

ORDINANCE NO. XXXX

An ORDINANCE to amend and reordain Title 3 of the Code of the City of Harrisonburg, Virginia, City Administration, by **adding Chapter 8 as follows:**

**TITLE 3 – CITY ADMINISTRATION**

**CHAPTER 8 – COLLECTIVE BARGAINING**

**Section 3-8-1. Statement of Policy.**

It is the public policy of the City of Harrisonburg and the purpose of this chapter to promote orderly and constructive relationships between the city and its employees subject, however, to the supreme right of the citizens of the city that their government honor guarantees for their health, safety, welfare, and the uninterrupted operations and functions of government. Because unresolved disputes between the city and its employees are detrimental to the public and to city employees, adequate means must be established for their speedy and effective resolution. Within the limitations required by the greater public interest, and recognizing that amicable relationships are required between the city and its employees, the City Council has determined that the overall policies set forth here may best be accomplished by (1) granting to city employees the right to organize and choose freely their representatives; (2) permitting the city to negotiate and bargain in good faith with employee organizations representing city employees and to enter into written agreements evidencing the result of such bargaining; and (3) establishing procedures to provide for the protection of the rights of the city, city employees and the public at large.

The City Council establishes this policy with the intent that city employees enjoy the right to bargain collectively within parameters that promote a government that provides ethical, effective and efficient services that are responsive to the community and focused on improving quality of life through the services of well-qualified staff who value and work to actively promote policies to advance all things reasonably necessary to achieve organizational excellence, while at all times elevating principles of cooperation, ethics, honesty, initiative, and learning.

**Section 3-8-2. Definitions.**

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

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

*Arbitration* means the procedure by which the city and an exclusive bargaining representative when involved in a labor-management dispute, as defined in this article, submit their differences to a third party for a final and binding decision subject to the provisions of this article.

*Benefits* means all forms of non-wage compensation.

*City* means the City of Harrisonburg acting through its City Manager or the City Manager's designee.

*Collective bargaining* means to perform the mutual obligation of the City, by its representatives, and the exclusive bargaining representative of employees in an appropriate bargaining unit to meet and negotiate in good faith at reasonable times and places, with the good faith intention of reaching an agreement and remaining in effect until superseded by a new agreement, regarding terms and conditions of employment including wages, salaries, and all forms of monetary compensation; benefits; resolution of employee grievances; personnel policies and practices, working conditions, and hours and scheduling of work, provided that matters reserved as City management rights in Section 3-8-4 are subject to collective bargaining only as provided therein. Any agreement reached by collective bargaining shall be subject to appropriation of funds by the City Council. The City shall not negotiate as to matters controlled or preempted by any federal or state constitutional provision, law, rule, or regulation.

*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 article and resulting from collective bargaining as defined in this section.

*Confidential employee* means any employee who works in or for:

- (1) the office of the City Council;
- (2) the office of the City Manager;
- (3) the office of the City Attorney;
- (4) the Department of Human Resources or other department or position in which the employee has authorized access to confidential city personnel files; or
- (5) is a secretary, administrative assistant, management analyst, or any other position, wherever assigned and however those titles may be changed from time to time, with authorized access to confidential information pertaining to City budgetary and fiscal data relevant to subjects within the scope of collective bargaining as set forth in this article.

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

- (1) an employee of the courts or of any local constitutional officer, i.e., officers elected pursuant to Article VII, Section 4 of the Constitution of Virginia;
- (2) a confidential employee, as defined in this section;
- (3) a managerial employee, as defined in this section;

- (4) a supervisor, as defined in this section;
- (5) an intermittent, temporary or seasonal employee, as defined in this section;
- (6) an intern or volunteer;
- (7) a member of a board or commission, or other appointee of any public body as defined by state law; or
- (8) an attorney whose responsibilities include providing legal advice to the City or performing legal research for the City as a client.

*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 Section 3-8-6).

*Impasse* means the failure of the City and an exclusive bargaining representative to reach agreement in the course of collective bargaining negotiations.

*Intermittent employee* means irregular or variably recurring, hourly employment that is less than full time in any calendar year.

*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; negotiability disputes; action challenged as a prohibited practice under Section 3-8-16; and questions of eligibility of disputes for resolution by arbitration. It shall not include an individual grievance as defined by Virginia Code Section 15.2-1507(A)(1).

*Lockout* means any action taken by the City intended to interrupt or prevent the continuity of work properly and usually performed by employees for the purpose of coercing or intimidating employees in the exercise of their rights conferred by this article or influencing their exclusive bargaining agents' positions in collective bargaining contract negotiations.

*Managerial employee* means any individual who:

- (1) has responsibility for a unit or sub-unit of a division of an agency or department;
- (2) participates in the formulation of policy;
- (3) is significantly engaged in executive or management functions;

- (4) is charged with the responsibility of directing the implementation of management policies, procedures, or practices; or
- (5) is involved in administration of collective bargaining agreements or human resources or personnel decisions, including, but not limited to, staffing, reductions-in force/layoffs, reorganizations, hiring, discipline, evaluations, pay, assignments, transfers, promotions or demotions.

*Mediation* means an effort by a neutral, third-party factfinder chosen under the terms of this article to assist confidentially in resolving an impasse, as defined in this section, arising in the course of collective bargaining between the City and the exclusive bargaining agent of a bargaining unit, or the first step prior to arbitration of a labor-management dispute other than a prohibited practice claim or charge.

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

- (1) Requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction; or
- (2) 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 any individual who customarily and regularly devotes a majority of work time to supervision of two or more employees and has authority to hire, transfer, suspend, layoff, recall, promote, demote, discharge, reward or discipline other employees, or adjust grievances, or effectively to recommend any such actions. With respect to the Fire Department, "supervisor" includes all personnel at the rank of lieutenant or above. With respect to the Police Department, "supervisor" includes all personnel at the rank of lieutenants or above. The City Manager or City Manager's designee shall meet and confer with Police and Fire supervisors ineligible to bargain collectively regarding matters within the scope of collective bargaining as specified in this article with the specific intent to address salary compression, as commonly defined or understood, resulting from collective bargaining with eligible Police and Fire uniformed employees.

*Strike* means, in concerted action with two or more city employees, an employee's refusal to report to duty or willful absence from their position, or stoppage of work, for the purpose of obstructing, impeding, or suspending any activity or operation of the City (see Virginia Code § 40.1-55) or inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of City employment.

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

*Temporary employee* means an individual who is employed for not more than 180 days in a 24-month period.

**Section 3-8-3. Employee Rights.**

- (a) Employees shall have the right to organize, form, join, assist, and pay dues or contributions to employee organizations, to bargain collectively through an exclusive bargaining representative 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 article or prohibited by any other applicable law. Employees shall also have the right to refrain from any or all such activities.
- (b) A collectively bargained agreement provision that violates the rights of employees set forth in this section shall be void. A collectively bargained agreement provision that establishes a time period for the exercise of an employee right set forth in this section shall not violate this section. The City and each employee organization will refrain from any intimidation, coercion, or harassment of employees who choose to exercise their rights under this article.

**Section 3-8-4. City's Rights and Authority.**

- (a) This article shall not be deemed in any way to limit or diminish the authority of the City to manage and direct the operations and activities of the City to the extent authorized and permitted by law. Thus, to the extent not inconsistent with a collective bargaining agreement, the City retains exclusive rights including, but not limited to, the rights:
  - (1) to determine the type and scope of work to be performed by City employees, and the manner in which services are to be provided;
  - (2) to direct the work of employees and determine the number of employees to perform any work or service;
  - (3) to hire, promote, transfer, assign, retain, classify and schedule all employees and to suspend, demote, discharge, or take other disciplinary action against employees in accordance with applicable law and regulations;
  - (4) to relieve employees from duties by layoff or other reduction-in-force due to lack of work, changed working conditions/requirements, budget limitations or for other reasons in the City's reasonable business judgment and not prohibited by law;
  - (5) to introduce new, or different services, methods, equipment, or facilities;

- (6) to contract for, expand, reduce, sell, transfer, convey, eliminate or change in any way the operations of general government, as well as any department, office or part thereof;
- (7) to establish and change standards of behavior or performance, staffing levels, job qualifications and job descriptions;
- (8) to determine the kind, type, location and use of City-owned equipment or facilities, provided that the City does not require use or operation of unsafe equipment or the unsafe operation of equipment;
- (9) to maintain the efficiency and integrity of the operations entrusted to the City;
- (10) to do all things reasonable and necessary to carry out the mission of the City; and
- (11) to retain the ability and authority to continue to implement the current administrative regulation in the management of probationary employees.

(b) In accordance with Virginia Code §40.1-57.2 and other applicable law, nothing in this section, any provision of this article or the terms of any collective bargaining agreement shall impair or restrict the authority of the City Council to establish its budget and appropriate funds in its discretion.

**Section 3-8-5. Employee Activity on Official Work Time and Use of City Communication Systems.**

(a) Employees shall have the right to hold informal conversations and interactions with one another to discuss workplace and employee organization issues while on duty, provided that such conversations do not interfere with the employee's job duties. Employee organizations shall not hold formal meetings that interfere with the work time of employees, except as provided for in this Article or in a collective bargaining agreement.

(b) Employees shall have the right to use City electronic communication systems to discuss employee organization business or activities, or employee organizing activity.

(c) In the absence of a collective bargaining agreement or a provision in such an agreement governing employee labor relations activity on official time, any employee representing an employee organization that has been recognized as an exclusive bargaining agent in the negotiation of an agreement under this article shall be authorized official time in amounts reasonable for such purposes, including attendance at impasse resolution proceedings.

**Section 3-8-6. Bargaining Units.**

The City shall recognize only the following bargaining units for the purposes of collective bargaining:

- (a) Police: The police employees' bargaining unit shall consist of all sworn employees of the police department as well as all civilian employees of the Police Department (including records clerks, evidence technicians, property technicians and administrative personnel); except those excluded by definition in Section 3-8-2;
- (b) Fire: The fire employees' bargaining unit shall consist of the uniformed fire employees, including fire marshals, except those excluded by definition in Section 3-8-2;
- (c) Other bargaining units may be approved by the City Council which may include any of the following:
  - (1) Labor & Trades: Those eligible classes of employees associated with maintenance and skilled crafts, i.e., job classes of workers performing duties that result directly in the comfort and convenience of the general public, or contribute to the maintenance of capital assets, land and infrastructure of the City, except those excluded by definition in Section 3-8-2; and
  - (2) Professional: Those non-supervisory and non-managerial employees within the definition of "professional employee" as set forth in Section 3-8-2; and
  - (3) Administrative and Technical: Those non-supervisory and non-managerial employees within the definition of "administrative employee" or who perform office support work and who are not confidential employees excluded from collective bargaining within the definition set forth in Section 3-8-2.

**Section 3-8-7. Labor Relations Administrator.**

- (a) A labor relations administrator ("LRA" or "the administrator") shall be appointed by the city manager in the manner set forth in subsection (c) of this section to effectively administer this article as it governs exclusive bargaining representative selection, certification and decertification procedures, labor-management disputes as defined in Section 3-8-2, and choice of mediator(s) and/or arbitrator(s) as needs arise under this article or under any collective bargaining agreement.
- (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 interest of the City or any employee organization, including an exclusive bargaining agent for a bargaining unit permitted under *this* article.
- (c) Subject to confirmation by the City Council, the City manager shall appoint the labor relations administrator who shall be selected for a 4-year term from no more than 3 (three) nominees jointly agreed upon and submitted by: (i) representatives of those employee organizations that have notified the City manager or City manager's designee of their interest in representing bargaining units permitted by this article, if no exclusive bargaining agents have been recognized at the time the selection process begins, or (ii) by the exclusive bargaining agents of the bargaining units permitted by this article, and (iii) an equal

number of designees of the City manager. If the City Council does not confirm the appointment on the recommendation of the City manager, an appointment must be made from a new agreed list of 3 (three) nominees compiled in the same manner.

- (d) The administrator's services shall be subject to termination by mutual agreement of the City manager and a majority of the exclusive bargaining agents of the bargaining units permitted by this article, and with council approval.
- (e) If the administrator dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve within six (6) months of initial appointment, the City manager shall appoint a new administrator from the list from which that administrator was selected, subject to council confirmation, to serve the remainder of the previous administrator's term. Otherwise, the administrator vacancy shall be filled as provided in subsection (c).
- (f) An administrator appointed under this section may be reappointed as provided in subsection (c).
- (g) The terms of payment for the services of the administrator shall be paid as specified by contract with the City.
- (h) The administrator shall:
  - (1) hold and conduct elections for certification or decertification pursuant to the provisions of this article 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 organization shall provide, any relevant assistance, service, and data that will enable the administrator to properly carry out duties under this article;
  - (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 article;
  - (4) investigate and attempt to resolve or settle, as provided in Section 3-8-14 - Mediation and Arbitration, charges of either the City or an employee organization engaging in prohibited practices as defined in this article. However, if the City and a certified representative have negotiated a labor-management dispute resolution procedure, 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 article. The administrator must defer to state procedures in any matter governed by the Law-Enforcement Officers' or Firefighters and Emergency Medical Technicians' Bill of Rights set forth in the Virginia Code, or to any other such procedure dictated by state statute;



- (5) determine unresolved issues of employee inclusion in or exclusion from the bargaining units permitted under this article;
- (6) obtain any necessary support services and make necessary expenditures in the performance of duties, subject to appropriation;
- (7) determine any issue regarding the negotiability of any collective bargaining proposal; and
- (8) exercise any other powers and perform any other duties and functions specified in this article of an administrative nature.

**Section 3-8-8. Recognition of Exclusive Bargaining Agent.**

A bargaining agent shall be the exclusive representative of all employees in an appropriate bargaining unit described in Section 3-8-6 if the employee organization is selected by a majority of the employees voting in an appropriate bargaining unit in an election conducted pursuant to this article and rules and procedures adopted by the LRA.

- (a) In the event that more than one (1) employee organization files a request for recognition or for election within ten (10) calendar days after a first request for recognition or for election has been filed, an election to select an exclusive bargaining agent shall be held under the rules and procedures adopted by the LRA. 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/designee or an employee organization may file exceptions to the election with the LRA 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. Any cost of such election shall be shared equally by the parties involved.
- (b) "Administratively acceptable evidence" to support a petition for certification within the meaning of Virginia Code § 40.1-57.2(C), for certification by representation election (see Section 3-8-9) or for decertification (see Section 3-8-10) may consist of a combination of membership cards or a membership roster, evidence of dues payment, or other evidence of bargaining unit employees' desire to be represented by an employee organization for collective bargaining purposes. An authorization that satisfies the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.) including, without limitation, electronic authorizations and voice authorizations, shall be valid for employees' authorization for representation for purposes of a petition filed by a labor organization for exclusive representation. The determination by the LRA (or of the City manager or manager 's designee in the absence of the LRA) of the sufficiency of a showing of majority support or for a representation election shall not be subject to challenge by any person or employee organization or by the City.

**Section 3-8-9. Request for Election.**

- (a) An employee organization may request an election be held by submitting a petition for an election to the LRA who shall notify the City manager pursuant to its rules and procedures. The petition must represent a showing of interest by at least thirty (30) percent of the employees in a bargaining unit permitted by this article.
- (b) Any additional interested employee organization must submit a petition of intervention to the LRA, which must be accompanied by a showing of interest by thirty (30) percent of the employees in the appropriate bargaining unit within ten (10) days of notice of the pending election.
- (c) An election under this article shall be held within forty-five (45) calendar days after written notice to all parties of the determination by the LRA of a valid petition for election in accordance with guidelines established by the LRA. 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, provided unless and until the LRA certifies a different organization or otherwise decertifies the agent in accordance with rules set forth in this section. In an election in which none of the choices on the ballot receives a majority, a runoff election shall be conducted in which the ballot shall provide for a selection between the two choices or parties receiving the highest and second highest number of ballots cast in the election. However, the City or the employee organization may file exceptions with the LRA in accordance with its rules, and the City need not recognize the employee organization pending the resolution of any process to review those exceptions.
- (d) Nothing in this article shall require or permit an election in any bargaining unit within twelve (12) months after a previous election has resulted in the recognition of an exclusive bargaining representative or a determination that the employees choose no representation in such bargaining unit.
- (e) No party shall have an advantage over the other in gaining access to employees during organizational or representation campaign activity. Unless there is a recognized bargaining representative, interested employee organizations will receive the same access to bargaining unit employees as is currently provided to outside organizations under City policies and practices for facility use and attendance at any meeting of such organizations under these circumstances is voluntary and open to all prospective bargaining unit employees.

**Section 3-8-10. Decertification/Withdrawal of Recognition**

- (a) Recognition of an employee organization as the exclusive bargaining agent for a bargaining unit permitted by this chapter shall continue only so long as such organization satisfies the criteria of this chapter.
- (b) If a petition for decertification of a recognized exclusive bargaining agent is presented to the LRA showing that at least fifty (50) percent of the employees in the bargaining unit no

longer want the employee organization to be their bargaining agent, then the LRA shall hold an election pursuant to Section 3-8-9 of this chapter.

- (c) A petition for decertification of a recognized exclusive collective bargaining agent in an appropriate unit may be filed in a thirty-day (30) 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 or any time after that collective bargaining agreement has expired.
- (d) For a period of one (1) year following recognition or certification of an exclusive bargaining agent, no decertification petitions may be filed.
- (e) The employee organization no longer shall be recognized as the exclusive bargaining agent of the employees in the bargaining unit if a majority of the employees in the appropriate bargaining unit vote in the decertification election to no longer be represented by the employee organization and a final outcome of that election has been certified by the LRA.

### **Section 3-8-11. Rights Accompanying Exclusive Representation.**

Any employee organization recognized as the bargaining agent for employees in an appropriate bargaining unit shall have the following rights:

- (a) To speak on behalf of all members of the unit and shall be responsible for representing the interests of all members of the bargaining unit without discrimination and without regard to employee organization membership.
- (b) To meet at reasonable times and places to engage in good faith collective bargaining on matters that, under this chapter, may be the subject of collective bargaining, in an effort to reach an agreement, subject to the tentative approval of the City manager or the City manager 's designee with responsibility for the employees in the bargaining unit.
- (c) To meet with bargaining unit employees on the premises of the City in non-secure areas during times when the employees are on break or in a non-duty status. Any other employee organization that has submitted a petition and established a valid question concerning representation of the bargaining unit shall also be permitted to meet with bargaining unit employees with the same limitations. This subsection shall not restrict an exclusive bargaining agent and the City from negotiating for greater access to employees by the exclusive bargaining agent as provision of a collective bargaining agreement.
- (d) To receive quarterly a list of all bargaining unit employees, as well as to be informed of all new hires within ten (10) days.
- (e) To meet with newly hired employees, without charge to the pay or leave time of any of the employees for a maximum of 30 minutes, within 30 calendar days from the date of hire, during new employee orientations, or if the City fails to conduct new employee orientation, at individual or group meetings.

- (f) To use City communications systems to communicate with employees regarding collective bargaining, the administration of collective bargaining agreements, the investigation of grievances, other workplace-related complaints and issues, and internal union matters involving the governance or business of the exclusive bargaining agent.
- (g) To be the only labor organization eligible to receive from the City amounts deducted from the pay of employees as authorized by written assignment of the employees, for the payment of regular and periodic dues to the exclusive bargaining agent, unless two exclusive bargaining agents of City employees agree that they can both receive deductions from the same employee. Any such authorization may be revoked in accordance with the terms of the authorization which shall provide a period of irrevocability of not more than one year. An authorization that satisfies the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.), including, without limitation, electronic authorizations and voice authorizations, shall be valid for employees' authorizations for payroll deductions and authorization for representation for purposes of a petition filed by an employee organization for exclusive representation.
- (h) To be represented at any formal discussion between one or more representatives of the City and one or more employees in the bargaining unit or their representatives concerning (1) any matter that is within the scope of collective bargaining as set forth in the definition of collective bargaining (see Section 3-8-2); or (2) any examination of bargaining unit employees by a representative of the City in connection with an investigation if the employee reasonably believes that the examination involves matters covered by any collective bargaining agreement then in effect, and the employee requests representation. The City shall inform the employee that he employee has a right to union representation prior to any such discussion or interview, and the employee shall have a right to request union representation before proceeding with the discussion or interview.
- (i) 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 effective opportunity to be present and to offer its view 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.
- (j) The requirements set forth in this section establish the minimum requirements for access to and communication with bargaining unit employees by an exclusive bargaining representative. These requirements shall not prevent the City and the exclusive bargaining representative from bargaining for greater access to or communication with employees.

**Section 3-8-12. Good Faith Bargaining.**

- (a) A written request for bargaining must be submitted by the exclusive bargaining agent to the City Manager or the manager 's designee no later than June 1, and negotiations must conclude by October 15 of any year where an agreement is sought to be effective at the beginning of the next fiscal year, in order to accommodate the City budget process. Failure of the parties to reach agreement by September 1 or such earlier time as the parties may agree in writing, shall constitute impasse and trigger impasse resolution procedures under this chapter.
- (b) Nothing in this chapter requires either party to make any concessions or agree to the other party's proposals.
- (c) Good faith bargaining shall not include submission of or a response to a proposal that:
  - (1) Violates the rights of employees as set forth in this chapter; or
  - (2) Impairs, restricts, or delegates the authority of the City as set forth in Section 3-8-4, other than as the City may expressly allow as a matter of permissive bargaining.
- (d) The City manager shall designate or appoint the City's representative (s) in collective bargaining negotiations in the city manager's sole discretion.
- (e) If an employee organization serves as the exclusive representative of more than one bargaining unit, it shall consolidate its bargaining with the City and negotiate a common master agreement on all matters not unique to particular bargaining unit.

**Section 3-8-13. Approval of Tentative Agreement.**

- (a) When an exclusive bargaining agent and the City reach a tentative agreement, they shall reduce it to writing and execute it signifying the approval of the bargaining agent and the City bargaining representative. No agreement shall be effective or enforceable:
  - (1) unless a fiscal impact study (or studies) of the tentative agreement provisions, conducted as bargaining proceeds, has been prepared by the City Manager; and
  - (2) the City Council specifies by resolution no later than the last day of December its good faith commitment to appropriate funding necessary for the City to meet obligations under the tentative agreement as set forth in the fiscal impact study provided for in this section, with the understanding that any such resolution remains subject to actual appropriation. If the City Council does not resolve to fund any provision(s) of the tentative agreement requiring appropriation or other City Council action, the resolution shall state the reason(s), and the City Manager and the exclusive bargaining agent must re-open negotiations on those provisions only, with the understanding that any such negotiations shall be scheduled as promptly as possible with the good faith objective to negotiate provisions that may be acceptable to the City Council for its consideration within the City's budget

approval schedule. Upon presentation to the City Council of any tentative agreement re-negotiated under this subsection, the City Council shall consider and specify by resolution as soon as practicable its good faith commitment to appropriate funding necessary for the City to meet obligations under the tentative agreement, or its intention not to do so, with the understanding that any such resolution remains subject to actual appropriation; and

(3) the tentative agreement is approved by:

- a. The City Manager or City Manager's designee with supervisory responsibility for the employees in the bargaining unit, as evidenced by signature, which may be an electronic signature made in accordance with applicable state law; and
- b. The exclusive representative by ratification of the tentative agreement in accordance with the bargaining representative's governing procedures, and evidenced by the signature of an authorized agent which may be an electronic signature made in accordance with applicable state law.

(b) A written agreement shall be contrary to public policy and therefore shall not bind the parties or be enforceable by either party to the extent that it is not the result of good faith bargaining as defined in Section 3-8-12.

### **Section 3-8-14. Mediation, Dispute Resolution, and Factfinding.**

(a) Mediation.

- (1) Labor-Management Disputes: The City and an exclusive bargaining agent shall discuss the feasibility of resolution of labor-management disputes informally by discussion between the parties' designees before resorting to formal mediation or arbitration. Failure to actually engage in such informal resolution prior to submitting a labor-management dispute or prohibited practice claim for mediation or arbitration shall not be a ground for dismissal of a claim under this article. In the event that the City and the bargaining agent are unable to informally resolve a labor-management dispute if and when engaged, either party or the parties jointly may submit the dispute to the LRA for mediation or arbitration, if applicable, pursuant to procedures instituted by the LRA.
- (2) Impasse: In the event that the City and the bargaining agent are unable to reach a collective bargaining agreement within one hundred twenty (120) days after their first meeting or September 1, whichever is earlier, an impasse may be called by either party and resolution may be sought by submission of any unresolved issues for mediation by the LRA or a mediator selected through procedures established by the LRA. The parties shall jointly request mediation within five (5) days of a declared impasse. The LRA or other mediator shall set reasonable deadlines for all steps of the mediation process. Negotiations on all matters should continue throughout impasse procedures.

- (3) The mediation process is advisory only, and the LRA or other mediator shall have no authority to bind either party.
  - (4) The mediation process and any comments, statements, or suggestions from the LRA or other 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. Communications between an exclusive bargaining representative and the employees that it represents regarding the mediation process shall not constitute public disclosure under this Section.
  - (5) The parties shall share the costs of mediation equally.
- (b) Arbitration: If the City and exclusive bargaining agent are unable to reach agreement resolving any labor-management dispute or impasse submitted to mediation as provided for in this article by any deadline set forth in procedures provided in this chapter or adopted by the LRA, the labor-management dispute shall be submitted to final and binding arbitration subject to the plenary authority of the City Council to determine whether to appropriate funding for the tentative agreement. Such arbitration shall be conducted pursuant to procedures adopted by the LRA which shall, at a minimum, require the parties' joint selection of an arbitrator and shall provide for timing requirements that ensure the conclusion of impasse proceedings on a schedule that complies with Section 3-8-13. The parties shall share the costs of arbitration equally. In making a determination under this subsection, the arbitrator shall consider the following factors:
- (1) Stipulations of the parties;
  - (2) The interests and welfare of the public;
  - (3) The financial ability of the employer to meet the financial obligations in the proposed collective bargaining agreement;
  - (4) The overall compensation presently received by the employees involved in the arbitration;
  - (5) Comparison of wages, benefits, and working conditions of the employees involved in the arbitration proceedings with the wages, benefits, and working conditions of other persons performing similar services in the public and private sectors, if applicable;
  - (6) 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, benefits, and working conditions;
  - (7) Comparison of working conditions of other City personnel; and

(8) Such other factors that are normally or traditionally taken into consideration in the determination of wages, benefits, and working conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in the public sector.

(c) Grievance Procedures: Any grievance, mediation, arbitration, or other resolution procedure negotiated by the parties and available to challenge disciplinary or other personnel actions set forth in Virginia Code Section 15.2-1506, et seq., shall comply with the minimum requirements set forth in the statute(s), as well as any other statutory grievance rights of law enforcement officers and fire and emergency medical employees.

**Section 3-8-15. Strikes and other Job Actions.**

Pursuant to Virginia Code § 40.1-55, any employee of the City or of any agency or authority of the City 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 twelve (12) months by the City, the Commonwealth of Virginia or any county, city, town or political subdivision of the Commonwealth or any department of any such public entities. The City agrees that no lockout shall take place.

Any employee organization determined to have violated this section shall cease to be accorded recognition under this article, shall cease to receive any dues or fees collected by paycheck withholding and shall not be accorded recognition or receive any dues or fees collected by paycheck withholding for a period of one (1) year.

**Section 3-8-16. Prohibited Practices.**

Neither the City nor any exclusive bargaining agent shall refuse to negotiate in good faith with respect to matters within the scope of collective bargaining as defined in Section 3-8-2.

(a) The City and its agents shall not:

- (1) Interfere with, restrain or coerce employees in the exercise of rights granted by this chapter;
- (2) Dominate or interfere in the administration of any employee organization;
- (3) Encourage or discourage membership in any employee organization, committee, or association including by discrimination in hiring, tenure, or other terms and conditions of employment, provided that use of City property and time for meetings and the City's communication system for employee organization business, as may be permitted by this chapter or a collective bargaining agreement, shall not be deemed encouragement prohibited by this section;
- (4) Discharge, discriminate, or retaliate against any employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony



under this article or because the employee has formed, participated in leadership in, joined, or chosen to be represented by any exclusive bargaining agent;

- (5) Deny the rights accompanying certification as the exclusive bargaining agent as conferred by this article;
- (6) Refuse to participate in good faith in any agreed-upon impasse resolution procedures or those set forth in this article; or
- (7) Refuse to reduce a collective bargaining agreement to writing and sign such agreement provided all conditions for an enforceable agreement, as set forth in this article, have been met.

(b) No employee organization or its agents shall:

- (1) Interfere with, restrain, or coerce any employee with respect to rights granted in this article or with respect to selecting an exclusive representative;
- (2) Willfully fail to represent an employee who is in a bargaining unit exclusively represented by the employee organization fairly regarding matters within the scope of collective bargaining, and without discrimination;
- (3) Refuse to bargain collectively with the City as provided in this article; or
- (4) Refuse to participate in good faith in or violate any agreed-upon impasse resolution procedures or those set forth in this article.

(c) Prohibited practice charge procedures:

- (1) Proceedings against a party alleging a violation of this Section shall be commenced by filing a charge with the LRA within 120 days of the alleged violation, or acquiring knowledge thereof, and causing a copy of the charge to be served upon the accused party in the manner of an original notice as provided in Section 3-8-18. The accused party shall have 10 days within which to file a written answer to the charge. The LRA may conduct a preliminary investigation of the alleged violation, and if the LRA determines that the charge has no legal or factual basis, they may dismiss the charge. If the charge is not dismissed, the LRA shall promptly thereafter set a time and place for a hearing. The parties shall be permitted to be represented by counsel or other designated representative, summon witnesses, and request the LRA to subpoena witnesses and the production of records on the requester's behalf. Compliance with the technical rules of pleading and evidence shall not be required.
- (2) The LRA may designate a hearing officer to conduct any hearing. The hearing officer shall have such powers as may be exercised by the LRA for conducting the hearing and shall follow procedures adopted by the LRA for conducting the

hearing. The decision of the hearing officer may be appealed to the LRA and the LRA may hear the case de novo or upon the record as submitted before the hearing officer.

- (3) The LRA shall provide for an official written transcript to report the proceedings, the costs of which shall be borne equally by the parties.
- (4) The LRA shall fill its findings of fact and conclusions. If the LRA finds that the party accused has violated any provision of this section, the LRA may issue an order directing the party to cease and desist engaging in the violation and may order such other reasonable affirmative relief as is necessary to remedy the violation. Under the provisions for court review of arbitration awards set forth in the Uniform Arbitration Act (Virginia Code §§8.01-581.01 et seq.), the LRA may petition the circuit court for enforcement of an order made under this section.
- (5) Any party aggrieved by any decision or order of the LRA may within 21 days from the date such decision or order is filed, appeal to the circuit court to obtain judicial review pursuant to the provisions for judicial review set forth in the Uniform Arbitration Act, Virginia Code §§ 8.01-581.01, et seq.

**Section 3-8-17. Time Limits.**

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

**Section 3-8-18. Notices.**

Any notice required under the provisions of this chapter 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 article or by the rules of the LRA, 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.