

**CITY OF CHARLOTTESVILLE
LABOR RELATIONS ADMINISTRATOR**

**PROCEDURES
RELATED TO THE ADMINISTRATION
OF THE COLLECTIVE BARGAINING
ORDINANCE, SECTIONS 19-201
THROUGH 19-218**

April 11, 2023

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Overview

Pursuant to Article VII, Collective Bargaining, Sections 19-201 through 19-218, (“Collective Bargaining Ordinance” or “CBO”) the City of Charlottesville Labor Relations Administrator (“LRA”) adopts the following procedures for the administration of the CBO. These procedures must be read in conjunction with the Collective Bargaining Ordinance and applicable law. References to “days”, unless otherwise specified, shall mean “calendar days.” In the event an applicable deadline falls on a weekend or holiday, the deadline shall be extended to the first business day thereafter. The LRA, at the LRA’s sole discretion, may grant requests for extensions of time for good cause and take such other actions as may be necessary to administer the CBO and procedures herein. At the LRA’s discretion, these procedures may be revised. Proposed revisions will be distributed to the City and Employee Organizations and an opportunity to comment on any proposed changes will be provided prior to adoption.

I. Elections

A. Petitions

A petition to conduct an election will specify the name and contact information of the Employee Organization (“Petitioning Employee Organization”) and will specify the bargaining unit at issue. The petition will be submitted to the LRA. The Petitioning Employee Organization will also provide the LRA with administratively acceptable evidence to support the petition. The LRA will provide notice of receipt of the petition to the City Manager and/or designee. The LRA will not share the administratively acceptable evidence provided by the Employee Organization. Such evidence will be kept confidential by the LRA.

Upon receipt of a petition to conduct an election, the LRA will request and the City will provide to the LRA a list of employees included in the petitioned for bargaining unit as of the later of: (a) the last full pay period prior to the filing of the petition or (b) the last full pay period prior to the LRA’s request. The list will be provided by the City within five (5) days of the LRA’s request (“Initial Bargaining Unit List”). For petitions involving the Police bargaining unit, the list will include last name, first name, job title, employee identification number, and work email address. For all other bargaining units, the list will include last name, first name, department, work location, job title, employee identification number, work email address, and home address. The LRA will utilize said list to verify a showing of interest.

The LRA will determine if the petition meets the requirements of the CBO and the required threshold to demonstrate a showing of interest. In the event the LRA determines the threshold for a showing of interest has not been met, the LRA will inform the Petitioning Employee Organization and City and allow the Petitioning Employee Organization the opportunity to submit additional administratively acceptable evidence in accordance with the CBO.

In the event the LRA determines a showing of interest has been demonstrated, the LRA will direct the City to provide public notice, utilizing the City website and/or other means as directed by the LRA, and post and/or distribute Notice of Petition and Opportunity to Intervene provided by the LRA. The content of the notice will include: name of petitioning employee organization; bargaining unit; date of posting; and requirements for intervention.

Upon the LRA's determination that a showing of interest has been demonstrated, the LRA will also direct the City to provide the Petitioning Employee Organization with the Initial Bargaining Unit List. The list will be provided no later than three (3) days from the LRA's determination that a showing of interest was demonstrated.

B. Bargaining Unit Composition

No later than five (5) days from the date of the Notice of Petition, the City will provide to the LRA and the Petitioning Employee Organization a list of any job titles or individual employees assigned to job titles who would otherwise be included in the petitioned for bargaining unit that the City asserts should not be included in the bargaining unit per the exclusions provided in the CBO. The City will also provide an explanation of the exclusion(s) asserted. No later than five (5) days following receipt from the City of the exclusions asserted, the Petitioning Employee Organization will respond in writing to each exclusion asserted, indicating agreement or disagreement and, in the event of disagreement, an explanation of the Petitioning Employee Organization's position as to each disputed job title and/or individual employee(s). These filings will be provided by the LRA to any Intervening Employee Organization which successfully demonstrates a showing of interest and the LRA will provide the Intervening Employee Organization an opportunity to submit written positions.

Upon expiration of the period during which a petition of intervention may be filed, if a petition for intervention is received, the LRA will provide notice of receipt of the petition to the City Manager and/or designee and the Petitioning Employee Organization. The LRA will not share the administratively acceptable evidence provided by the Intervening Employee Organization; such evidence will be kept confidential. The LRA will determine whether a showing of interest was demonstrated utilizing the Initial Bargaining Unit List for comparison with the administratively acceptable evidence submitted by the Intervening Employee Organization in accordance with the CBO. In the event the LRA determines the threshold for a showing of interest has not been met, the LRA will inform the Intervening Employee Organization, the Petitioning Employee Organization, and City and allow the Intervening Employee Organization the opportunity to submit additional administratively acceptable evidence in accordance with the CBO. The LRA will provide notice to the City, Petitioning Employee Organization, and Intervening Employee Organization(s), if any, as to whether the Intervening Employee Organization met the required threshold for intervention.

In the event the LRA determines that a showing of interest was demonstrated by an Intervening Employee Organization(s), the LRA will also direct the City to provide the Intervening Employee

Organization the Initial Bargaining Unit List as previously provided to the Petitioning Employee Organization. Such list will be provided no later than two (2) days from the LRA's determination that a showing of interest has been demonstrated.

C. Informal Election Conferences

The LRA will provide notice to the City and any Employee Organization(s) that demonstrated a showing of interest of the date of an Informal Election Conference.

Informal election conferences will be conducted by the LRA with the City and Employee Organization(s) to discuss the method and manner in which the secret ballot election will be conducted, including whether the election will be conducted via electronic and/or telephonic voting, mail ballot, in-person or otherwise; the ballot and instructions provided, if any; ballot security; the composition of the bargaining unit in accordance with the CBO including agreement on criteria determining eligible voters; the period of the election; and any other topics the LRA deems pertinent. The purpose of the conference will be to reach consensus between the City and Employee Organization(s) culminating in an Election Agreement approved by the LRA. In the event there is no consensus and approval, the LRA will make determinations and provide an Order of Election detailing the method and manner in which the secret ballot election will be conducted. Per the CBO, absent agreement of the parties, the secret ballot election will be conducted in-person.

D. Notice

At least two (2) business days prior to the beginning of the voting period, the LRA will provide and direct the City to post and/or distribute the Notice of Election, which will include, at minimum, the voting period and manner of election, the text of the ballot, including the name(s) of any employee organization(s) and a choice of "no representation", and instructions on seeking assistance from the LRA, utilizing the City website and/or other means as directed by the LRA.

The City will provide the LRA and Employee Organization(s) an alphabetic list of eligible voters ("Eligible Voter List") no later than two (2) business days following the Election Agreement or Election Order. For elections involving the Police bargaining unit, the list will include last name, first name, job title, employee identification number, and work email address. For all other bargaining units, the list will include last name, first name, department, work location, job title, employee identification number, work email address, and home address.

E. Conducting Secret Ballot Elections

1. In-Person Option

In the event of an in-person election, the LRA, or neutral designated by the LRA, will supervise the election, ensuring individuals who seek to cast a ballot are eligible to vote (utilizing the Eligible Voter List) and are only permitted to cast one ballot. The City and the Employee Organization(s) appearing on the ballot may each designate one observer. Notice of the names of the respective observers will be provided to the LRA at least 24 hours before the start of the election or as otherwise determined by the LRA. Substitutions may be permitted for good cause at the discretion of the LRA. Observers may challenge for good cause the eligibility of any person to vote in the election per Section 19-210 and such challenged ballots will be impounded in the manner provided per Section 19-210.

There shall be no electioneering within the building where the in-person vote is held.

The LRA will count all valid ballots cast in the presence of the observers. If a ballot is defaced or marked in a manner that makes the voter's preference indeterminable as determined by the LRA, the ballot will be declared void by the LRA.

In the event that the number of challenged ballots may be determinative of the outcome of the election, prior to the tallying of ballots, the LRA and the observers will discuss each challenged ballot to determine if the parties agree on the validity of the challenge. The LRA may request and the parties will provide information, if any, the LRA deems relevant to the LRA's determination. Absent agreement, the LRA will determine the validity of challenged ballot(s).

2. E-Election Option

In the event of an electronic election, the impartial body under the supervision of the LRA will email or email and mail each eligible voter instructions to cast an e-ballot. The instructions must advise the voter of the date and time by which electronic ballots must be cast. A date will be set for the tallying of ballots by the impartial body under the supervision of the LRA and the LRA may direct the impartial body to simultaneously convey the results to the LRA, City, and Employee Organization(s).

3. Mail Ballot Option

In the event of a mail ballot election, the impartial body under the supervision of the LRA will mail each eligible voter a ballot, ballot security envelope, pre-addressed stamped return envelope, and instructions. The instructions must advise the voter of the date by which envelopes must be received.

In the event of a mail ballot election, a date will be set for the tallying of ballots by the LRA and must be tallied by the LRA or impartial body under the supervision of the LRA and in view of the observers respectively selected by the City and the Employee Organization(s). The number of observers present will be determined by agreement of the City and Employee Organization(s) and approved by the LRA or, in the event of no approved agreement, by the LRA. The tallying of mail ballots may be conducted in-person or virtually as determined by the LRA.

Challenged ballots will initially be segregated and resolved upon the agreement of the parties. All ballots not challenged will be separated from their return envelope, if any, and commingled before being tallied. If a ballot is defaced or marked in a manner that makes the voter's preference indeterminable as determined by the LRA, the ballot will be declared void by the LRA. If challenges to ballots are not resolved prior to the count and are sufficient in number to affect the outcome of the election, the validity of the ballot will be determined by the LRA. The LRA may request and the parties will provide information, if any, the LRA deems relevant to the LRA's determination.

F. Election Outcomes

Following consideration of any challenges, the LRA will issue or cause to be issued by the impartial third body under the supervision of the LRA, a certification of election results. In addition to the numerical results, the certification will indicate whether: an Employee Organization received a majority of votes cast; a run-off election is necessary; or whether no representation received a majority of votes cast.

G. Objections

Per Section 19-210, there will be a 14-day period following the certification of election results during which parties may file written objections. Any objections received will be resolved by the LRA in accordance with the CBO.

H. Notice of Election Results

Upon expiration of the objection period and resolution of objections received, if any, the LRA will provide and direct the City to post Notice of Election Results utilizing the same methods used when providing notice of election to the employees.

I. Decertification

In accordance with Section 19-211, a petition for decertification will be submitted to the LRA and copies provided to the Employee Organization certified as the Exclusive Bargaining Agent and the City. The Petitioner will provide the LRA administratively acceptable evidence to support the petition. In the event a petition for decertification is presented to the LRA and the LRA determines

that petition meets the requirements of the CBO, the LRA will order an election in accordance with the election procedures previously outlined.

J. Modification of Bargaining Unit

If, after election and certification of an Exclusive Bargaining Agent for a bargaining unit, a new position is created that may be appropriately included in the bargaining unit, the City and/or the Exclusive Bargaining Agent may assert such to the Exclusive Bargaining Agent and/or City and the LRA. Upon the filing of a petition for unit modification, the LRA will direct the City to provide public notice, utilizing the City website and/or other means as directed by the LRA, to post and/or distribute Notice of Petition for Bargaining Unit Modification. The content of the notice will be determined by the LRA and will include: name of petitioning organization; bargaining unit; position(s) at issue; date of posting; and instructions as to how an affected Employee Organization or individual may provide written comments. In the event of an agreement to include the position in the bargaining unit, the LRA will codify the agreement in an order. In the event of disagreement as to whether the position is appropriately included in the bargaining unit, the LRA may direct the parties to provide written submissions, conduct an informal conference, and/or order a hearing. The LRA will determine whether said position is included in the bargaining unit pursuant to the provisions of the CBO.

If, after election and certification of an exclusive representative for a bargaining unit, the City or the Exclusive Bargaining Agent assert a position is no longer in existence or that, by virtue of changed circumstances, is no longer appropriate in the established unit because it meets one of the exclusions set forth in the CBO, the City or the Exclusive Bargaining Agent may assert said position to the City or Exclusive Bargaining Agent and the LRA. Upon the filing of a petition for unit modification, the LRA will direct the City to provide public notice, utilizing the City website and/or other means as directed by the LRA, to post and/or distribute notice of Petition for Bargaining Unit Modification. The content of the notice will be determined by the LRA and will include: name of petitioning organization; bargaining unit; position(s) at issue; date of posting; instructions as to how an affected Exclusive Representative or individual and the City may provide written comments. In the event of an agreement to exclude the position from the bargaining unit, the LRA will codify the agreement in an order. In the event of disagreement as to whether the position is appropriately excluded from the bargaining unit, the LRA may direct the parties to provide written submissions, conduct an informal conference, and/or order a hearing. The LRA will determine whether said position is excluded from the bargaining unit pursuant to the criteria established by the CBO.

II. Electronic Filings & Notices

A. E-Mail

Any filings, including but not limited to petitions, objections, prohibited practice charges (PPC), answers, briefs, notices, requests for subpoenas, motions, orders, and decisions, will be transmitted electronically to or from the City email address designated for the LRA. Service on parties may also be made electronically, including the electronic service of documents at the email address for the Employee Organization(s), City, and/or individual complainants.

III. Mediation & Fact-Finding

A. Selection of a Mediator for Resolution of Collective Bargaining Impasses

No later than 45 days from the first bargaining meeting, the parties will select a neutral to serve as mediator in the event of a collective bargaining impasse. Such selection may be made by:

1. By joint agreement of the parties on the individual selected to serve as mediator; or
2. By agreement of the parties to request mediation services be provided by the Federal Mediation and Conciliation Service; or
3. The LRA will provide the parties with a list of three (3) neutrals from whom to select a mediator. Such selection will include a telephonic, in-person, or virtual discussion between the advocate of each party during which each will strike a name until one neutral remains. The party making the first strike will be chosen by random method.

Whatever the method utilized, the parties will inform the LRA of the selection. In the event the parties are unable to agree on one of the methods provided above for the selection of a mediator, option three will be the default method of selection. The parties are responsible to make appropriate arrangements to ensure the mediator selected is available to mediate in the event of impasse.

B. Selection of a Fact-Finder for Resolution of Collective Bargaining Impasses

No later than 45 days from the first bargaining meeting, the parties will select a neutral to serve as arbitrator in the event of a collective bargaining impasse. Such selection may be made by:

1. By joint agreement of the parties on the neutral selected to serve as fact-finder;; or
2. By joint agreement of the parties to request a list of neutrals with experience in public sector labor relations and who are members of the National Academy of Arbitrators from the Federal Mediation and Conciliation Services (FMCS) or like organization. The parties will utilize the organization's process for striking or ranking; or
3. By request of the parties or in the absence of a joint agreement by the parties to utilize selection method one or two, the LRA will provide the parties with a list of neutrals with experience in public sector labor relations from whom to select a fact-finder. Such

selection will include a telephonic, in-person, or virtual discussion between the advocate of each party during which each will alternatively strike a name until one neutral remains. The party making the first strike will be chosen by random method.

Whatever the method utilized, the parties will inform the LRA of the selection. In the event the parties are unable to agree on one of the three methods provided above for the selection of a fact-finder, option three will be the default method of selection. It is the responsibility of the parties to make appropriate arrangements to ensure the fact-finder selected is available to conduct a hearing and render findings and recommendations in accordance with the processes and time frames established per the CBO.

The same individual may be selected by the parties to serve as mediator and fact-finder if mutually agreed by the parties.

IV. Prohibited Practice Charges

A. Prohibited Practice Charges

1. PPC Form

Prohibited Practice Charges (PPC) will be processed in accordance with the CBO utilizing the PPC Form created and provided by the LRA. The PPC Form will be available on the City's internet or intranet and/or as otherwise determined by the LRA. In accordance with the CBO, a charge must be filed with the LRA within 180 days of the alleged violation or acquiring knowledge thereof. The Complainant will electronically file the PPC with the LRA (via email) and send a copy by email to the accused party(ies) ("Respondent(s)").

2. Allegations of Violations of Section 19-214 (a)

For charges alleging a violation of Section 19-214 (a), a refusal to negotiate in good faith with respect to matters within the scope of collective bargaining as defined in the CBO, the PPC Form will be accompanied by the following: complete statement of the issue in dispute, including proposals at issue, if any; specific reference to any applicable ordinance provision(s), statute(s), or collective bargaining agreement provisions(s), and any other relevant documents. The Respondent may file an answer within ten (10) days, accompanied by a brief and additional relevant documents, if any. The Complainant may file a reply brief within five (5) days of receipt of the answer and supporting brief.

The LRA may, if the LRA deems necessary, conduct an informal conference and/or order a hearing. The LRA will endeavor to issue a written decision within 30 days of receipt of the reply brief or hearing, whichever is later.

3. Allegations of Violations of Section 19-214 (b) and/or Section 19-214 (c)

If, after review of the PPC and answer, the LRA determines a hearing may be necessary, the LRA will schedule an informal conference.

B. Informal Conferences

The informal conference will include but not be limited to a discussion of the following: delineation of the issues; a schedule for the exchange of witness lists and exhibits in advance of hearing; the scheduling of a hearing date(s); arrangements for transcripts to be made of the hearing; exploration of whether a voluntary resolution may be reached prior to hearing with the LRA or designated hearing officer acting as mediator. No statement or communication made during the course of mediation may be offered as evidence in any proceedings except as agreed upon by all parties. Any resolution will be reduced to writing. Absent resolution, the LRA will issue a Scheduling Order, if applicable, following the Informal Conference.

C. Subpoenas

Either party may prepare and request the LRA sign a subpoena. Such requests will be made at least seven (7) days prior to hearing, absent extenuating circumstances as determined by the LRA. An application for *subpoenas ad testificandum* must clearly identify the person subpoenaed. An application for issuance of *subpoenas duces tecum* requiring a person to produce documents must be made returnable on the date of the hearing or as otherwise agreed by the parties and/or determined by the LRA at the informal conference. The party requesting the subpoena is responsible for serving the subpoena. Subpoenas may be served by email or certified mail return receipt requested or by personal service. Any motion to limit or quash the subpoena must be filed no later than five (5) days after service of the subpoena or on the date for compliance with the subpoena, whichever is earlier. The motion must set forth all objections with specificity. When an employee of the City or the Employee Organization receives a subpoena to testify, the employing organization will make said employee available, absent extraordinary circumstances. Any enforcement of a subpoena will be the responsibility of the requesting party.

D. Hearings

Hearings will be conducted by the LRA, or a hearing officer designated by the LRA, in accordance with the CBO.

Prior to the close of hearing, any party may request the opportunity to make oral closing arguments or file post-hearing briefs. The determination of the schedule and manner in which closing arguments or briefs will be received will be upon the agreement of all parties or at the direction of the LRA or designated hearing officer.

V. Requests for Advisory Opinions

The City and an Exclusive Representative may discuss and agree to jointly request in writing that the LRA issue an advisory opinion concerning the interpretation of a provision of the CBO. Such requests may be granted or denied at the LRA's discretion and the LRA's decision as to whether or not to grant such a request is final. In the event the LRA chooses to grant such a request, the LRA will conduct an informal conference. The LRA may, if the LRA deems necessary, conduct a hearing and set a briefing schedule. Informal conferences and/or hearings will be conducted pursuant to the processes set forth to resolve prohibited practice charges. The LRA may issue written advisory decisions.

VI. LRA as Neutral Agency

Per Section 19-207 (a), the LRA serves as the neutral agency in the administration of the CBO. It is understood that the LRA will communicate with City personnel related to administrative support requested by the LRA to fulfill the LRA's duties; for example, the establishment and maintenance of a web presence. The LRA will also be available to all stakeholders to provide information related to the processes established herein. However, this provision is not intended to encourage or allow ex parte communications between any party and the LRA concerning any labor management disputes pending before the LRA.