

CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA



Agenda Date:	August 16, 2021
Action Required:	<ul style="list-style-type: none"><li>• <b>Motion Not to Adopt the Proposed Collective Bargaining Ordinance Received by City Council on March 6, 2021</b></li><li>• <b>Adoption of a Resolution Requesting the City Manager to Develop a Collective Bargaining Ordinance</b></li></ul>
Presenter:	Charles P. Boyles, II, City Manager
Title:	<b>Collective Bargaining</b>

**Background:**

Historically the Virginia General Assembly has prohibited localities, their elected officials and City officials, from recognizing a labor union or employee association as a bargaining agent for the locality's employees. *See* Va. Code §40.1-57.2 (copy attached). In April 2020 the legislature amended the statute to expressly grant authority to local governing bodies to make their own local decisions as to whether or not to implement collective bargaining. The amended statute took effect May 1, 2021.

The City of Alexandria and Loudoun County are the first Virginia localities in which collective bargaining is being implemented by their governing bodies. Both governing bodies studied the topic over a course of months, considered proposals and recommendations from labor unions, employees and their managers, and planned what internal or contractual resources were necessary to implement the particular model and procedures set up within their ordinances. (The Loudoun-Times Mirror reported in June 2021 that, within its current-year [FY22] budget, the Loudoun County Board of Supervisors authorized eight new full-time staff positions, and \$300,000 in recurring contractual costs, to support and administer a collective bargaining program.)

**Discussion:**

On March 6, 2021, prior to the effective date of the new law, Greg Wright of the Charlottesville Fire Department notified City Council that a majority of members within the City's Fire Department desire that City Council should adopt an ordinance to provide rules for City employees to engage in collective bargaining. A copy of the March 6, 2021 correspondence is attached.

To our knowledge, neither VML nor VACO, nor any agency of the Commonwealth, has developed a model ordinance for localities' reference. City Council and the City Manager's Office have a number of decisions to make, as to what procedures might best fit the City administration and the City's workforce, how many bargaining units to authorize, etc. For example: in the traditional

model of collective bargaining, unions represent employees on the basis of designated “bargaining units”, i.e., groups of employees that share a sufficient community of interest with one another to justify one entity bargaining on behalf of the entire group. In the traditional model, the City Council will, within its ordinance, determine how many bargaining units it would authorize, and within each unit, how its exclusive representative will be chosen (must a majority of all employees within a unit vote in an election? Or can a simple majority of eligible employees who choose to vote elect the bargaining representative?). Council may also choose to investigate non-traditional models of collective bargaining, and/or to specify what will be the mandatory or permissive topics of collective bargaining agreements—such as wages, work hours, schedules, paid time off, disciplinary policies, bonuses, work rules or other issues. The new Virginia statute prohibits City Council from restricting its own authority to establish an annual budget or to appropriate funds.

### **City Manager Recommendation:**

I do not believe that City Council has sufficient information to make an informed decision about a particular collective bargaining ordinance at this point in time; therefore, it is my recommendation that City Council should **decline** to adopt the ordinance proposed by the City’s firefighters on March 6, 2021 (Motion #1, below).

**That being said:** it appears to me that a majority of City Councilors may **favor** establishment of collective bargaining, so I also recommend that City Council adopt the attached Resolution, to provide direction by which a collective bargaining ordinance for the City may be developed (Motion #2, below).

- **Recommended Motion #1:** *“I move NOT to approve the collective bargaining ordinance presented to City Council on March 6, 2021 by Greg Wright on behalf of a majority of members of the Charlottesville Fire Department.”*
- **Recommended Motion #2:** *“I move to adopt the Resolution Requesting the City Manager to Develop a Collective Bargaining Ordinance for the City”*

### **Budgetary Impact:**

The overall fiscal impact of implementing a traditional collective bargaining program would include support costs for administering the collective bargaining environment, including both City staff and contracted services, as well as the cost of funding any specific labor union proposals accepted and/or bargaining agreements negotiated and approved by the City. As this is an issue not studied or addressed within the current (FY22) City Budget, I will research administration and support cost estimates, for consideration during the FY23 Budget development process.

### **Alternatives:**

- City Council may vote to adopt the firefighters’ proposed collective bargaining ordinance, without study or consideration of budgetary impacts
- City Council may vote NOT to adopt the firefighters’ proposed collective bargaining ordinance, and take no other action.

**Alignment with Council Vision Areas and Strategic Plan:** Yes.

**Community Engagement:**

The state law does not require a public hearing or any particular public engagement. It is my belief that the work of preparing an ordinance for City Council's consideration should be guided by City Council, should engage the City's workforce, and should consider various collective bargaining ordinances utilized by other cities.

**Attachments:**

- Resolution Requesting the City Manager to Develop a Collective Bargaining Ordinance for the City of Charlottesville
- Va. Code §40.1-57.2
- March 6, 2021 Fire Department Transmittal and Proposed Ordinance

**RESOLUTION  
REQUESTING THE CITY MANAGER TO DEVELOP A COLLECTIVE BARGAINING  
ORDINANCE FOR THE CITY OF CHARLOTTESVILLE**

**WHEREAS** the Virginia General Assembly, within Virginia Code Sec. 40.1-57.2, expressly authorizes local governing bodies to enact ordinances authorizing City officials to recognize labor unions or employee associations as bargaining agents for certain public officers or employees; to collectively bargain with or enter into collective bargaining contracts with such unions or associations; and to provide for procedures for the certification and decertification of exclusive bargaining representatives; and

**WHEREAS** this City Council supports the development of a collective bargaining ordinance, but does not yet have sufficient information upon which to base any decision about specific provisions that it might desire to set forth within an ordinance; now, therefore,

**BE IT RESOVLED BY THE COUNCIL OF THE CITY OF CHARLOTTESVILLE:**

1. The City Manager shall commence work to assemble and deliver to City Council information and analysis regarding City Council's options for collective bargaining models, sample ordinances, and the anticipated fiscal impacts of various options. The City firefighters' March 6, 2021 proposed ordinance shall be among the sample ordinances that will be studied, analyzed and considered during this process.
2. The City Manager shall present to City Council on September 13, 2021 a timeline and list of deliverables and decision points to be made by Council, as necessary to facilitate preparation of a collective bargaining ordinance in tandem with the development and adoption of the City's FY 2023 Budget.
3. To the extent that contractual services are necessary or desirable to support the work that this Council is asking the City Manager to perform, the City Manager is hereby authorized to procure those services.

Code of Virginia

Title 40.1. Labor and Employment

Chapter 4. Labor Unions, Strikes, Etc.

Article 2.1. Collective Bargaining for Governmental Employees

## § 40.1-57.2. Collective bargaining

A. No state, county, city, town, or like governmental officer, agent, or governing body is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents with respect to any matter relating to them or their employment or service unless, in the case of a county, city, or town, such authority is provided for or permitted by a local ordinance or by a resolution. Any such ordinance or resolution shall provide for 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. As used in this section, "county, city, or town" includes any local school board, and "public officers or employees" includes employees of a local school board.

B. No ordinance or resolution adopted pursuant to subsection A shall include provisions that restrict the governing body's authority to establish the budget or appropriate funds.

C. For any governing body of a county, city, or town that has not adopted an ordinance or resolution providing for collective bargaining, such governing body shall, within 120 days of receiving certification from a majority of public employees in a unit considered by such employees to be appropriate for the purposes of collective bargaining, take a vote to adopt or not adopt an ordinance or resolution to provide for collective bargaining by such public employees and any other public employees deemed appropriate by the governing body. Nothing in this subsection shall require any governing body to adopt an ordinance or resolution authorizing collective bargaining.

D. Notwithstanding the provisions of subsection A regarding a local ordinance or resolution granting or permitting collective bargaining, no officer elected pursuant to Article VII, Section 4 of the Constitution of Virginia or any employee of such officer is vested with or possesses any authority to recognize any labor union or other employee association as a bargaining agent of any public officers or employees, or to collectively bargain or enter into any collective bargaining contract with any such union or association or its agents, with respect to any matter relating to them or their employment or service.

1993, cc. 868, 879; 2020, cc. [1209](#), [1276](#).

The chapters of the acts of assembly referenced in the historical citation at the end of this section(s) may not constitute a comprehensive list of such chapters and may exclude chapters whose provisions have expired.

**Robertson, Lisa**

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**Subject:** FW: AMENDMENT TO CHAPTER 19 OF THE CHARLOTTESVILLE CITY CODE  
**Attachments:** AMENDMENT TO CHAPTER 19 OF THE CHARLOTTESVILLE CITY CODE.docx

**From:** Wright, Gregory <[wrightg@charlottesville.gov](mailto:wrightg@charlottesville.gov)>  
**Sent:** Saturday, March 6, 2021 11:35 AM  
**To:** Boyles, Chip <[boylesc@charlottesville.gov](mailto:boylesc@charlottesville.gov)>; Hill, Heather <[hhill@charlottesville.gov](mailto:hhill@charlottesville.gov)>; Magill, Sena <[smagill@charlottesville.gov](mailto:smagill@charlottesville.gov)>; Payne, Michael <[mpayne@charlottesville.gov](mailto:mpayne@charlottesville.gov)>; Robertson, Lisa <[robertsonl@charlottesville.gov](mailto:robertsonl@charlottesville.gov)>; Robinson, Maxicelia <[robinsonma@charlottesville.gov](mailto:robinsonma@charlottesville.gov)>; Snook, Lloyd <[lsnook@charlottesville.gov](mailto:lsnook@charlottesville.gov)>; Thomas, Kyna N <[thomaskn@charlottesville.gov](mailto:thomaskn@charlottesville.gov)>; Walker, Nikuyah <[nwalker@charlottesville.gov](mailto:nwalker@charlottesville.gov)>; Wheeler, Brian <[wheelerb@charlottesville.gov](mailto:wheelerb@charlottesville.gov)>  
**Subject:** AMENDMENT TO CHAPTER 19 OF THE CHARLOTTESVILLE CITY CODE

Greg Wright  
203 Ridge Street  
Charlottesville, VA 22901  
March 6th, 2021

Mayor Walker  
605 East Main Street  
Charlottesville, VA 22902

Dear Mayor Walker:

I am writing you today to inform you, and the members of the Executive Staff of the attached proposed Amendment to Chapter 19 of the Charlottesville City Code to provide rules for City Employees to engage in collective bargaining.

As I am sure you are aware starting May 1<sup>st</sup>, 2021 a new version of Va. Code 40.1-57.2 goes into effect; this new statute would permit collective bargaining by municipalities if they have adopted an ordinance. Obviously, this is a local option, and the decision lies with you, and your colleagues on Council.

I humbly ask that you, and all the members of Council support this Amendment. Empowering ALL City employees to participate in traditional collective bargaining is something that I hope you consider as important as we do.

Lastly, upon request I will gladly provide you, or City Legal Counsel, a simple authorization card from the majority of members within Charlottesville Fire Department.

Respectfully,

Greg Wright

1 **AMENDMENT TO CHAPTER 19 OF THE CHARLOTTESVILLE CITY CODE TO**  
2 **PROVIDE RULES FOR CITY EMPLOYEES TO ENGAGE IN COLLECTIVE**  
3 **BARGAINING**  
4

5 Article VII  
6

- 7 A. Effective May 1, 2021, VA Code 40.1-57.2 provides as follows: “No state, county, city,  
8 town, or like governmental officer, agent, or governing body is vested with or possesses  
9 any authority to recognize any labor union or other employee association as a bargaining  
10 agent of any public officers or employees, or to collectively bargain or enter into any  
11 collective bargaining contract with any such union or association or its agents with  
12 respect to any matter relating to them or their employment or service unless, in the case  
13 of a county, city, or town, such authority is provided for or permitted by a local ordinance  
14 or by a resolution. Any such ordinance or resolution shall provide for procedures for the  
15 certification and decertification of exclusive bargaining representatives, including  
16 reasonable public notice and opportunity for labor organizations to intervene in the  
17 process for designating an exclusive representative of a bargaining unit. As used in this  
18 section, ‘county, city, or town’ includes any local school board, and ‘public officers or  
19 employees’ includes employees of a local school board.”
- 20 B. This sub-chapter, along with any related revisions to other articles of Chapter 19, sets forth  
21 the City’s Rules for City employees’ engagement in collective bargaining with the City  
22 and its Departments.
- 23 C. Declaration of Policy: The Council declares that it is the policy of the City to promote  
24 harmonious, stable, and cooperative relations between the City and its employees as such  
25 conditions are well known to assist in maintaining a professional and productive workforce  
26 that serves the best interests of the City and its residents. These policies are best  
27 implemented by:
- 28 1. Recognizing the right of City employees to organize for the purpose of collective  
29 bargaining regarding the terms and conditions of their employment;
  - 30 2. Providing a means by which employees may select, should they choose to do so,  
31 representatives for purposes of collective bargaining;
  - 32 3. Negotiating and entering into written agreements with exclusive representatives on  
33 terms and conditions of employment consistent with the law and the City’s other legal  
34 obligations; and
  - 35 4. Establishing a method for dealing with disputes in the City’s labor-management  
36 relations.
- 37 D. The Council has determined that this Article will also serve the public interest in promoting  
38 labor stability and avoiding potentially disruptive labor disputes.
- 39 E. Article VII of Chapter 19 of the Charlottesville City Code is hereby established with this  
40 ordinance.
- 41 F. Definitions
- 42 1. “Appropriate Unit” means a group of employees for whom a labor organization may  
43 be certified as the exclusive representative. For purposes of exclusive representation  
44 the following seven units are appropriate:
    - 45 a. all sworn employees of the Police Department at and below the rank of  
46 Lieutenant;

- 47                   b. all uniformed employees of the Fire Department at or below the rank of  
48                   Battalion Chief and all emergency dispatchers in the Department of Emergency  
49                   Communications;  
50                   c. all non-supervisory employees in trades and maintenance occupations except  
51                   employees described in subsection g;  
52                   d. all non-supervisory employees whose functions are primarily clerical in nature  
53                   except employees described in subsection g;  
54                   e. all non-supervisory professional employees except employees described in  
55                   subsection g or subsection h;  
56                   f. All non-supervisory technical employees except employees described in  
57                   subsection g or subsection h;  
58                   g. All non-supervisory employees of the Department of Libraries; and  
59                   h. All nonsupervisory professional and technical employees of the Department of  
60                   Human Services providing direct care and services to members of the public.
- 61           2. “Certification” means official recognition by the City’s Employee Relations Council  
62           pursuant to this Article that a labor organization is, and shall remain, the exclusive  
63           representative for all of the employees in an appropriate bargaining unit for the purpose  
64           of collective bargaining, until it is replaced by another labor organization, decertified,  
65           or disclaims its representative status.
- 66           3. “Terms and Conditions of Employment” means personnel policies, practices, and  
67           matters, whether established by directive, regulation, or otherwise, affecting working  
68           conditions, including, but not limited to, compensation, the pay plan established in  
69           accordance with Chapter 19 of the City Code, hours, working conditions, retirement,  
70           pensions established in accordance with Chapter 19 of the City Code and other benefits.
- 71           4. “Confidential Employee” means any individual who, in the course of his or her  
72           employment:  
73                   a. has access to confidential City personnel files or other confidential City  
74                   information (including budgetary and fiscal data) subject to use by the City in  
75                   the collective bargaining process or in the adjustment of grievances; or  
76                   b. assists and acts in a confidential capacity to persons who formulate, determine  
77                   and effectuate government policies in the area of labor management relations.
- 78           5. “ERC” means the Charlottesville City Employee Relations Council (or “ERC”) created  
79           by this Section.
- 80           6. “Employee” means any person employed by the City, excluding employees whose  
81           wages are provided for under the budget of the Charlottesville City School Board;  
82           employees employed by the Commonwealth of Virginia; supervisory, judicial and  
83           confidential employees of the City; elected and appointed officials; constitutional  
84           officers and employees appointed directly by them; persons possessing the status of  
85           independent contractors; and employees whose duties are temporary or seasonal in  
86           nature and have served the City for less than 90 days. For purposes of this Section,  
87           “employee” also means an individual employed by the City or whose employment by  
88           the City has ceased because of any unfair labor practice or termination that remains the  
89           subject of an active appeal or a grievance by the employees’ collective bargaining  
90           representative. The term “employee” does not include a supervisor or management  
91           official, a confidential employee as defined in this Article, or any person who  
92           participates in a strike in violation of this Article or applicable law.



- 93 7. "Employer" means the City and all of its Departments.  
 94 8. "Exclusive Representative" means any labor organization which is certified as the  
 95 exclusive representative of employees in an appropriate unit pursuant to this Article.  
 96 9. "Impasse" means that point in the negotiation of terms and conditions of employment  
 97 at which the parties are unable to reach agreement, notwithstanding their efforts to do  
 98 so by direct negotiations and by the use of mediation or other voluntary arrangements  
 99 for settlement.  
 100 10. "Impartial Agency" means the American Arbitration Association or the Federal  
 101 Mediation and Conciliation Service.  
 102 11. "Labor Organization" means an organization, composed in whole or in part of  
 103 employees, in which employees participate and pay dues, and which has as a purpose  
 104 the dealing with the City concerning the grievances and terms and conditions of  
 105 employment.  
 106 12. "Strike" means the concerted activities described in Virginia Code Section 40.1-55..  
 107 13. "Supervisor" means any individual having interest in the authority of the City:  
 108 a. To hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or  
 109 discipline other employees; or  
 110 b. To responsibly direct other employees; or  
 111 c. To adjust the grievances of other employees; or  
 112 d. To effectively recommend any action set forth in a., b. or c. of this subsection,  
 113 provided that the authority to act as set forth in a., b., c. or d. of this subsection  
 114 requires the exercise of independent judgment and is not merely routine or  
 115 clerical in nature.  
 116 The term "supervisor" does not include either Police Department employees below the  
 117 rank of Lieutenant or Fire Department employees at or below the rank of Battalion  
 118 Chief.  
 119 14. "Professional employee" means:  
 120 a. Any individual whose primary duty consists of the performance of work  
 121 requiring knowledge of an advanced type in a field of science of learning  
 122 customarily acquired by a prolonged course or specialized intellectual  
 123 instruction and study, as distinguished from a general academic education and  
 124 from an apprenticeship and who customarily and regularly exercises discretion  
 125 and independent judgment in the performance of such function; or  
 126 b. Any employee who has completed or is engaged in a course of specialized  
 127 intellectual instruction and study described above and who is performing related  
 128 work in conjunction with a professional employee as described in Paragraph  
 129 14.a of this subsection.  
 130 15. "Technical employee" means:  
 131 a. Any individual whose primary duty consists of the performance of work  
 132 requiring the routine exercise of a specialized knowledge or skill acquired  
 133 through distinctive training, as distinguished from a prolonged course of  
 134 specialized intellectual instruction and study; or  
 135 b. Any employee who has completed or is engaged in the distinctive training  
 136 described above, or who is receiving on-the-job training in a specialized  
 137 knowledge or skill, and who is performing related work in conjunction with a

138 professional employee as described in Paragraph 14 or technical employees as  
139 described in Paragraph 15.a of this subsection.

140 G. Employee Rights

- 141 1. Employees shall have the right to self-organization, to form, join, or assist labor  
142 organizations, to bargain collectively as provided in this Chapter through  
143 representatives of their own choosing, and to engage in other concerted activities for  
144 the purpose of collective bargaining or other mutual aid or protection, and shall also  
145 have the right to refrain from any or all of such activities.
- 146 2. Notwithstanding any other provision in this Section, an individual employee may  
147 present a grievance at any time to the City without the intervention of a labor  
148 organization, provided that the Exclusive Representative (if there is one) is afforded an  
149 effective opportunity to be present and to offer its view at any meetings held to adjust  
150 the grievance and that any adjustment made shall not be inconsistent with the terms of  
151 any applicable collective bargaining agreement. Such employee or employees who  
152 utilize this avenue of presenting personal complaints to the employer shall not do so  
153 under the name, or by representation, of a labor organization.
- 154 3. In the absence of an exclusive representative, a labor organization shall be permitted to  
155 meet with employees on the premises of the City in non-secure areas during times when  
156 the employees involved are on break or in other non-duty status. If an exclusive  
157 representative has been recognized, such right shall be available only to the exclusive  
158 representative and any other labor organization that has submitted a petition and  
159 established a valid question concerning representation. This section shall not restrict an  
160 exclusive representative and the City from negotiating for greater access to employees  
161 by the exclusive representative.
- 162 4. An exclusive representative shall have the right to meet with newly hired employees,  
163 without charge to the pay or leave time of any of the employees involved, for a  
164 minimum of 30 minutes, within 30 calendar days from the date of hire, during new  
165 employee orientations, or if the employer does not conduct new employee orientations,  
166 at individual or group meetings.
- 167 5. Within 10 calendar days from the date of hire of an employee represented by an  
168 exclusive representative, the City shall provide the following contact information to the  
169 exclusive representative in an Excel file format or other format agreed to by the  
170 exclusive representative labor organization: name, job title, worksite location, home  
171 address, work telephone numbers, and any home and personal cellular telephone  
172 numbers on file with the public employer, date of hire, and work email address and any  
173 personal email address on file with the City. Within thirty days of certification as the  
174 exclusive representative and on the first Monday following January 15, May 15 and  
175 September 15 each year, the City shall provide exclusive representative labor  
176 organizations, in an Excel file or similar format agreed to by the exclusive  
177 representative labor organization, the following information for all negotiations unit  
178 employees: name, job title, worksite location, home address, work, home and personal  
179 cellular telephone numbers, date of hire, and work email address and personal email  
180 address on file with the City. The home addresses, phone numbers, email addresses,  
181 dates of birth, and the emails or other communications between exclusive representative  
182 labor organizations and their members shall not be considered public records subject  
183 to public disclosure except to the exclusive representative.

184 H. Employee Relations Council (“ERC”)

185 1. There is hereby created the Charlottesville City Employee Relations Council, which  
186 shall have authority to process issues related to questions concerning representation,  
187 allegations of unfair labor practices and negotiability disputes. The ERC will have three  
188 persons.

189 a. All members of the Employee Relations Council shall, at the time of  
190 appointment, be a neutral that is on the roster of an impartial agency.

191 b. For the period lasting until December 31, 2023, the ERC members will be  
192 appointed as follows:

193 i. Within 30 days of enactment of this Chapter, the City Manager will  
194 appoint one member to the ERC.

195 ii. Within 15 days following the City Manager’s appointment, labor  
196 organizations, including those who may later seek to become an  
197 exclusive representative of one or more bargaining units of employees,  
198 will have the right to select an individual to appoint to the ERC. The  
199 labor organizations shall attempt to reach an agreement on a nominee  
200 and, if no agreement is reached, the labor organizations shall select a  
201 nominee via a poll of the members of each local labor organization. The  
202 City Council will, at its next regular meeting, officially appoint the  
203 nominated individuals to the ERC. Labor organizations may only  
204 nominate individuals who have agreed to accept the proposed  
205 appointment.

206 iii. The third member of the ERC will be mutually selected and appointed  
207 by the first two appointees. That person will serve as the Chair of the  
208 ERC unless the three members of the ERC agree otherwise by majority  
209 vote.

210 iv. If, an ERC member vacates the position prior to the expiration of their  
211 term, the replacement will be appointed in the same manner (City  
212 Manager, labor organizations/City Council, other two ERC members)  
213 that appointed the vacating Member and the new member shall serve for  
214 the remainder of the term. Sixty days prior to the conclusion of their  
215 term, an ERC member may be reappointed or replaced by the appointing  
216 authority. A replacement ERC member shall assume a position on the  
217 ERC at the conclusion of the incumbent ERC member’s term.

218 2. Representation Process

219 a. Where, in accordance with procedural regulations as may be prescribed by the  
220 ERC, a petition has been filed:

221 i. By a labor organization, or in the case of decertification by an employee  
222 or group of employees, supported by evidence, including an  
223 alphabetized list of names, that at least 30% of employees in an  
224 appropriate unit:

225 1. Wish to be represented for collective bargaining by an exclusive  
226 representative; or

227 2. Assert that the certified labor organization is no longer the  
228 representative of the majority of employees in the unit,

229 the ERC shall investigate such petition, and if it has reasonable cause to believe  
230 that a question concerning representation exists, it shall, within 21 days, order  
231 the City to post a public notice that a petition has been filed and provide for an  
232 appropriate hearing upon due notice. If the ERC finds upon the record of such  
233 hearing that a question concerning representation exists, it shall direct an  
234 election by secret ballot and shall certify the results thereof. Any labor  
235 organization shall be allowed to intervene upon the filing of a petition with the  
236 ERC within 10 days of the public notice that a petition has been filed supported  
237 by evidence of at least 20% employees in said unit support exclusive  
238 representation by the intervening labor organization. The city shall provide the  
239 petitioner and any qualified intervenor with a list of the names, job titles,  
240 worksite locations, home addresses, work, home and personal cellular  
241 telephone numbers, and work email address and personal email address on file  
242 with within three days of a finding by the ERC that a question concerning  
243 representation exists. The ERC, after a hearing on any disputes among the  
244 parties, shall determine assignment of positions to the appropriate units  
245 described in this Article.

246 i. A petition will be dismissed if the petitioner seeks to be certified in a  
247 bargaining unit:

- 248 1. Within which in the preceding 12 month period of the  
249 certification of a labor organization as the exclusive  
250 representative of the appropriate for which the petition has been  
251 filed; or
- 252 2. During the term of any lawful collective bargaining agreement  
253 between the employer and a labor organization. Where a valid  
254 collective bargaining agreement is in existence, a petition for  
255 election may be filed not more than 270 days and not less than  
256 225 days before the expiration of the collective bargaining  
257 agreement.

258 b. Elections

259 i. Representation elections shall be conducted at the direction of the ERC,  
260 which may delegate parts of an election process to one or more of its  
261 members as Election Officer who may determine to use a qualified  
262 vendor to assist in conducting the election.

263 ii. Representation elections conducted pursuant to this Section shall be by  
264 secret ballot and shall be subject to the following:

- 265 a. At least 10 days notice of the time and place of the election shall be  
266 provided.
- 267 b. The ballots in all representation elections shall include a choice of  
268 “no representative” except that a runoff election shall include only  
269 the two choices receiving the highest and second highest number of  
270 ballots cast in the initial election.
- 271 c. A representative may not be certified unless it receives a majority of  
272 the valid ballots cast.
- 273 d. In an election in which none of the choices on the ballots receives a  
274 majority, a runoff election shall be conducted in which the ballot

275 shall provide for a selection between the two choices or parties  
276 receiving the highest and second highest number of ballots cast in  
277 said election.

278 iii. The ERC shall certify the results of said election within seven calendar  
279 days after the final tally of votes if no objection to the election is filed  
280 by any affected person alleging that there has been conduct which has  
281 affected the outcome of the election.

282 e. If such an objection is filed, and the ERC has reason to believe that  
283 such allegations are valid, it shall set a time for hearing on the matter  
284 after due notice, such hearing to be conducted within 14 days of the  
285 date of receipt of such charge. If the ERC determines that the  
286 outcome of the election was affected, even if by third party  
287 interference, it shall require corrective action and order a new  
288 election. If the ERC determines that the conduct alleged did not  
289 affect the outcome of the election, then it shall immediately certify  
290 the election results. The ERC may delegate the oversight of the  
291 hearing to one or more of its Members as Hearing Officer, but its  
292 decision must be by majority vote of the Members.

293 f. If the employer creates a new job classification, it shall seek to  
294 resolve the placement of the job in an appropriate unit with the  
295 exclusive representative labor organizations affected. In the event  
296 the parties cannot resolve the matter, it shall be referred to the ERC  
297 for resolution.

298 g. Decisions of the ERC regarding representation matters shall not be subject to  
299 court review.

300 I. Unfair Labor Practices and Negotiability Disputes

301 1. Unfair Labor Practices

302 a. Violations of the following provisions will be considered an Unfair Labor  
303 Practice (“ULP”). The ERC is charged with adjudicating allegations of such  
304 violations.

305 i. The City, its agents, its departments, or its representatives are prohibited  
306 from:

- 307 1. Interfering with, restraining, taking reprisals against or coercing  
308 employees in the exercise of the rights guaranteed by this  
309 Article;
- 310 2. Using public funds, or acting in their official capacity to assist,  
311 promote or deter exclusive representation or membership in a  
312 labor organization.
- 313 3. Dominating, interfering, or assisting in the formation, existence  
314 or administration of any labor organization, or contributing  
315 financial or other support to it, except that the City shall not be  
316 prohibited from permitting employees to negotiate, process  
317 grievances, or otherwise attend to matters related to the labor  
318 management relationship during working hours without charge  
319 to leave or pay or from providing an exclusive representative  
320 with access and use of routine facilities and services of the City;

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4. Discriminating in regard to hire, promotion, or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization;
  5. Discharging or otherwise discriminating against an employee because he has signed or filed an affidavit, petition, or complaint or given any information or testimony under this Article;
  6. Refusing to bargain collectively in good faith with the exclusive representative as required under this Article;
  7. Refusing to participate in good faith in the mediation or arbitration procedures set forth in this Article;
  8. Refusing or failing to comply with any provision of this Article or any of the procedural regulations established by the ERC;
  9. Locking out the members of any bargaining unit; or
  10. Enforcing any rule or regulation which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed.
- ii. Labor organizations, their agents, or representatives are prohibited from:
1. Interfering with, restraining, or coercing employees in the exercise of the rights guaranteed by this Article;
  2. Causing or attempting to cause the City to discriminate against an employee in the exercise by the employee of any right under this Article;
  3. Refusing to bargain collectively in good faith with the City if they have been designated in accordance with the provisions of this Article as the exclusive representative of employees in an appropriate unit;
  4. Refusing to participate in good faith in mediation or arbitration procedures set forth in this Article;
  5. Refusing or failing to comply with any provision of this Article or any of the procedural rules and regulations established by the ERC;
  6. Discriminating against an employee with regard to the terms or conditions of membership in the labor organization on the basis of labor organization membership, race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status, or handicapping condition;
  7. Calling, instituting, maintaining, participating in, or conducting a strike against the City.
- b. Procedure Concerning Alleged Unfair Labor Practices
- i. Any allegation that a person has engaged in an unfair labor practice shall be submitted to the ERC within 180 days of the alleged unlawful conduct, subject to such procedural rules and regulations as the Council may issue. If an exclusive representative's allegation of an unfair labor practice may also be properly be raised as a grievance under an

367 applicable collective bargaining agreement, the matter may be raised  
368 under either procedure, but not both. The exclusive representative shall  
369 be deemed to have exercised the option to raise the matter under either  
370 the unfair labor practice procedure or the negotiated procedure at such  
371 time as the exclusive representative timely initiates an action under the  
372 unfair labor practice procedure or timely files a grievance in writing,  
373 whichever event occurs first.

374 ii. The ERC’s rules and regulations shall provide that compliance with the  
375 technical rules of evidence shall not be required. If upon the  
376 preponderance of the testimony taken, the ERC finds that any person  
377 named in the complaint has engaged in or is engaging in an unfair labor  
378 practice, then the ERC shall state its findings of facts and shall issue and  
379 cause to be served on such person an order requiring that he cease and  
380 desist from such unfair labor practices and take such affirmative action,  
381 including reinstatement with or without back pay, as will effectuate the  
382 policies of this Article. Such order may further require such person to  
383 make reports from time to time showing the extent to which he has  
384 complied with the order. The ERC’s remedial powers shall not be  
385 limited to the effects of the immediate case and may be designed to  
386 prevent future unfair labor practices, notwithstanding the penal nature  
387 of such requirement.

388 iii. If the preponderance of evidence has not shown that the person named  
389 in the complaint has engaged in or is engaging in any such unfair labor  
390 practice, then the ERC shall state its findings of facts and shall issue an  
391 order dismissing the said complaint.

392 iv. The ERC shall have the authority to assign one of its members as the  
393 Hearing Officer in a particular case, however a majority vote of the  
394 entire ERC (including the Member assigned as Hearing Officer) shall  
395 be required to issue a final and binding decision.

396 a. Findings of the ERC shall be conclusive and binding upon the parties and shall  
397 be considered as an award of an arbitrator in accordance with the Virginia  
398 Uniform Arbitration Act, Virginia Code Section 8.01—581.01 et. seq. .

399 2. Negotiability Disputes

400 a. General: A negotiability dispute shall exist when a labor organization and the  
401 City disagree on whether this Section, a collective bargaining agreement, or  
402 other applicable law or regulations, requires or prohibits bargaining with  
403 respect to a specified matter. For the purposes of this Article, a negotiability  
404 dispute shall not refer:

405 i. To the situation where the City refuses to bargain over a subject that the  
406 parties agree is not a mandatory subject of bargaining;

407 ii. To a situation where the City refuses to bargain based on a belief that it  
408 has no obligation to bargain in a specific situation; or

409 iii. To a situation where the parties are unable to agree upon the terms of a  
410 Collective Bargaining Agreement, insofar as the issue in dispute is not  
411 “what is negotiable”.

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- b. Interpretation of Existing Agreements. A dispute over the interpretation of a controlling agreement in existence shall be resolved under the grievance procedure of the controlling agreement. A dispute over what is subject to a grievance procedure and what is arbitrable under such procedure shall not be resolved as a negotiability dispute under the procedures set forth in this Article but shall be resolved by the arbitrator chosen to hear the grievance.
  - c. Procedure: The services of the ERC shall be invoked for negotiability disputes arising in the course of negotiations. The ERC shall seek to expedite review of all such disputes.
    - i. If, in the conduct of negotiations, the City asserts a proposal offered by an exclusive representative is outside the lawful duty to bargain, the exclusive representative shall request the City to reduce the allegation of non-negotiability to writing. The City shall provide such allegation in writing to the exclusive representative within seven days of receiving the request.
    - ii. Within 14 days of receiving the written allegation of non-negotiability, or within 21 days of the request for a written allegation of non-negotiability if the City fails to provide a written allegation of non-negotiability, the exclusive representative may petition the ERC for a determination of negotiability. The petition shall be accompanied by an explanation from the exclusive representative of the proposal and the basis for its belief that it is within the lawful scope of bargaining. The exclusive representative shall simultaneously serve the City with the petition.
    - iii. The City shall file a reply to the petition with the ERC and the exclusive representative within 14 days of receipt of the exclusive representative's petition.
    - iv. The ERC shall schedule a mediation session among the parties within 14 days or as soon as practical thereafter. No statement made or position taken during mediation under this Article may be used as evidence in any other proceeding. If mediation fails to resolve the dispute, the ERC shall request a reply brief from the exclusive representative and make a decision as to the negotiability based on the written record. The decision may be accompanied by an order directing the parties to take action appropriate to remedy the dispute including, but not limited to the issuance of a retroactive bargaining order or engagement in further mediation. To minimize the potential recurrence of similar disputes, the ERC shall publish periodically such decisions and shall distribute copies to the City and to all exclusive representatives.
  - d. The ERC may delegate to one or more of its members some tasks, such as scheduling hearings, overseeing pre-hearing matters, and conducting mediation or any hearings on the matter. The final decision of the ERC requires the concurrence of at least two Members.
- J. Rights Accompanying Exclusive Representation
- 1. The labor organization which has been certified by the ERC shall be the exclusive representative of all employees in the unit and as such shall have the right to act for and



458 negotiate agreements hereunder covering all employees in the unit and shall be  
459 responsible for representing the interest of all such employees without discrimination  
460 and without regard to membership in the labor organization.

- 461 2. The negotiated grievance procedure shall be the exclusive procedure applicable to an  
462 employee in the unit for a grievance regarding the employee's rights under the  
463 agreement provided, however, an employee may appeal a disciplinary or adverse action  
464 under any applicable procedure established by the City or by law in lieu of using the  
465 negotiated grievance procedure. An employee's election of remedy is irrevocable and  
466 is made at the time the employee timely files a written disciplinary appeal under the  
467 negotiated grievance procedure or the alternative procedure, whichever occurs first.
- 468 3. Where a labor organization has been recognized as the exclusive representative of the  
469 employees in a unit, it shall be the only labor organization eligible to receive from the  
470 City amounts deducted from the pay of employees as authorized by written assignment  
471 of the employees, for the payment of regular and periodic dues to the exclusive  
472 representative, unless two exclusive representatives of City employees agree that they  
473 can both receive deductions from the same employee. Any such authorization may be  
474 revoked in accordance with the terms of the authorization which shall provide a period  
475 of irrevocability of not more than one year. An authorization that satisfies the Uniform  
476 Electronic Transactions Act (Virginia Code § 59.1-479 et seq.), including, without  
477 limitation, electronic authorizations and voice authorizations, shall be valid for  
478 employees' authorizations for payroll deductions and authorization for representation  
479 for purposes of a petition filed by a labor organization for exclusive representation.
- 480 4. An exclusive representative of an appropriate unit shall be given the opportunity to be  
481 represented at:
  - 482 a. any formal discussion between one or more representatives of the City and one  
483 or more employees in the unit or their representatives concerning any grievance  
484 or any personnel policy or practices or other general condition of employment;  
485 or
  - 486 b. any examination of an employee in the unit by a representative of the City in  
487 connection with an investigation if:
    - 488 i. the employee reasonably believes that the examination may result in  
489 disciplinary action against the employee; and
    - 490 ii. the employee requests representation.
  - 491 c. The City shall annually inform its employees of their rights under this  
492 subsection.

#### 493 K. Official Time

- 494 1. Any employee representing an exclusive representative in the negotiation of an  
495 agreement under this Article shall be authorized official time for such purposes,  
496 including attendance at an impasse proceeding, during the time the employee otherwise  
497 would be in a duty status. The number of employees for whom official time is  
498 authorized under this subsection shall be at least equal to the number of individuals  
499 designated as representing the City for such purposes but may exceed the number of  
500 City representatives upon agreement of the parties.
- 501 2. Any employee representing an exclusive representative, or in connection with any  
502 other matter covered by this Article or by the collective bargaining agreement, any  
503 employee in an appropriate unit represented by an exclusive representative, shall be

504 granted official time in any amount the City and the exclusive representative involved  
505 agree to be reasonable, necessary, and in the public interest.

506 L. Negotiations & Agreements

- 507 1. The City and the exclusive representative shall meet at reasonable times, and shall  
508 negotiate in good faith with respect to terms and conditions of employment which are  
509 subject to negotiation under this Article and which are to be embodied in a written  
510 agreement, or any question arising thereunder, but such obligation shall not compel  
511 either the City or the exclusive representative to agree to a proposal or require the  
512 making of a concession. The City Manager, or his designated authorized  
513 representative(s) shall represent the City in collective bargaining.
- 514 2. Any agreement reached by the negotiators shall be reduced to writing and shall be  
515 executed by both parties. Such agreement shall be valid and enforced under its terms  
516 when entered into, in accordance with the provisions of this Article.
- 517 3. Agreements with exclusive representatives shall provide for final and binding  
518 arbitration of contractual disputes in accordance with Virginia Code Section 15.2-1404.  
519 Arbitration proceedings conducted pursuant to collective bargaining agreements and  
520 this Article shall be governed by the Uniform Arbitration Act, Virginia Code Section  
521 8.01—581.01 et. seq.
- 522 4. Upon the request of either party, negotiations shall commence not later than October  
523 1 for agreements that are to be effective on July 1 of the following year. Collective  
524 Bargaining Agreements shall have a minimum term of one year and maximum term  
525 of four years.
- 526 5. At the request of either party, the parties shall enter into mediation to resolve any  
527 dispute between the parties. The parties involved shall mutually agree upon a  
528 mediator or request a mediator from the Federal Mediation and Conciliation Service.  
529 No statement made or position taken during mediation under this section may be used  
530 as evidence in any other proceeding
- 531 6. At the request of either party, and not later than January 31 of the year the agreement  
532 may become effective, impasses not resolved through negotiation or mediation shall  
533 be submitted to final and binding arbitration. The parties shall jointly select an  
534 arbitrator or, if they are unable to agree on an arbitrator, they shall request a list of  
535 seven arbitrators from the Federal Mediation and Conciliation Service or American  
536 Arbitration Association. Each party in turn shall strike a name from the list until only  
537 one name remains. Negotiations may continue throughout the impasse procedures.
- 538 7. In making any decision under the impasse procedures authorized by this Article, the  
539 arbitrator shall select either the final offer of the employer, or the final offer of the  
540 union on each separate issue. The arbitrator shall give weight to the following factors:
- 541 a. The lawful authority of the City;
- 542 b. Stipulations of the parties;
- 543 c. The interests and welfare of the public;
- 544 d. The financial ability of the employer to meet the costs of any items to be included  
545 in the agreement;
- 546 e. Comparison of wages, hours, and terms and conditions of employment of the  
547 employees involved in the arbitration proceedings with the wages, hours, and  
548 terms and conditions of employment of other persons performing similar services  
549 in the public and private sectors, if applicable;

- 550 f. The average consumer prices for goods and services, commonly known as the  
551 cost of living;  
552 g. The overall compensation presently received by the employees involved in the  
553 arbitration;  
554 h. Changes in any of the foregoing circumstances during the pendency of the  
555 arbitration proceedings; and  
556 i. Such other factors that are normally or traditionally taken into consideration in the  
557 determination of wages, hours, and terms and conditions of employment through  
558 voluntary collective bargaining, mediation, arbitration, or otherwise between the  
559 parties, in public service or in private employment.  
560 8. The expenses of the arbitrator shall be borne equally by the parties.

561 M. Funding for implementation of agreements.

- 562 1. After a negotiated agreement has been reached, or a final and binding arbitration decision  
563 has been rendered in accordance with this Article, the City Manager shall submit a  
564 request for funds necessary to implement the agreement and for approval of any other  
565 matter requiring the approval of the City Council within five days after:  
566 a. the date on which the parties finalize the agreement; or  
567 b. the date on which the arbitration decision is issued,  
568 unless otherwise specified in this section or agreed by the parties.  
569 2. The City Council shall approve or reject the request for funds as a whole when it adopts  
570 the annual budget. If the annual budget for any term of the agreement has been adopted  
571 prior to the submission of a request for funds to implement the agreement by the City  
572 Manager, the Council shall consider the request for funding as a budget modification at  
573 the first meeting subsequent to the submission of the request for funds necessary to  
574 implement the agreement.  
575 3. If the City Council does not fund the agreement, either party may reopen negotiations.  
576 4. At the request of the exclusive representative, those provisions of the agreement not  
577 requiring action by the City Council shall be effective and operative in accordance with  
578 the terms of the agreement.  
579 5. Upon the expiration of an agreement, the terms of such agreement shall remain in effect  
580 until superseded by a new agreement.

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