

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

1. 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:

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 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 whose work involves regular, authorized access to confidential or privileged personnel management, fiscal, or labor policy information material to the City in collective bargaining.

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 probationary employee, as that term is used in the City's personnel regulations;

- 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.

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 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 an employee who is hired into a position for which the customary annual employment is four (4) months or less, and 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.

Temporary employee means an individual who is hired into a time-limited position that lasts for four (4) consecutive months or less, and who actually works for the City for four consecutive months or less; provided, that any employee who has worked for the City for more than four consecutive months shall not be considered a temporary employee for purposes of this ordinance.

Sec. 19-203. Authorized Subjects of Collective Bargaining

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

- (1) wages, salaries, and other forms of monetary compensation,
- (2) working conditions, including hours of work, provided that matters reserved as City management rights in sec. 19-206 are not authorized subjects of bargaining, or
- (3) non-health and non-welfare benefits, such as paid and unpaid leave and holidays.

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

- (1) health and welfare benefits such as health, dental, life insurance, and similar benefit programs,
- (2) matters concerning the provisions of a retirement system including, but not limited to, 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,
- (3) matters concerning the provisions of the City's deferred compensation program,

- (4) other matters governed, controlled, or preempted by federal or state constitutional provision, law, rule, or regulation, including the City Charter, such as:

Workers' compensation matters,

Wage and hour matters, such as those subject to the Fair Labor Standards Act and the Virginia Overtime Wage Act,

Occupational safety and health matters,

Equal employment opportunity matters,

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.,

Matters governed by this ordinance;

- (5) matters related to the administration of pay and benefits which are not directly related to monetary compensation or benefits;
- (6) matters affecting the City's right to hire, promote, transfer, assign, retain, classify, and schedule employees;
- (7) matters affecting the City's right to take disciplinary actions up to and including termination, including but not limited to the procedures the City takes prior to administering discipline;
- (8) matters governed by the City's uniformly applicable grievance procedures and any personnel rules related thereto;
- (9) matters affecting the City's right to establish policies or practices to respond to emergency situations; and
- (10) provisions, prohibited by state law, that restrict the City Council's authority to establish the budget or appropriate funds in its discretion.

Sec. 19-204. Authorized Bargaining Units

(a) For at least two (2) years following the adoption of this ordinance, only employees in the following specified bargaining units shall 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 employees of the Charlottesville Area Transit in the positions of Transit Operator Leads, Transit Operators, Transit Maintenance Workers, Transit Maintenance Assistants, Transit Bus Technicians, School Transit Operator Leads, School Transit Operators, and School Bus Aids, excluding all office and clerical employees and those excluded by definition under sec. 19-202.

(b) The City reserves the right to extend the right to engage in collective bargaining to employees in additional bargaining units through modification of this ordinance after this ordinance has been in effect for at least two (2) years.

(c) The City Manager or his/her designee shall meet and confer with police and fire supervisors 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 eligible police and fire uniformed employees.

Sec. 19-205. Employee Rights

Employees in the bargaining units specified in sec. 19-204(a) 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. 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. The City and the City Manager retain their respective exclusive rights, including the rights:

- (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 appointment type (full time, part time, etc.) of City employees;
 - (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 issue and enforce rules, policies, and regulations necessary to carry out these and all other managerial functions which are not inconsistent with this ordinance, 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. This includes the right to advocate for or

against employee organizations, and to speak on issues related to the City's labor policy without limitation.

(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.

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

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.

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 sec. 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 ballots may be permitted if all parties agree. The cost of such election, including postage if applicable, shall be borne by the prospective employee organization seeking recognition.

(b) In the event that more than one employee organization files a petition for election within ten calendar days after a first petition for election or for election has been filed, an election to select an exclusive bargaining agent shall be held under the procedures adopted by the administrator. Any cost of such election shall be borne equally by the prospective employee organizations seeking recognition. If an employee organization receives a majority of the votes cast by the employees voting in an appropriate bargaining unit, it shall be recognized by the City as the exclusive bargaining agent, provided however, that the City Manager or an employee organization may file objections to the election with the administrator alleging that there has been misconduct which has affected the outcome of the election, and the City need not recognize the employee organization pending the resolution of any process to review those exceptions.

(c) "Administratively acceptable evidence" to support a petition for election or for decertification will consist of a petition or a set of authorization cards where all signatures must be dated and received by the employee organization, employee, or group within sixty (60) days prior to the date on which the petition for election has been filed. 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.

(d) 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 petition must represent a showing of uncoerced interest by at least thirty (30)

percent of the employees in a bargaining unit permitted by this ordinance based upon administratively acceptable evidence.

(e) Any additional interested employee organization must submit a petition of intervention to the administrator, which must be accompanied by a showing of uncoerced 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.

(f) If the administrator determines, after a tabulation of the submitted showing of interest signatures and/or cards, 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 showing of interest signatures or cards. The 14-day period for submitting such forms commences on the date the administrator provides notice to the petitioning or intervening employee organization of the insufficiency of its petition.

(g) An 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 in accordance with election procedures established by the administrator, which shall include, but not be limited to, provisions regarding employee organization receipt of bargaining unit employee contact information, ballot content, and procedures for mail-in voting. The City must furnish to the administrator no more than five (5) days after the administrator determines that that employee organization has met the required showing of interest, a list of all eligible employees in the bargaining unit. 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.

(h) The City and each 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.

(i) 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 certification of the results. The administrator's certification of results is final, unless within 14 days after service of the election report and 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 it 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. In any event, the administrator must make a determination as to whether or not to certify the election within 21 days of the filing of objections.

(j) 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 subsection (i), 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 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.

(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.

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.

(b) The bargaining agent must submit a written request to the City Manager 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 July 1 of the preceding fiscal year and conclude, including any impasse resolution procedures, by December 1 of the preceding fiscal year to ensure adequate time for inclusion in the City Manager's proposed budget for the given fiscal year.

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

(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. Impasse

(a) In the event that the City and the bargaining agent are unable to reach an agreement or contract within 120 days after their first meeting, an impasse may be called by either party, and the following procedure shall be followed:

(b) 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.

(c) 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.

(d) If mediation fails to resolve the parties' impasse as to any issue at least 30 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 fact-finder shall meet with the parties and make written findings of fact, and recommendations for resolution no later than ten 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.

(b) The City Manager, after giving due consideration to the fact-finder's recommendations and the mediation results, shall submit recommendations to the City Council by incorporation in the City Manager's proposed annual budget, or in other proposed legislation as may be appropriate. The City Council shall retain its legislative discretion with respect to action on any proposals so submitted.

(c) The parties shall share the costs of mediation and fact-finding equally.

Sec. 19-214. 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 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. 19-215. 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. 19-216. 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.

Sec. 19-217. Review of Ordinance

The City Manager and the exclusive representatives of the city employees shall conduct a review of this ordinance and its effectiveness, with recommendations for improvements and submit a report to City Council within one (1) year after this ordinance has been in effect for two (2) years.

2. BE IT FURTHER ORDAINED THAT THIS ORDINANCE SHALL BE EFFECTIVE AT MIDNIGHT ON x, 20xx

[Effective date to be determined at a later date]