section 5.10.** Any such hearings by the Council on the Impasse Arbitrator's recommendations shall be held at least one (1) Business Day before the regular Council meeting during which the proposed fiscal year operating budget ordinance is considered on third reading. Once impasse has been invoked the Council shall schedule and give notice as required by the City's Charter to hold a special meeting for the purpose of conducting hearings on any appeal of the decision of the Impasse Arbitrator and conducting its budget reconciliation discussion, if necessary.

**Section 5.11.** The Council acts only as the final arbiter of the impasse between the City and the employee bargaining units at impasse under this impasse arbitration procedure. The Council shall make the final decision on each recommendation made by the Impasse Arbitrator by deciding the amount, if any, that would be funded in the City's budgets for the ensuing fiscal year.

**Section 5.12.** The City Council shall have full discretion to approve or amend all budgets prior to the adoption of a tax rate for the ensuing year including funding, if any, for the Total Economic Packages for any or all of the City's employee bargaining units in such amounts as the Council shall determine is in the best interests of the City. The Council's decision on the recommendation of the Impasse Arbitrator shall be final and effective only to the extent funded by the City Council in a finally adopted budget for the ensuing fiscal year. The City Administration shall modify the Budget Appropriation Ordinance for the ensuing fiscal year to include all Total Economic Items to the extent so approved or amended by the Council and the City Comptroller shall not under any circumstances make any disbursements not specifically provided for in any budget finally approved by the Council.

## **Section 6. Nonconflicting – Conflicting laws.**

BE IT FURTHER ORDAINED that as amended hereby all laws constituting the present Code of Ordinances of the City of Memphis be and the same are hereby continued in full force and effect, and all laws in conflict herewith are hereby repealed. This ordinance does not alter,

amend, create or abrogate the rights or obligations of any person or entity that may exist under the City Charter or under Tennessee law.

**Section 7. Severability.**

BE IT FURTHER ORDAINED that the provisions of this Ordinance are hereby severable. If any of these sections, provisions, sentences, clauses, phrases, or parts are held to be unconstitutional or void, the remainder of this Ordinance shall continue in full force and effect.

**Section 8. Effective Date.**

BE IT FURTHER ORDAINED That this Ordinance shall take effect from and after the date it shall have been passed by the Council, signed by the Chairman of the Council, certified and delivered to the Office of Mayor in writing by the comptroller and become effective as otherwise provided by law.

SPONSOR:

JB Smiley Jr.

JANA SWEARGEN WASHINGTON  
Council Chairman

Attest:

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Comptroller