

ORDINANCE NO. 2060

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALISBURY, MARYLAND TO AMEND CHAPTER 1.08, ELECTION BOARD, OF THE *SALISBURY MUNICIPAL CODE*

WHEREAS, THE City Council of the City of Salisbury, Maryland has determined that it is in the best interest of the citizens of Salisbury to amend the *Salisbury Municipal Code* sections that relate to the Election Board to coordinate with the Charter and current state election procedures.

NOW, THEREFORE, be it enacted and ordained by the City Council of the City of Salisbury, Maryland, in regular session, that Chapter 1.08, Election Board, of the *Salisbury Municipal Code* shall be amended as follows:

**Chapter 1.08**

**ELECTION BOARD**

**Sections:**

- 1.08.010**      **Definitions.**
- 1.08.020**      **Duties of the city election board.**
- 1.08.030**      **Transfer of certain city board functions and duties of the Wicomico County board of elections.**
- 1.08.040**      **Payment to county board members and election personnel for election-related services.**
- 1.08.050**      **Delivery and recording of oaths of office by city clerk.**
- 1.08.060**      **System of permanent registration established.**
- 1.08.070**      **Removal or omission from active registration files.**
- 1.08.080**      **Public inspection of registration records.**
- 1.08.090**      **Furnishing of certified list of voters.**
- 1.08.100**      **Hiring of clerical assistance.**
- 1.08.110**      **Additional registrations by same voter prohibited.**
- 1.08.120**      **False answers to material questions prohibited.**
- 1.08.130**      **Falsification or removal of records.**
- 1.08.140**      **Aiding or abetting in commission of prohibited acts prohibited.**
- 1.08.150**      **Office hours established for registration.**
- 1.08.160**      **Access to city records.**
- 1.08.170**      **Registration by mail.**
- 1.08.180**      **Registration for county election automatically registers for city election.**
- 1.08.190**      **Absentee ballot—Who may vote.**
- 1.08.200**      **Late absentee ballots—Voter assistance.**
- 1.08.210**      **Elections in which absentee voters may vote.**
- 1.08.220**      **Application for absentee ballots.**
- 1.08.230**      **Application forms.**

- 1.08.240 Determination of absentee voters' applications—Delivery of ballots.
- 1.08.250 Ballots for absentee voters.
- 1.08.260 Instructions to voters.
- 1.08.270 Provisional ballots.
- 1.08.270~~280~~ Canvassing of ballots.
- 1.08.280~~290~~ Contests and appeals.
- 1.08.290~~300~~ Election districts and precincts established.
- 1.08.300~~310~~ Map of election districts.

**1.08.010 Definitions.**

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

“City board” means the city election board provided for in § SC6-2 of the Charter.

“County board” means the Wicomico County board of elections. (Ord. 1746 § 1 (part), 2000)

**1.08.020 Duties of the city election board.**

The city board shall generally supervise the conduct of the system of appointment and registration, nomination by petition and general, primary and special elections in accordance with the provisions of the City Charter and ordinances of the council; specifically including the following duties:

- A. Observe polls;
- B. Observe opening of absentee ballots;
- C. Hear contests concerning voting and the validity of any ballot. (Ord. 1746 § 1 (part), 2000)

**1.08.030 Transfer of certain city board functions and duties to the Wicomico County board of elections.**

The following duties, powers and functions assigned by the Charter and code to the city election board shall be delegated to the Wicomico County board of elections;

- A. Salisbury Municipal Code Section 1.08.090, Furnishing of certified list of voters;
- B. Salisbury Municipal Code Section 1.08.100, Hiring of clerical assistance;
- C. Salisbury Municipal Code Sections 1.08.190 through 1.08.270, inclusive, Absentee Ballots, except where specifically designated as duties of city board;
- D. Salisbury Municipal Code Section 1.08.060 through 1.08.090, and 1.08.150 through 1.08.180, inclusive, Registration and inspection sections.
- E. Such other functions of the city board as are necessary for the conduct of elections. (Ord. 1746 § 1 (part), 2000)

**1.08.040 Payment to county board members and election personnel for election-related services.**

The city treasurer is authorized to pay to the county board staff such sums for the performance of certain duties involved in the conduct and supervision of city elections as may be mutually agreed upon between the city and county board. (Ord. 1746 § 1 (part), 2000)

**1.08.050 Delivery and recording of oaths of office by city clerk.**

The clerk of the circuit court shall administer an oath of office to the members of the city board and the oath of office shall be recorded by the city clerk among the minutes of the city council. (Ord. 1746 § 1 (part), 2000)

**1.08.060 System of permanent registration established.**

There shall be a registration of the voters of Salisbury on a daily basis, Monday through Friday inclusive, during normal business hours, exclusive of state and national holidays. No person shall be allowed to vote at any municipal election unless he or she shall be registered. (Ord. 1746 § 1 (part), 2000)

**1.08.070 Removal or omission from active registration files.**

Any person who shall believe that his or her name has been erroneously removed or omitted from the active registration files of the city shall make complaint to the city board. The city board shall investigate the complaint, and, if found to be justified, appropriate action shall be taken to correct the error. The decision of the city board shall be final, but if adverse to the complainant, the latter shall have the right to appeal to the circuit court of Wicomico County within ten days after the date of such determination. (Ord. 1746 § 1 (part), 2000)

**1.08.080 Public inspection of registration records.**

The registration records shall be open to public inspection under reasonable regulations of the county board. (Ord. 1746 § 1 (part), 2000)

**1.08.090 Furnishing of certified list of voters.**

The county board shall furnish to anyone making written application therefor, within ten days after such application has been received, the names, addresses, and political affiliation of all persons registered in any election precinct of the city, in accordance with the fee structure established by the county board. (Ord. 1746 § 1 (part), 2000)

**1.08.100 Hiring of clerical assistance.**

The county board with the consent of the city council, may hire such clerical assistance as it may require in the performance of the duties assigned to it by this chapter. (Ord. 1746 § 1 (part), 2000)

**1.08.110 Additional registrations by same voter prohibited.**

No person being a registered voter of the city shall knowingly and corruptly register or attempt to register a second or additional time as a voter of the city. (Ord. 1746 § 1 (part), 2000)

**1.08.120 False answers to material questions prohibited.**

No person shall knowingly make a false answer to any material question required to be answered for the purpose of registration. (Ord. 1746 § 1 (part), 2000)

**1.08.130 Falsification or removal of records.**

No person shall knowingly and corruptly falsify or remove any registration record of the city. (Ord. 1746 § 1 (part), 2000)

**1.08.140 Aiding or abetting in commission of prohibited acts prohibited.**

No person shall procure, aid or abet any person in the commission of an act prohibited in this chapter. (Ord. 1746 § 1 (part), 2000)

**1.08.150 Office hours established for registration.**

The county board shall keep its office in the county court house opened for registration of city voters during regular business hours of eight a.m. to four-thirty p.m. on all regular business days, except such days, if any, immediately preceding the holding of state, county or city elections as may be designated by the county board or the city board for its purposes in examining and verifying the registry books and delivering same to the precincts for use during such elections. (Ord. 1746 § 1 (part), 2000)

**1.08.160 Access to city records.**

The county board shall give the city board access to the city records at any and all reasonable times as may be requested by the city board for its purposes. (Ord. 1746 § 1 (part), 2000)

**1.08.170 Registration by mail.**

A voter registration by mail program shall be established and administered by the county board. Such registration shall be conducted in accordance with the current Maryland State law and regulations governing county registration by mail. (Ord. 1746 § 1 (part), 2000)

**1.08.180 Registration for county election automatically registers for city election.**

The county board is authorized to automatically register any and all eligible voters of the city who register with the Wicomico County board for eligibility to vote in county elections. (Ord. 1746 § 1 (part), 2000)

**1.08.190 Absentee ballot—Who may vote.**

A. Any registered voter who is an employee of the county board, including any judge appointed under this chapter who, as a condition of his employment on any election day, is required to be absent from the precinct in which he is registered to vote and who chooses to vote shall cast his vote by an absentee ballot provided by the county board.

B. A registered voter may vote by absentee ballot under this section if the voter is unable for sufficient reason to be present and personally vote at the polls on election day. (Ord. 1746 § 1 (part), 2000)

**1.08.200 Late absentee ballots—Voter assistance.**

A. Application for Ballot.

1. After the Tuesday preceding an election and on the day of the election prior to the time the polls close, any person registered and otherwise qualified to vote may apply, in person or through a duly authorized agent, as authorized in subsection (A)(4) of this section, who appears in person, at the office of the county board for a late emergency absentee ballot if the voter is within the provisions of Section 1.08.190.

2. The application shall be made under penalty of perjury but without formal oath, setting forth the reason why the voter is unable to be present at the polls on the day of the election. The late absentee ballot shall contain an affidavit, which need not be under oath but

which shall set forth such information, under penalty of perjury, as may be required by the county board.

3. Upon receipt of the application, the county board, if satisfied that the person cannot, in fact, be present at the polling place on the day of the election, shall issue to the applicant, or his duly authorized agent, an absentee ballot which shall be marked by the voter, placed in a sealed ballot envelope, and returned to the county board in the envelope provided for that purpose.

4. If the applicant does not apply in person, the applicant shall designate a voter registered in the city as agent for the purpose of delivering the absentee ballot to the vote, and the agent shall execute an affidavit under penalty of perjury that the ballot was delivered to the voter who submitted the application, was marked by the voter in the agent's presence, was placed in a sealed envelope in the agent's presence and returned, under seal, the county board by the agent.

5. Any late absentee ballot received by the county board shall be considered timely if received in accordance with Section 1.08.270(C).

B. Assistance in Marking Ballot, Etc. Any registered voter who requires assistance to vote by reason of blindness, disability or inability to read the English language or write may be given assistance by a person of the voter's choice, not to include the voter's employer or agent of that employer or officer or agent of the voter's union. Any person rendering assistance pursuant to this subsection shall execute a certificate to be included in the instructions prescribed by Section 1.08.260. (Ord. 1746 § 1 (part), 2000)

#### **1.08.210 Elections in which absentee voters may vote.**

This chapter applies to all special, primary and general elections held in any year in the city. (Ord. 1746 § 1 (part), 2000)

#### **1.08.220 Application for absentee ballots.**

Except as provided in Section 1.08.190, a qualified voter desiring to vote at any election as an absentee voter shall make application in writing to the county board for an absentee ballot, which application must be received not later than the Tuesday preceding the election. The application shall contain an affidavit, which need not be under oath but which shall set forth such information, under penalty of perjury, as may be required by the county board. (Ord. 1746 § 1 (part), 2000)

#### **1.08.230 Application forms.**

Printed forms of application for absentee ballots in accordance with the requirements of this section shall be provided by the county board and shall be available to any qualified voter upon request. (Ord. 1746 § 1 (part), 2000)

#### **1.08.240 Determination of absentee voters' applications—Delivery of ballots.**

A. Rejection of Application. Upon receipt of an application containing the affidavit, the county board shall reject the application only upon the unanimous vote of the entire city board upon the decision of the Election Director and, when rejected, shall notify the applicant of the reason therefor if it is determined upon inquiry that the applicant is not legally qualified to vote at the election as an absentee voter.

B. Delivery of Ballot. If the applicant is a qualified voter as stated in his affidavit, the county board shall, as soon as practicable thereafter, deliver to him, or his duly authorized

agent, at the office of the county board, or mail to him at an address designated by him, an absentee voter's ballot and an envelope therefore. If the applicant is one with respect to whom free postage privileges are provided for by the federal Uniformed and Overseas Citizens Absentee Voting Act, or any other federal law, rule or regulation, the county board shall take full advantage of these privileges; in all other instances, postage for transmitting ballot material to voters shall be paid by the county board and postage for the return of ballots shall be paid by the voters. If the ballots are to be sent by mail, the determinations required in subsection A of this section shall be made in such time as will allow for the sending and return of the ballots by regular mail, or airmail, depending on the mailing address and including at least one secular day for marking the ballots and completing the affidavit. All investigations shall be concluded and any determinations made as to all absentee ballot applications not later than five days before election day.

C. Record of Applications Received and Ballots Delivered.

1. The county board shall keep applications for absentee voters' ballots as they are received, showing the date and time received, the names and residences of the applicants and such record shall be available for examination by any registered voter on written application to the county board.

2. After approval of an application for an absentee ballot and the mailing to the applicant of an absentee ballot, then, unless an electronically reproduced precinct register is used, the voter's authority card in the precinct binder shall be removed and retained in the office of the county board. A marker shall be placed in the regular precinct binder with the voter's name and recording the fact that an absentee ballot has been mailed. If an electronically reproduced precinct register is used, a distinctive line shall be drawn through the voter's name on the list in red. No such voter shall vote or be allowed to vote in person at any polling place.

D. One Ballot to an Applicant. Not more than one absentee ballot shall be mailed to any one applicant unless the county board has reasonable grounds to believe that the absentee ballot previously mailed has been lost, destroyed or spoiled. (Ord. 1746 § 1 (part), 2000)

**1.08.250 Ballots for absentee voters.**

A. Printing of Ballots, Envelopes and Instructions. In sufficient time prior to any election, the county board shall have printed an adequate number of absentee ballots, the three kinds of envelopes described in this section and the instructions to absentee voters as set out in Section 1.08.260.

1. Absentee ballots in the discretion of the county board may be in form either of paper ballots kept together in a covering folder, provided that all absentee ballots shall be in the same form.

B. Form of Ballots. All ballots shall contain the words "Absentee Ballot" or "Official Ballot" shall be printed in large letters in clear space at the top of each ballot and on any covering folder instructions to the voters shall be printed as follows:

1. If paper ballots are used, underneath the words "Absentee Ballot" or "Official Ballot" shall be printed the following warning:

~~— "Mark ballot by connecting arrow in proper blank after each candidate or question. Do not erase or make identifying mark. If your vote for a candidate or question is marked in such a manner that your intent is not clearly demonstrated, your vote for that office or question shall not be counted. In order to protect the secrecy of your vote, do not put your~~

name, initials or any identifying mark on your official ballot. If it is determined that a ballot is intentionally marked with an identifying mark, the entire ballot will not be counted.” instructions shall be printed on the ballot for completing the absentee ballot in accordance with the current voting system in use.

C. Envelopes. The county board shall prescribe the size, form and printed content of the absentee ballot material envelopes, providing for a “covering envelope,” a “ballot envelope” and a “return envelope.” (Ord. 1746 § 1 (part), 2000)

**1.08.260 Instructions to voters.**

The printed instructions for the casting of absentee ballots shall be prescribed by the county board and it shall prescribe separate instructions for paper ballots. (Ord. 1746 § 1 (part), 2000)

**1.08.270 Provisional ballots.**

The city board shall authorize the county board to administer provisional voting and canvass the provisional ballots pursuant to state law and regulations provided the provisional voting does not conflict with City Election Code.

**1.08.270280 Canvassing of ballots.**

A. Opening or Unfolding Ballots. The county board shall not open or unfold any absentee ballot at time prior to the closing of the polls.

B. Duties of County Board.

1. Subject to the provisions of subsection (B)(2) of this section, at any time after four p.m. on the Wednesday following election day and not later than the canvass of the votes cast at the regular voting places in the city at any election, the county board shall meet at the usual offices of the county board and shall proceed to count, certify and canvass the absentee ballots contained in the ballot envelopes. Each board of canvassers shall keep the ballots safe from tampering until the canvass is completed. The county board shall take all appropriate and feasible steps to protect the privacy of all absentee ballots.

2. The canvass may not be completed until all absentee ballots that have been received timely have been counted.

C. Timely Receipt and Ballot.

1. Except as provided in subsection D of this section, a ballot shall be considered as received timely, provided:

a. It has been received by the county board prior to closing of the polls on election day; or

b. It was mailed on or before election day; or

c. The United States Postal Service, an army post office, a fleet post office, or the postal service of any other county, has provided verification of that fact by affixing a mark so indicating on the covering envelope; and

d. The county board receives the ballot from the United States Postal Service not later than four p.m. on the Wednesday second Friday following election day.

2. Except as provided in subsection D of this section, any ballot received after the deadline established in this subsection may not be counted.

D. Ballots Received From Locations Outside United States.

1. In a **primary**, general or special election, a ballot received from a location outside the United States shall be considered as received timely provided:
  - a. It has been received by the county board from the United States Postal Service not later than four p.m. on the second Friday following the election day; and
  - b. It was mailed before election day; andThe United States Postal Service, an army post office, a fleet post office, or the postal service of any other country, has provided verification to that fact by affixing a mark so indicating on the covering envelope.
2. Any ballot received by mail after the deadline established in this subsection may not be counted.
3. The commencement of the counting and canvassing process may not be delayed to await receipt of ballots under this subsection.
4. For the purposes of this subsection, "United States" includes several states, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands but does not include American Samoa, Guam, the Trust Territory of the Pacific Islands, any other territory or possession of the United States, an army post office address or a fleet post office address.
  - E. Voter's Affidavit. For the purposes of subsections C and D of this section, a voter's affidavit that the ballot was completed and mailed before election day shall suffice if the postal service of the country from which the ballot was mailed does not provide a postmark on that ballot.
  - F. Procedure Generally.
    1. A ballot may not be rejected by the city board except by the unanimous vote of the entire city board.
    2. If the intent of the voter is not clearly demonstrated, only the vote for that office or question shall be rejected.
    3. If the board of canvassers determines a ballot is intentionally marked with an identifying mark the entire ballot shall not be counted.
    4. Any ballot received by mail after the deadlines established in subsections C and D of this section may not be counted.
    5. Absentee ballots may not be separately disclosed or reported by precinct.
    6. All voters' applications, affidavits, certifications, ballot envelopes and ballots shall be kept separate and apart from ballots cast at the regular voting places and retained after the date of election at which they were cast for the time required by federal law, unless prior to that time, the county board is ordered by a court of competent jurisdiction, to keep the same for any longer period.
    7. The county board may appoint such numbers of temporary judges as it may deem necessary to adequately and promptly carry out the provisions of this section.
  - G. Ballot Voted for Person Who Has Ceased to Be a Candidate. Any absentee ballot voted for a person who has ceased to be a candidate shall not be counted for such candidate but such vote shall not invalidate the remainder of such ballot.
  - H. Ballot Delivered to Wrong Board. If an absentee ballot envelope is delivered to the wrong board, such board shall immediately send said ballot envelope unopened, unmarked and unchanged in any way to the proper board or to the city clerk.
  - I. Voter Dying Before Election Day. Whenever the county board determines from proof or investigation that any person who has marked and transmitted or deposited in person



with the board an absentee ballot, under the provisions of this chapter, has died before election day, the county board shall not count the ballot of the deceased voter.

J. Place Ballot in Ballot Box and Entry in Registry—More than One Ballot in Envelope—Marking Ballots.

1. If the county board determines that the provisions for filling out and signing the oath on the outside of the ballot envelope have been substantially complied with and that the person signing the voter's oath is entitled to vote under this chapter in any city election and has not already voted therein on election day, it shall open the ballot envelope and remove the ballot therefrom and the ballot shall be placed by the county board in a secure place to which the public has no access.

2. If there be more than one ballot in the ballot envelope, all shall be rejected except when two elections are held on the same day and a voter is voting in both elections and the voter returns both absentee ballots in the ballot envelope provided.

3. Absentee ballots may be marked by the pencil taped on the absentee ballot.

K. More Than One Ballot Received From Same Person. If the county board receives from the same person prior to the deadline for receipt of absentee ballots more than one absentee ballot, it shall count, certify and canvass only the absentee ballot contained in the ballot envelope on which the voter's oath was first executed and if the oath on two or more of the ballot envelopes containing absentee ballots are dated the same, or if both are undated, none of the ballots received from such person shall be counted. (Ord. 1746 § 1 (part), 2000)

#### **1.08.280290 Contests and appeals.**

A. Decision by City Board. Appeals concerning voting or the validity of any ballot under this chapter shall be decided by the city board.

B. Unanimous Vote by City Board. No ballot shall be rejected except by the unanimous vote of the city board.

C. Right to Appeal. Any candidate or absentee voter aggrieved by any decision or action of the city board shall have the right of appeal to the circuit court for Wicomico county to review such decision or action.

D. Procedure for Appeal. Such appeals shall be taken by way of petition filed with the appropriate court within five days from the date of the completion of the official canvass by the county board of all the votes cast at the election and shall be heard de novo and without a jury by said court as soon as possible.

E. Appeal to Court of Special Appeal. There shall be further right to appeal to the court of special appeals, provided such appeal shall be taken within forty-eight (48) hours from the entry of the decision of the lower court complained of, and such appeals shall be heard and decided on the original papers, including a typewritten transcript of the testimony taken in such cases, by the court of special appeals, as soon as possible after the same having been transmitted to that court.

F. Transmission of Record to Court of Special Appeals. The original papers, including the testimony, shall be transmitted to the Court of Special Appeals within five days from the taking of the appeal. (Ord. 1746 § 1 (part), 2000)

**1.08.290300 Election districts and precincts established.**

The city shall have two councilmanic districts, and there shall be one precinct corresponding to each councilmanic district. Voting records shall be kept pursuant to divisional lines as established by the county board. (Ord. 1746 § 1 (part), 2000)

**1.08.300310 Map of election districts.**

A map of the city, prepared by the engineering department of the city, which is on file in the office of the city clerk, is adopted and made a part of this chapter for the purpose of more clearly defining the boundaries of the election precincts described in this chapter. (Ord. 1746 § 1 (part), 2000)

AND BE IT FUTHER ENACTED AND ORDAINED by the City Council of the City of Salisbury, Maryland that the changes set forth in this Ordinance shall take effect upon final passage.

THIS ORDINANCE was introduced and read at a meeting of the City Council of the City of Salisbury, Maryland held on the \_\_\_\_ day of \_\_\_\_\_, 2008, and having been published as required by law, in the meantime, was finally passed by the City Council on the \_\_\_\_ day of \_\_\_\_\_, 2008.

ATTEST:

\_\_\_\_\_  
Brenda J. Colegrove  
City Clerk

\_\_\_\_\_  
Louise Smith, President  
Salisbury City Council

APPROVED BY ME THIS:

\_\_\_\_\_ day of \_\_\_\_\_, 2008

\_\_\_\_\_  
Barrie P. Tilghman  
Mayor