

ORDINANCE
TO AMEND CHAPTER 19 OF THE CITY CODE (PERSONNEL) TO ADD A NEW
ARTICLE VII AUTHORIZING COLLECTIVE BARGAINING WITH LABOR
UNIONS OR OTHER EMPLOYEE ASSOCIATIONS

WHEREAS the Virginia General Assembly enacted Sec. 40.1-57.2 of the Virginia Code, to expressly authorize the City and other local governments, upon adoption of a local ordinance, to recognize labor unions or other employee associations as bargaining agents for public officers or employees, subject to the provisions and limitations set forth within said statute; and

WHEREAS within this Ordinance City Council desires to provide procedures for the certification and decertification of exclusive bargaining representatives, including reasonable public notice and opportunity for labor organizations to intervene in the process for designating an exclusive representative of a bargaining unit, and to set forth procedures and parameters within which collective bargaining contracts may be negotiated and administered within the City government, consistent with the City Charter and the general laws of the Commonwealth of Virginia; NOW, THEREFORE,

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE,
THAT:

The City Code (1990), Chapter 19 (Personnel), is hereby amended and reenacted to include a new Article VII (Collective Bargaining), as follows:

Article VII. Collective Bargaining

Sec. 19-201. Statement of Policy /Purpose

It is the public policy of the City of Charlottesville to promote a harmonious and cooperative relationship between the City government and its employees to ensure that the workforce is positioned to efficiently meet demands and deliver exceptional services to the community and stakeholders. Unresolved disputes in public service are harmful to the employees and the public, and adequate means should be available for preventing disputes and for resolving them when they occur. To that end, it is in the public interest that employees have the opportunity to bargain collectively in good faith, without interference of the orderly processes of government and subject to the limitations of the City's annual budget and appropriations.

Sec. 19-202. Definitions

As used in this ordinance, the following terms shall have the meanings ascribed to them in this section:

Administrative employee means an employee whose primary duty is the performance of office or non-manual work directly related to or in furtherance of the management or general business operations and services of the City.

Administratively acceptable evidence to support a petition for election or for decertification may consist of a combination of petition signatures, a membership roster signed by each employee, or a set of membership authorization cards. All signatures must be dated, and each signature must have been provided subsequent to any previously held election for the bargaining unit in question, if applicable. Any signature or authorization by an employee to support a petition for election or for decertification may be revoked in a dated writing by the employee at any time. A current authorization that satisfies the Uniform Electronic Transactions Act (Code of Virginia, § 59.1-479 et seq.) shall be valid for an employee's authorization for representation for purposes of a petition filed by an employee organization seeking an election or by an employee or group seeking decertification.

Administrator means the labor relations administrator appointed pursuant to sec. 19-207.

Arbitration means a procedure whereby parties, unable to agree on a solution to a problem, indicate their willingness to be bound or advised by the decision of a third-party as provided for in this subtitle.

Benefits means all forms of non-wage compensation.

City means the City of Charlottesville, Virginia.

Collective Bargaining means the performance of the mutual obligation of representatives of the City and the bargaining agent to meet at reasonable times and places and negotiate in good faith with the intent of reaching agreement regarding the authorized subjects of collective bargaining identified in sec. 19-203.

Collective bargaining agreement means the written legal contract between the City and an exclusive bargaining agent representing the employees in a bargaining unit authorized by this ordinance and resulting from collective bargaining as defined in this section. Any collective bargaining agreement negotiated under this ordinance shall continue in effect following the expiration of its term until such time as superseded by a later agreement.

Confidential employee means any employee who works in or for:

- (1) Any office of a City Council member;
- (2) The Office of the City Manager;
- (3) The Office of the City Attorney;

(4) The Department of Human Resources;

(5) The Department of Finance and Budget;

The term “confidential employees” also includes:

(1) Those employees whose job duties require authorized access to confidential information pertaining to the City's budgetary and financial data, emails between management staff and the City Council or City Manager, personnel data, or strategy, relevant to subjects within the scope of collective bargaining as set forth in this chapter, or those employees within the Information Technology department whose job duties require authorized access to confidential information pertaining to personnel data or management emails relevant to subjects within the scope of collective bargaining.

(2) A position in any department in which the employee assists in a confidential capacity, persons who formulate, determine, and effectuate management policies in the field of labor relations.

Employee means any employee of the City, except it does not include anyone who is:

a seasonal or temporary employee, as defined in this section;

a confidential employee, as defined in this section;

a managerial employee, as defined in this section;

a supervisor, as defined in this section;

an intern or volunteer;

a member of a board, commission, authority, or other appointee of any public body as defined in state law, unless such member is an Employee who would otherwise be entitled to engage in collective bargaining under the terms of this ordinance;

emergency services dispatchers; or

an employee of the courts or any local constitutional officer as set forth in Article VII, Section 4 of the Virginia Constitution, whether or not the City provides personnel administrative services or supplements state or other funding provided for the personnel of such officers.

Employee organization means an organization in which employees participate, and that exists for the purpose, in whole or in part, of representing employees in collective bargaining concerning labor disputes, wages, hours, and other terms and conditions of employment.

Exclusive bargaining representative and *exclusive bargaining agent* mean the employee organization recognized by the City as the only organization to bargain collectively for all employees in a bargaining unit (as defined in sec. 19-204).

Impasse means the failure of the City and an exclusive bargaining representative to reach agreement in the course of collective bargaining negotiations within the timeframes specified in this ordinance.

Insurance benefit options means the types and components of health and welfare insurance plans offered to employees, their dependents, and retirees, including but not limited to the structure and provider of insurance plans, the covered benefits of insurance plans, any plan exclusions, and any cost-controlling features such as prior approval requirements, prescription formularies, etc.

Labor-management dispute means a difference of position as between the City and an exclusive bargaining agent concerning administration or interpretation of the collective bargaining agreement between them; whether an act is a prohibited labor practice under sec. 19-214; and questions of eligibility of disputes for resolution by mediation or arbitration. It shall not mean disciplinary or other adverse personnel actions within the meaning of Code of Virginia, § 15.2-1506, et seq, as implemented by the uniformly applicable City grievance procedure and specialized state statutory procedures applicable to law enforcement officers and fire and emergency medical services employees.

Managerial employee means any employee or appointee involved directly in the determination of labor relations or personnel policy, or who is responsible for formulating, determining, and effectuating policy in the area of labor relations.

Mediation means an effort by a neutral, third-party facilitator chosen under the terms of this ordinance to assist confidentially in resolving an impasse, or other labor-management dispute as defined in this section, arising in the course of collective bargaining between the City and the exclusive bargaining agent of a bargaining unit.

Professional employee means an employee exempt from the Fair Labor Standards Act and whose primary duty is the performance of work:

requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or

involving the consistent exercise of discretion and judgment in its performance; or

requiring invention, imagination, originality, or talent in a recognized field of artistic or creative endeavor.

Seasonal employee means a temporary employee, as defined in this section, for which the period of employment begins each calendar year in approximately the same part of the year, such as summer or winter, for reasons related to work demands that arise during those parts of the year.

Supervisor means all personnel who devote a majority of work time to the supervision or direction of two or more employees, or who have authority to hire, transfer, suspend, layoff, recall, promote, demote, discharge, reward, or discipline other employees, or adjust grievances, or who can effectively recommend such action. With respect to the Fire Department, “supervisor” includes all personnel at the rank of Battalion Chief and above. With respect to the Police Department, “supervisor” includes all personnel at the rank of Sergeant and above.

Strike means, in concerted action with others, an employee's refusal to report to duty or willful absence from their position, or stoppage of work, for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of public employment.

Technical employee means an individual whose work requires a combination of basic scientific or technical knowledge and manual skill that can be obtained through specialized postsecondary school education or through equivalent on-the-job training.

Temporary employee means an employee who works variable hours, but fewer than 20 hours per week, and fewer than 36 weeks per year, on an as-needed basis.

Sec. 19-203. Authorized Subjects of Collective Bargaining

(a) Except as provided for in subsections (b) and (c) below, the following matters are authorized subjects of collective bargaining:

- (1) wages, salaries, and other forms of monetary compensation,
- (2) health and dental insurance premiums (including employer contributions and premium cost sharing), deductibles, and co-payments for active employees and covered dependents;
- (3) non-health and non-welfare benefits, such as paid and unpaid leave and holidays;
- (4) retirement benefits for active employees;
- (5) other terms and conditions of employment, including hours of work, provided that matters reserved as City management rights in sec. 19-206 are not authorized subjects of bargaining.

(b) Any procedure for resolution of grievances, as defined in Virginia Code § 15.2-1507(A)(I), negotiated as part of a collective bargaining agreement reached under this section shall conform

to any requirements set forth in applicable state law, and the City may agree to arbitration as a component of any such negotiated procedure. Probationary employees, as that term is used in the City's personnel regulations, must be excluded from any such negotiated grievance procedure. A negotiated grievance procedure contained in a collective bargaining agreement shall be the exclusive procedure available to an employee of the bargaining unit covered by that procedure, unless another procedure is available as a matter of right provided by state, federal, or other applicable law. Where such alternate procedures are available, an employee's initial election of procedure made at the time of filing the grievance shall be binding and irrevocable.

(c) The following matters shall not be subject to negotiation:

- (1) the provider of the City's existing retirement plan or any decision to replace any or all such plans with the retirement plan of the Virginia Retirement System,
- (2) benefits established and administered in accordance with the Code of Virginia over which the City does not have discretion or control,
- (3) insurance benefit options, insurance plan providers, and employer subsidies for insurance provided to individuals who are neither active employees nor their covered dependents, including retirees and/or survivors,
- (4) other matters controlled or preempted by federal or state constitutional provision, law, rule, or regulation, or by the City Charter, such as:

Matters pertaining to the composition, duties, or powers of any civilian review board applicable to police officers, or to any decision rendered by such a board,

Matters governed by Code of Virginia, § 9.1-300 et seq.

- (5) matters affecting the City's right to take disciplinary actions up to and including termination for probationary employees, as that term is used in the City's personnel regulations;
- (6) matters affecting the City's right to establish policies or practices to respond to emergency situations; and
- (7) provisions, prohibited by state law, that restrict the City Council's authority to establish the budget or appropriate funds in its discretion.

(d) Nothing in this ordinance requires either party to make any concessions or agree to the other party's proposals in collective bargaining.

Sec. 19-204. Authorized Bargaining Units

- (a) For at least one year following the adoption of this ordinance, the City shall recognize up to three of the potential bargaining units outlined in subsection (c) below for the purpose of collective bargaining. The units recognized by the City under this subsection shall be the first three to achieve certification under the procedures outlined in sec. 19-210.
- (b) Beginning in the second year following adoption of this ordinance, additional bargaining units may be recognized by the City at a rate of one new bargaining unit per calendar year. New units will be recognized by the City under this subsection in the order in which they achieve certification under the procedures outlined in sec. 19-210. By the fourth year following adoption of this ordinance, all the potential bargaining units outlined in subsection (c) will be eligible for recognition by the City.
- (c) Employees in the following specified bargaining units may be authorized to engage in collective bargaining through an employee organization recognized by the City:
 - (1) Police: a unit consisting of all sworn uniformed employees of the Charlottesville Police Department, except those excluded by definition under sec. 19-202;
 - (2) Fire: a unit consisting of all sworn uniformed employees of the Charlottesville Fire Department, except those excluded by definition under sec. 19-202; and
 - (3) Transit: a unit consisting of all regular full-time and part-time operators and maintenance employees of the Charlottesville Area Transit and the Pupil Transportation Department, , except those excluded by definition under sec. 19-202.
 - (4) Labor and Trades: a unit consisting of all regular full-time and part-time employees associated with maintenance and skilled crafts, *i.e.*, job classes of workers performing duties that result directly in the comfort and convenience of the general public, or contribute to the maintenance of capital assets, land and infrastructure of the City, excluding any otherwise eligible employees outlined for participation in the Transit unit and those excluded by definition under sec. 19-202.
 - (5) Administrative and Technical: a unit consisting of all regular full-time and part-time employees of the City who are administrative employees or technical employees or who perform office support work, except those excluded by definition under sec. 19-202.
 - (6) Professional: a unit consisting of non-supervisory and non-managerial employees within the definition of “professional employee” as set forth in sec. 19-202, except those excluded by definition under sec. 19-202.

(d) The City Manager or his/her designee shall, upon request, meet and confer with employees who supervise members of a certified bargaining unit who are themselves are ineligible to bargain collectively regarding matters within the scope of collective bargaining under this ordinance, with the specific intent to address salary compression, as commonly defined or understood, resulting from collective bargaining with certified employees.

Sec. 19-205. Employee Rights

(a) Employees in the bargaining units specified in sec. 19-204 shall have the right to organize, form, join, assist, and pay dues or contributions to employee organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid and protection, insofar as such activity is not inconsistent with this ordinance or prohibited by any other applicable law.

(b) Employees have the right to request representation by a representative of their certified bargaining unit and have such representative present during any investigative interview conducted by the City in its role as employer if the eligible employee reasonably believes that such interview involves a matter that could lead to the employee's discipline.

(c) Employees are not prohibited from, and shall not be penalized or retaliated against for, using City electronic mail, telephone, facsimile transmission, or other communication systems owned by the City to discuss employee organization business or activities or employee organizing activities; however, the City remains the owner of such communication systems, and no employee shall have any expectation of privacy in the use of such a communication system. The City's access to or disclosure of emails, voicemails, or other communications when required by law, for use in litigation or administrative hearings, for use in investigations, or for other proper business or governmental purposes shall not be considered a prohibited practice under sec. 19-214.

(d) Employee organizations have the right to meet with bargaining unit employees on the premises of the City in designated spaces during times when the employees are on break or in a non-duty status, in accordance with generally applicable City policies. This section shall not be applied or interpreted in a manner that prohibits casual nondisruptive conversation among or between employees in the workplace.

(e) Employees also shall have the right to refrain from any or all such activities.

Sec. 19-206. City's Rights and Authority

(a) This ordinance shall not be deemed to limit or diminish the authority of the City Council and the City Manager to fully manage and direct the operations and activities of the City as authorized and permitted by law. Thus, unless the City elects to bargain regarding the following matters, the City and the City Manager retain their respective exclusive rights, including the following rights, subject to the terms agreed to in a collective bargaining agreement:

- (1) to determine the organization of City government and the purpose and mission of its constituent agencies, and to add, delete, modify, or suspend programs, functions, and units of government as the City determines to be necessary and appropriate;
- (2) to determine the type and scope of work to be performed by City employees, and the manner in which services are to be provided;
- (3) to direct the work of employees and determine the number of employees to perform any work or service;
- (4) to hire, classify, promote, transfer, assign, retain, and supervise all employees, and to suspend, demote, discharge, or take other disciplinary action against employees;
- (5) to determine and change the number of positions and/or the appointment type (full time, part time, etc.) for such positions;
- (6) to relieve employees from duties by layoff or other reduction-in-force due to lack of work, budget changes, changed working conditions or requirements, or for other reasons not prohibited by law;
- (7) to introduce new or different services, methods, equipment, or facilities;
- (8) to contract for, expand, reduce, transfer, eliminate, or change in any way the operations of the general government, as well as any department, office, or part thereof;
- (9) to establish and change standards of behavior or performance, promotions, staffing levels, job qualifications, and job descriptions;
- (10) to determine the kind, type, location, and use of City-owned equipment or facilities; provided that the City shall not require use or operation of unsafe equipment or the unsafe operation of equipment;
- (11) to determine its tax levies, revenue generation methods, budget, and appropriation;
- (12) to require enhanced security measures to protect City facilities, infrastructure, personnel, and the public;

(13) to take whatever actions may be necessary to carry out the City's mission during a state of emergency as defined in Code of Virginia, § 44-146.16 affecting the City or a declaration of local emergency as defined in Code of Virginia, § 44-146.16, or during such other emergency operations as may be deemed necessary by the City Manager or his/her designee;

(14) to make and implement systems for awarding outstanding service increments, extraordinary performance awards, other merit awards, and recognizing employee recognition and service (including hiring and referral bonuses);

(15) to introduce new or improved technology, research, development, and services;

(16) to determine matters related to the administration of pay and benefits which are not directly related to monetary compensation or benefits;

(16) to issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this ordinance, a collective bargaining agreement, or federal or state law; and

(17) to take any other action necessarily to fulfill the duties and responsibilities granted to the City Manager under Section 5.01 of the Charter of the City of Charlottesville.

(b) No provision of this ordinance shall act to interfere with or impair the free speech and association rights of the City Manager or the members of the City Council. No prohibited practice charge may be brought against the City, the City Manager, or any City Council member because of such individual's or the City's collective exercise of the right of free speech and association so long as such expression or speech contains no threat of reprisal or promise of benefit.

(c) This section does not limit the discretion of the City to voluntarily discuss with the exclusive representative any matter concerning the City's exercise of any right specified in this section. If any matter is discussed it does not become a subject of collective bargaining unless reduced to writing and signed by both parties.

Sec. 19-207. Labor Relations Administrator

(a) An administrator shall be selected and appointed in the manner set forth in sec. 19-208 to administer provisions of this ordinance, including the process for certification and decertification of bargaining agents, resolving labor-management disputes, and assisting with the selection of mediators or arbitrators as needs arise under this ordinance or under any collective bargaining agreement. The administrator shall serve as a neutral agency.

(b) The administrator must be experienced as a neutral in the field of labor relations, and must not be a person who, because of vocation, employment, or affiliation, can be categorized as a representative of the interests of the City or of any employee organization, including any bargaining agent.

(c) Should administrator responsibilities, as set forth in sec. 19-209, be required before an administrator is appointed or during a time when the appointed administrator is unable to serve for any reason, the City Manager shall secure such services from any impartial agency provider, such as the American Arbitration Association, the Federal Mediation and Conciliation Service, or a similar provider. Such impartial agency provider shall have all of the powers and responsibilities of the administrator as set forth in this Article.

Sec. 19-208. Selection of Administrator.

(a) The selection of the administrator will be conducted through competitive negotiation for nonprofessional services. Proposals will be evaluated by a panel that will consist of an equal number of City representatives and either (i) representatives of those employee organizations that have notified the City Manager of their interest in representing bargaining units permitted by this ordinance, if no bargaining agents have been recognized at the time the selection process begins, or (ii) representatives of the bargaining agent for the bargaining unit(s) permitted by this ordinance.

(b) The panel shall evaluate and rank all proposals, and recommend up to the three highest-ranked offerors for presentation to the City Manager for approval. The City Manager shall approve one of the offerors presented to him/her as the administrator.

(c) If the administrator dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve within six (6) months of the date of appointment, the City Manager may either appoint a new administrator from the list from which that administrator was selected or request that a new list be created through the process outlined in this section. The newly selected administrator will serve the remainder of the previous administrator's term.

(d) The administrator's services shall be subject to termination by majority agreement of the City Manager and the exclusive bargaining representatives certified under this ordinance, if any. If no exclusive bargaining representatives have been certified, then the administrator's services shall be subject to termination by the City Manager in his/her sole discretion. Any replacement for the administrator shall be selected in accordance with sec. 19-208(c) (if the administrator had served for a period of six (6) months or less prior to termination) or sec. 19-208(a) (if the administrator had served longer than 6 months prior to termination).

(e) The administrator will be appointed for a term of four (4) years. An administrator appointed under this section may be reappointed for subsequent terms through the process outlined in

subsections (a) and (b), above. The administrator shall serve on an as-needed basis during his/her term, when such need is requested by the City Manager. The administrator shall be paid an hourly or per diem rate which shall be specified in a contract between the administrator and the City Manager.

Sec. 19-209. Duties of Administrator

(a) The administrator shall:

- (1) hold and conduct elections for certification or decertification pursuant to the provisions of this ordinance and issue the certification or decertification, or cause these actions to occur;
- (2) request from the City or an employee organization, and the City or such employee organization shall provide, any relevant assistance, service, and data that will enable the administrator to properly carry out duties under this ordinance;
- (3) hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony and receive evidence, and compel by issuance of subpoenas the attendance of witnesses and the production of relevant documents in proceedings within the responsibility of the administrator under this ordinance;
- (4) investigate and attempt to resolve or settle labor-management disputes between the City and an employee organization. However, if the City and a certified representative have negotiated a dispute resolution procedure as a provision of a collective bargaining agreement, the administrator must defer to that procedure to resolve any dispute that properly may be submitted to the procedure, absent a showing that the deferral results in the application of principles contrary to this ordinance. The administrator must defer to state law procedures in any matter where state law so requires;
- (5) determine unresolved issues of employee inclusion in or exclusion from the bargaining unit identified in this ordinance;
- (6) obtain any necessary support services and make necessary expenditures in the performance of duties, subject to approval by the City Manager; and
- (7) exercise any other powers and perform any other duties and functions specified in this ordinance of an administrative nature.

(b) Any party aggrieved by any decision or order of the administrator may within 21 days from the date of such decision or order is filed, appeal to the circuit court to obtain judicial review pursuant to the provisions for judicial review set forth in the Uniform Arbitration Act, Code of Virginia, §§ 8.01-581.01—8.01-581.016, except that in addition to those grounds outlined

in Code of Virginia, § 8.01-581.010, the court shall be empowered to vacate the administrator's decision upon a finding that the administrator manifestly disregarded applicable law.

Sec. 19-210. Recognition of Exclusive Bargaining Unit

(a) A bargaining agent shall be the exclusive representative of all employees in an appropriate bargaining unit described in sec. 19-204(a) if the employee organization is selected by a majority of the employees voting in an appropriate bargaining unit in a secret ballot election conducted pursuant to this section following a petition for election. Elections shall be conducted by secret ballot at the time and place that the administrator directs and in accordance with procedures adopted by the administrator. Mail in or other alternative ballots may be permitted if all parties agree. The cost of such election, including postage if applicable, shall be borne equally by the prospective employee organization(s) seeking recognition and the City.

(b) An employee organization may request an election be held by submitting a petition for an election to the administrator, who shall notify the City Manager in accordance with procedures established by the administrator, including but not limited to provisions for notice to bargaining unit employees and public notice of election. The City must furnish to the administrator no more than five (5) days after notification of the submission of the petition a list of all eligible employees in the bargaining unit. The petition must represent a showing of interest by at least thirty (30) percent of the employees in a bargaining unit permitted by this ordinance based upon administratively acceptable evidence.

(c) Any additional interested employee organization must submit a petition of intervention to the administrator, which must be accompanied by a showing of interest by thirty (30) percent of the employees in the appropriate bargaining unit, based upon administratively acceptable evidence, within ten (10) days of public notice of the filing of the petition. A petition for intervention may not be supported by any employee who already supported the initial petition for an election.

(d) If the administrator determines, after a tabulation of the signatures submitted with the petition, that the petitioning employee organization or any intervening employee organization has not met the required showing of interest, then the administrator must allow not less than fourteen (14) additional days for such employee organization to submit additional evidence. The 14-day period for submitting such evidence commences on the date the administrator provides notice to the petitioning or intervening employee organization of the insufficiency of its petition.

(e) An initial election under this ordinance shall be held within thirty (30) calendar days after written notice to all parties of the determination by the administrator of a valid petition for election. The election shall be held in accordance with election procedures established by the administrator. The election ballots must contain, as choices to be made by the voter, the name of

the petitioning employee organization, the name(s) of any employee organization that has intervened in accordance with the provisions of this ordinance, and a choice of “no representation” by any of the named employee organizations.

(f) The City and each other party to the election may be represented by observers selected under conditions that the administrator prescribes. Observers may challenge for good cause the eligibility of any person to vote in the election. All challenged ballots must be impounded until either the parties agree on the validity of each challenge or the administrator decides the validity of each challenge. However, if the number of challenges will not determine the outcome of the election, the challenged ballots must be destroyed. After the polls have been closed, the administrator must count all valid ballots cast in the presence of the observers.

(g) If an employee organization receives a majority of the valid ballots cast by the employees in a permitted bargaining unit, it shall be recognized by the City as the exclusive bargaining agent upon the administrator’s written certification of the results. In an election in which none of the choices on the ballot receives a majority, a runoff election shall be conducted in which the ballot shall provide for a selection between the two choices or parties receiving the highest and second highest number of ballots cast in the prior election. Any runoff election(s) shall be conducted in substantial conformity with the procedures set out by the administrator for the initial election.

(h) The administrator’s certification of results is final, unless within 14 days after service of the certification, any party serves on all other parties and files with the administrator objections to the election. Objections must be verified, and must contain a concise statement of facts constituting the grounds for the objections. The administrator must investigate the objections, and if substantial factual issues exist, must hold a hearing. Otherwise, the administrator may determine the matter without a hearing. The administrator may invite written or oral argument to assist them in determining the merits of the objections. If the administrator finds that the election was not held in substantial conformity with this ordinance, or if the administrator determines that the outcome of the election was affected, even if by third party interference, it shall require corrective action, and order a new election under this section. Otherwise, the administrator must confirm the certification initially issued. The City need not recognize the employee organization pending the resolution of any process to review objections. In any event, the administrator must make a determination as to whether or not to confirm the certification of the election within 21 days of the filing of objections.

(i) Nothing in this ordinance shall require or permit an election in any bargaining unit within twelve (12) months after a previous election has been held in such bargaining unit pursuant to this ordinance, notwithstanding the outcome of that election, except that this provision is inapplicable to any election that might be ordered by the administrator under subsections (g) or (h), above.

Sec. 19-211. Decertification of Bargaining Agent

(a) If an employee organization has been certified, an employee in the bargaining unit, a group of employees in the bargaining unit, or their representative may file a petition with the administrator to decertify the certified representative. The employee(s) or their representative must also send a copy of the petition to the City Manager and the certified representative, not including the names of the supporting employees.

(b) If a petition for decertification of a recognized exclusive bargaining agent is presented to the administrator showing, by administratively acceptable evidence, that at least thirty (30) percent of the employees in the bargaining unit no longer want the employee organization to be their bargaining agent, then the administrator shall hold an election pursuant to sec. 19-210 of this ordinance.

(c) A petition for decertification of a recognized exclusive collective bargaining agent in an appropriate unit may be filed in the thirty (30)-day period between the one hundred eightieth (180th) and one hundred fiftieth (150th) day prior to expiration of any existing collective bargaining agreement for that bargaining unit. If a collective bargaining agreement expires and a successor agreement is not in place, a request for decertification may be filed at any time prior to the ratification of a successor agreement.

(d) For a period of one (1) year following recognition or certification of an exclusive bargaining agent, no decertification petitions may be filed.

(e) If a majority of the employees in an appropriate bargaining unit vote in a secret ballot decertification election to no longer be represented by the employee organization, that organization no longer shall be recognized as the exclusive bargaining agent of the employees in the bargaining unit. The effect of a successful decertification election for the bargaining unit takes effect immediately upon final certification of the election results by the administrator. If the election results in a new exclusive representative, the new representative shall become a successor in interest to the existing or prior collective bargaining agreement. If the election results in no exclusive representative, the result will act as a revocation of any existing collective bargaining agreements for the bargaining unit.

Sec. 19-212. Rights Accompanying Exclusive Representation

(a) Any employee organization recognized as the bargaining agent for a bargaining unit shall be:

- (1) permitted to speak on behalf of all members of the bargaining unit, and responsible for representing the interests of all members of the bargaining unit without discrimination based on any legally protected characteristic and without regard to employee organization membership; and

(2) entitled to meet at reasonable times and places to engage in good faith collective bargaining on matters that, under this ordinance, may be the subject of collective bargaining, in an effort to reach an agreement, subject to the approval of the City Manager.

(3) entitled to receive upon request a list of the names of all bargaining unit employees, provided that such a request shall occur no more than once per month, unless alternative arrangements are agreed to in a collective bargaining agreement.

(d) Notwithstanding any other provision in this section, an individual employee may present a personal complaint, concern or question at any time to the City without the intervention of an employee organization, provided that any such organization that is recognized by the City as the exclusive bargaining agent for the bargaining unit in which the employee is a member is afforded an opportunity to be present at any meetings held to adjust the matter and that any adjustment made shall not be inconsistent with the terms of any applicable collective bargaining agreement. Such employee or employees who utilize this avenue of presenting personal complaints, concerns or questions to the City shall not do so under the name, or by representation, of an employee organization.

Sec. 19-213. Negotiated Agreement and Impasse

(a) The City or the bargaining agent may initiate a request to bargain by submitting a written request to the other party for any collective bargaining intended to result in a collective bargaining agreement to become effective for a given fiscal year in time for collective bargaining to begin on or before September 1 of the preceding fiscal year and conclude, including any impasse resolution procedures, with adequate time for inclusion in the City Manager's proposed budget for the given fiscal year.

(b) Prior to the adoption of a first collective bargaining agreement, eligible employees representing an exclusive bargaining representative who are directly involved in the negotiation of a collective bargaining agreement under this chapter may be authorized to engage in such negotiations during work time. Such official time shall be negotiated between the parties, and any negotiated agreement shall be set forth in writing between the City and the exclusive bargaining representative. After the ratification of a first collective bargaining agreement for a respective bargaining unit, official time shall be governed by the terms set forth in that collective bargaining agreement.

(c) The parties are strongly encouraged to reach a negotiated agreement on all items whenever possible. When the parties reach a tentative agreement, they shall reduce it to writing. The executed tentative agreement is then submitted to the exclusive bargaining representative for ratification in accordance with the bargaining representative's governing/ratification procedures.

Upon the exclusive bargaining representative's ratification, the tentative agreement will be submitted to the City Manager for final approval. No collective bargaining agreement shall have any force or effect until the agreement is approved by the City Manager and (if necessary) funded by the City Council.

(d) If the exclusive bargaining representative does not ratify the tentative agreement, the City Manager does not approve the tentative agreement, or the City Council indicates its intention not to fund the tentative agreement, the parties shall meet promptly and re-open negotiations. If the City Council indicates its intention to reject any part of the tentative agreement, it shall designate a representative to meet with the parties and present the City Council's views for the parties' further negotiations.

(e) In the event that the City and the bargaining agent are unable to reach an agreement or contract within one hundred twenty (120) days after their first meeting, an impasse may be called by either party. If the parties have been unable to reach an agreement or contract as of January 31 of the year in which the collective bargaining agreement is intended to be effective, an impasse shall automatically be considered to have been reached. In the event of an impasse, the procedures below shall be followed.

(f) Any unresolved issues shall be submitted within five days of impasse being declared or reached by operation of law to the administrator for mediation which, at the parties' election, may be conducted by the administrator or arranged by the administrator pursuant to approved procedures which, at a minimum, shall set reasonable deadlines for the conduct of mediation and provide for joint selection of the mediator.

(g) The mediation process and any comments, statements, or suggestions from the mediator or the parties and any documents evidencing the same made or created during the mediation process shall not be disclosed except as required by law.

(h) If mediation fails to resolve the parties' impasse as to any issue at least forty-five (45) days prior to the deadline for the submission of the City Manager's proposed annual budget, the unresolved issues shall be submitted to fact-finding by a neutral fact-finder selected pursuant to procedures established by the administrator, providing for the parties' mutual agreement on the fact-finder choice. The parties shall jointly provide to the fact-finder a memorandum of agreed issues that states all the terms and conditions on which they agree. On a date determined by the fact-finder, each party shall simultaneously exchange its final offers regarding all the proposed terms and conditions required for a final collective bargaining agreement. The fact-finder shall hold a hearing in order to define the areas in dispute and determine facts necessary to render a decision on any and all unresolved areas. Thereafter the fact-finder shall make written findings of fact and recommendations for resolution of all matters raised. The fact-finder will provide such findings and recommendations to the parties no later than twenty days before the deadline

for the submission of the City Manager's proposed annual budget. In making the findings, the fact-finder shall consider:

- (1) the lawful authority of the City;
- (2) stipulations of the parties;
- (3) the interests and welfare of the public;
- (4) the financial ability of the City to meet the costs of any items to be included in the agreement;
- (5) the condition of the City's general operating fund;
- (6) comparison of wages and working conditions of employment of the employees involved in the fact-finding proceedings with the wages and working conditions of employment of other persons performing similar services in the public sector in comparable Virginia jurisdictions, if applicable;
- (7) the average consumer prices for goods and services, commonly known as the cost of living as analyzed by the U.S. Bureau of Labor Statistics for the relevant geographical area;
- (8) the overall compensation presently received by the employees involved in the proceeding;
- (9) past collective bargaining agreements between the parties, including the past bargaining history that led to the agreements, or the pre-collective bargaining history of employee wages, hours, benefits, and working conditions;
- (10) changes in any of the foregoing circumstances during the pendency of the proceedings; and
- (11) such other factors that are normally or traditionally taken into consideration in the determination of wages and working conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in public service.

(i) The parties will discuss the fact-finder's recommendations, and each recommendation of the fact-finder shall be deemed approved by both parties unless specifically rejected by a party. A party may reject one or more findings of the fact-finder by providing written notice to the City Council and the other party within ten (10) calendar days of the date the party received the fact-finder's recommendation. The written notice must include a copy of the fact-finder's written findings of fact and recommendations, identification of the specific rejected issue(s), and a statement of the party's cause for rejection. The City Council shall convene a public hearing at

which the parties shall both be required to explain their respective positions regarding any rejected recommendations of the fact-finder. In any such proceeding, the City Council shall give deference to the fact-finder's factual findings, but is not bound by the fact-finder's recommendations. The City Council shall then take the action it deems to be in the public interest in order to resolve all disputed issues from the fact-finder's recommendation. The action of the City Council shall be final and shall be adopted by the parties as a part of the collective bargaining agreement.

(j) The City Council shall retain its legislative discretion with respect to action on any proposals submitted under this section.

(k) The parties shall share the costs of mediation and fact-finding equally, except that neither party shall be responsible for costs of legal representation or expert witnesses engaged by the other.

Sec. 19-214. Prohibited practices.

(a) Neither the City nor any exclusive bargaining agent shall refuse to negotiate in good faith with respect to matters within the scope of collective bargaining as defined in this ordinance.

(b) The City and its agents shall not:

- (1) Interfere with, restrain or coerce employees in the exercise of rights granted by this ordinance.
- (2) Dominate or interfere in the administration of any employee organization;
- (3) Discharge or discriminate in regard to hire, tenure, or other terms and conditions of employment against any employee to encourage or discourage membership in any employee organization, committee, or association, or because an employee has formed, joined, supported, or chosen to be represented by any exclusive bargaining agent or exercised their right to refrain from any or all such activities;
- (4) Discharge or discriminate in regard to hire, tenure, or other terms and conditions of employment against any employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under this ordinance;
- (5) Deny the rights accompanying certification as the exclusive bargaining agent as conferred by this ordinance;
- (6) Refuse to participate in good faith in any agreed-upon impasse resolution procedures set forth in this ordinance;

- (7) Refuse to reduce a collective bargaining agreement to writing and sign such agreement provided all conditions for an enforceable agreement, as set forth in this ordinance, have been met.

(c) No employee organization or its agents shall:

- (1) Interfere with, restrain, or coerce any employee with respect to rights granted in this ordinance; including but not limited to their rights with respect to selecting or refraining from selecting an exclusive representative;
- (2) Fail to provide an employee who is in a bargaining unit exclusively represented by the employee organization with fair representation regarding matters within the scope of collective bargaining; or
- (3) Refuse to participate in good faith in or violate any agreed-upon impasse resolution procedures set forth in this ordinance.

Sec. 19-215. Prohibited practice charge procedures.

(a) Proceedings against a party alleging a violation of section 19-214 shall be commenced by filing a charge with the administrator within 180 days of the alleged violation, or acquiring knowledge thereof, and causing a copy of the charge to be served upon the accused party in accordance with section 19-214. The accused party shall have ten days within which to file a written answer to the charge. The administrator may conduct a preliminary investigation of the alleged violation, and if the administrator determines that the charge has no legal or factual basis, they may dismiss the charge. If the charge is not dismissed, the administrator shall promptly thereafter set a time and place for a hearing. The parties shall be permitted to be represented by counsel or other designated representative, summon witnesses, and request the administrator to subpoena witnesses and the production of records on the requester's behalf. Compliance with the technical rules of pleading and evidence shall not be required.

(b) The administrator may designate a hearing officer to conduct any hearing. The hearing officer shall have such powers as may be exercised by the administrator for conducting the hearing and shall follow procedures adopted by the administrator for conducting the hearing. The decision of the hearing officer may be appealed to the administrator and the administrator may hear the case de novo or upon the record as submitted before the hearing officer.

(c) The administrator shall provide for an official written transcript to report the proceedings, the costs of which shall be borne equally by the parties.

(d) The administrator shall file their findings of fact and conclusions. If the administrator finds that the party accused has violated any provision of this section, the administrator may

issue an order directing the party to cease and desist engaging in the violation and may order such other reasonable affirmative relief as is necessary to remedy the violation.

Sec. 19-216. Strikes and other Job Actions

Pursuant to Code of Virginia § 40.1-55, any employee who, in concert with two or more other such employees, strikes or willfully refuses to perform the duties of their employment, shall be deemed by that action to have terminated their employment, and shall be ineligible for employment in any position or capacity during the next 12 months by the City. The City shall not engage in a lockout of employees from the workplace. Any employee organization determined to have sponsored, authorized, supported, or approved of actions which violated this section shall be deemed decertified under this ordinance, shall cease to receive any dues or fees collected by paycheck withholding, and shall not be certified as a bargaining agent, otherwise accorded recognition as a bargaining agent, or receive any dues or fees collected by paycheck withholding for a period of at least one year.

Sec. 19-217. Time Limits

Any time limits in this ordinance may be extended by written agreement of the City Manager, the employee organization, and any other appropriate parties.

Sec. 19-218. Notices

Any notice required under the provisions of this ordinance shall be in writing, but service of any such notice shall be sufficient if mailed by certified mail, return receipt requested, addressed to the last-known address of the parties, unless otherwise provided in this ordinance or by the rules of the administrator, which rules shall provide for the electronic service of documents. Refusal of certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice.

BE IT FURTHER ORDAINED THAT THIS ORDINANCE SHALL BE EFFECTIVE AT MIDNIGHT ON January 1, 2023.

	<u>Aye</u>	<u>No</u>
Magill	<u> x </u>	<u> </u>
Payne	<u> x </u>	<u> </u>
Pinkston	<u> x </u>	<u> </u>
Snook	<u> x </u>	<u> </u>
Wade	<u> x </u>	<u> </u>

Approved by Council
 October 3, 2022



Kyna Thomas, MMC
 Clerk of Council