

**CITY OF CHARLOTTESVILLE, VIRGINIA  
CITY COUNCIL AGENDA**



Agenda Date:	February 22, 2022
Actions Required:	1) <b>Motion</b> Not to Adopt the Proposed Collective Bargaining Ordinance Received by City Council on October 29, 2021  2) <b>Adoption of a Resolution</b> Regarding a Collective Bargaining Ordinance
Presenter(s):	Michael C. Rogers, Interim City Manager Lisa Robertson, City Attorney
Staff Support:	Ashley Marshall, Deputy City Manager Samuel Sanders, Deputy City Manager
<b>Title:</b>	<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. 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 localities in which collective bargaining has been established. 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.)

To our knowledge, neither VML nor VACO, nor any agency of the Commonwealth, has developed a model ordinance for localities’ reference, although there is some movement in that direction among the membership of the Virginia Local Government Attorneys Association. 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 specify what are the mandatory topics of collective bargaining agreements—such as wages, work hours, schedules, paid time off, disciplinary policies, bonuses, and work rules—and what may be other permissive subjects.

The new Virginia statute prohibits City Council from restricting its own authority to establish an annual budget or to appropriate funds. However, since most collective bargaining agreements will involve issues relating to pay and benefits, proceeding to authorize collective bargaining and then to negotiate bargaining agreements may generate frustration in the event that the City does not have the financial capacity to fund the matters that are the subject of the negotiated agreements.

### **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.

On October 26, 2021, John Ertl, a representative of the Amalgamated Transit Union (ATU) notified the City Council that ATU is requesting recognition as the representative of a group of employees within Charlottesville Area Transit (CAT). The ATU requested City Council to adopt an ordinance to enact strong collective bargaining rights for City employees. The ATU states that it has obtained union authorization cards from a majority of City employees within CAT, including employees in the following job positions: Transit Operators, Relief Operators, Leads, Transportation Operators Supervisors, School Bus Aides, Transit Maintenance Workers, Transit Bus Technicians, Admin Assistants I and II, Customer Service Representatives, Customer Service Supervisors, Transit Safety, Security and Training Personnel, Accountant and Senior Accountants, and Marketing Coordinators. Subsequently, on October 29, 2021, the ATU transmitted a proposed ordinance to the Clerk of City Council (copy attached).

### **City Manager Analysis and Recommendation:**

The City Manager's Office does not believe that City Council has sufficient information to make an informed decision about a particular collective bargaining ordinance at this point, and strongly recommends that before undertaking an ordinance that would authorize collective bargaining agreements, it would be important for City Council to consider the financials needed for collective bargaining by preparing a financial plan to support the implementation process. This might include funding for additional [specialized] positions within the department of human resources, it may include funding to engage the services of consultants experienced in the design of collective bargaining programs and negotiation of collective bargaining agreements, etc. The City Manager's Office strongly recommends that City Council should **decline** to adopt the ordinance proposed by the ATU on October 29, 2021 (**Motion #1, below**).

- **Recommended Motion #1:** *“I move NOT to approve the collective bargaining ordinance presented to City Council on October 29, 2021 by John Ertl representing the Amalgamated Transit Union on behalf of a majority of members of the Charlottesville Area Transit).”*

That being said: it appears that a majority of City Councilors may **favor** the establishment of collective bargaining within the City administration, so the City Manager's Office also recommends that City Council discuss, during its Budget adoption process for FY23, the possibility of appropriating funding for additional staff positions and consultants, as necessary to commence the process of developing and implementing a collective bargaining ordinance for the City (**Motion #2, below**).

- Recommended Motion #2: *“I move to adopt the Resolution Affirming City Council’s intention to explore implementation of collective bargaining for City of Charlottesville employees.”*

### **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. These potential costs/ expenditures have not yet been studied/scoped and are not addressed within the current (FY22) City Budget. The City Manager's Office recommends that initially, a minimum of two (2) FTEs should be added to the Department of Human Resources in the proposed the fiscal year 2023 budget. Additionally, existing funding should be reallocated, to allow commencement of collective bargaining pre-work and a request for reallocation of funds, beginning in the FY2022 budget will be presented to Council for their consideration and action.

### **Alternatives:**

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

### **Alignment with Council Vision Areas and Strategic Plan:**

Should Council choose to engage in collective bargaining it could meet the strategic plans Goal 4 to foster a strong, creative and diverse economy by developing a quality workforce (4.1) as well as Goal 5 to foster a well-managed and responsive organization by integrating effective business practices (5.1).

### **Community Engagement:**

The state law does not require a public hearing or any particular public engagement. The work of preparing an ordinance for City Council's consideration should be guided by City Council—specifically through prioritizing funding within its future budgets. Through the budgetary process Council will engage the public regarding where budget priorities should be established.

### **Attachments:**

- Resolution Stating City Council's Intention to Explore Implementation of Collective Bargaining for City Employees
- October 29, 2021 ATU Proposed Ordinance

**RESOLUTION**  
**AFFIRMING CITY COUNCIL'S INTENTION TO EXPLORE IMPLEMENTATION OF**  
**COLLECTIVE BARGAINING FOR CITY OF CHARLOTTESVILLE EMPLOYEES**

**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 generally supports the development of a collective bargaining program for City employees, 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, or what the impact of adopting an ordinance and proceeding with implementation would have on its annual budgets for Fiscal Year 2023 and beyond; now, therefore,

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

1. The City Council will include discussion of collective bargaining within its budget discussions of the level of funding needed for City operations during Fiscal Year 2023.
2. The City Manager shall compile information and analysis regarding pay, benefits, and working conditions for the groups of employees who are seeking a collective bargaining ordinance (fire, police and transit), and will provide analysis for potential solutions, including collective bargaining, with fiscal impact analysis of those solutions.
3. In considering collective bargaining, the City Manager shall give due consideration to the City firefighters' March 6, 2021 proposed ordinance, the Amalgamated Transit Union's October 29, 2021 proposed ordinance, and other sample ordinances deemed appropriate for the City of Charlottesville.
4. 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, subject to the availability and appropriation by City Council of funding to cover the expense of those services.

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

*Proposed by the Amalgamated Transit Union (ATU) to City Council, and  
received via email in the Office of the Clerk of City Council October 29, 2021*

Article VII

- A. Effective May 1, 2021, VA Code 40.1-57.2 provides as follows: “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. This sub-chapter, along with any related revisions to other articles of Chapter 19, sets forth the City’s Rules for City employees’ engagement in collective bargaining with the City and its Departments.
- C. Declaration of Policy: It is the public policy of the City of Charlottesville to promote a harmonious, peaceful, and cooperative relationship between the city government and its employees and to protect the public by assuring the responsive, orderly, and efficient operation of city government and services. It is in the public interest that employees have the opportunity to bargain collectively over wages, hours, and other terms and conditions of employment through a representative of their choice. It is also in the public interest that the city government and a representative of city employees bargain collectively in good faith without interference with the orderly process of government and that they implement any agreements reached through collective bargaining. In enacting this law, the City Council finds that where public employees have been granted the right to share in the decision-making process affecting wages and working conditions, they have been better able to share important insights and to exchange ideas and information on operations with their administrators. Accordingly, government services are made more effective.
- D. The Council has determined that this Article will also serve the public interest in promoting labor stability and avoiding potentially disruptive labor disputes.
- E. Article VII of Chapter 19 of the Charlottesville City Code is hereby established with this ordinance.
- F. Definitions:
  - 1. *Arbitration*. A dispute mediation process through which a neutral, mutually selected arbitrator makes a final decision with regards to the disputed issues.
  - 2. *Bargaining Unit or unit*. Any of the bargaining units defined in section H.
  - 3. *Certified union*. A union that employees choose to represent them as their exclusive bargaining representative in a bargaining unit as defined in section H in accordance with the procedures of this Article.

4. *City* means the City of Charlottesville acting through its city manager
5. *City Council*. The Charlottesville City Council.
6. *Collective bargaining*. To perform the mutual obligation of the city and the certified union to meet and negotiate in good faith at reasonable times and places regarding wages, benefits, and terms and conditions of employment, with the good faith intention of reaching a binding agreement remaining in effect until superseded by a new agreement. The fiscal terms of any agreement reached by collective bargaining shall be subject to appropriation of funds by the City Council.
7. *Collective bargaining agreement (CBA)*. A binding agreement reached between the city and the certified union that addresses wages, benefits, and terms and conditions of employment that shall remain in effect until superseded by a new agreement.
8. *Confidential employee*. An individual who customarily and regularly devotes a majority of work time to assisting and acting in a confidential capacity to persons who formulate, determine, and effectuate management policies in the field of labor relations.
9. *Employee*. Any person who works for the City of Charlottesville, but excluding:
  - a. A seasonal employee, as defined in sub-section 15 below
  - b. A confidential employee, as defined in sub-section 8 above
  - c. A managerial employee, as defined in sub-section 13 below
  - d. A supervisor, as defined in sub-section 17 below
10. *Impartial agency*. The American Arbitration Association and the Federal Mediation and Conciliation Service
11. *Labor Relations Administrator*. The City of Charlottesville Labor Relations Administrator, a contract position created by this Article.
12. *Lockout*. Any action that the city takes to interrupt or prevent the continuity of work properly and usually performed by the employees for the purpose and with the intent of either coercing the employees into relinquishing rights guaranteed by this Article or of bringing economic pressure on employees for the purpose of securing the agreement of their certified union to certain collective bargaining terms.
13. *Managerial employee*. An executive or department head, a deputy to an executive or department head, or other individual who formulates, determines, and effectuates management policies in the field of labor relations.
14. *Mediation*. An effort by the mediator chosen under this Article to assist confidentially in resolving, through interpretation, suggestion, and advice, a dispute arising out of collective bargaining between the City and the certified union.
15. *Seasonal Employee*. 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.
16. *Showing of Interest Form*. Signature in an electronic, telephonic, digital, or paper format that indicates a desire by an employee to be represented by a union in collective bargaining. An authorization, signature, or petition that satisfies the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 *et seq.*) shall be valid for the showing of interest form. In addition, a membership card or dues deduction authorization constitute a showing of interest form under this Article.
17. *Supervisor*. An 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, or discipline other employees. For purposes of employees of the Fire and Rescue Department, employees at or below the rank of Battalion Chief are not considered supervisors.

18. *Strike*. When an employee, in concert with two or more other employees, for the purpose of obstructing, impeding or suspending any activity or operation of the City, willfully refuses to perform the duties of his or her employment.
19. *Wages, benefits, and terms and conditions of employment* means personnel policies, practices, and matters, whether established by directive, regulation, or otherwise, affecting working conditions, including, but not limited to, compensation, the City's pay plan, hours and scheduling, working conditions, health and safety, workplace equity, grievance procedures, pensions, and other benefits.
20. *Union*. A not-for-profit organization that engages with the city as an employer concerning wages, hours, and terms and conditions of employment and that represents or seeks to represent employees in a bargaining unit as described in section H.

#### G. Employee Rights

1. Employees have the right to self-organization: to form, join, support, assist, contribute to, or participate in a union; to engage in collective bargaining collectively through representatives of their own choosing; and to engage in other concerted activities for purposes of collective bargaining or other mutual aid or protection without interference, restraint, reprisals, or coercion by the City.
  - a. Employees have the right to discuss union issues with each other while on duty, provided that such communications do not unreasonably interfere with the employee's job duties.
  - b. Employees have the right to use City email systems, telephones, fax systems, bulletin boards, and other communications systems to communicate regarding workplace and union issues.
2. Employees have the right to be represented fairly by their certified union, if any, in collective bargaining.
3. Employees have the right to request representation by their certified union (or any union, if no union has been certified) during any investigative interview conducted by the City if the employee reasonably believes that the interview involves a matter that could lead to the employee's discipline. The City shall inform the employee that the 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.

#### H. Units for Collective Bargaining

1. There are nine separate bargaining units for collective bargaining and for purposes of certification and decertification. Members of these units are all city government employees, as defined in Section F(9). The employees are divided into the following bargaining units:
  - a. All uniformed employees of the Fire Department at or below the rank of Battalion Chief and all emergency dispatchers in the Department of Emergency Communications;
  - b. all sworn employees of the Police Department at and below the rank of Lieutenant;
  - c. all non-supervisory employees in trades and maintenance occupations except employees described in subsection g or subsection h;
  - d. all non-supervisory employees whose functions are primarily clerical in nature except employees described in subsection g or subsection h;
  - e. all non-supervisory professional employees except employees described in subsection g or subsection h;
  - f. all non-supervisory technical employees except employees described in subsection g or subsection h;

- g. all non-supervisory employees of Charlottesville Area Transit and the Pupil Transportation Department;
- h. all non-supervisory employees of the Department of Libraries; and
- i. all nonsupervisory professional and technical employees of the Department of Human Services providing direct care and services to members of the public.

I. Labor Relations Administrator (“LRA”)

1. A labor relations administrator (“LRA”) shall be appointed by the City Manager in the manner set forth in subsection 3 of this section to effectively administer this chapter as it governs exclusive bargaining representative certification, and decertification procedures, unfair labor practice claims, and other disputes that may arise.
2. The LRA 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 union, including a certified union for a bargaining unit permitted under this chapter.
3. Subject to confirmation by the City Council, the City Manager shall appoint the LRA, who shall be selected for a four-year term, from no more than three nominees jointly agreed upon and submitted by:
  - a. (1) representatives of those unions that have notified the City Manager or City Manager’s designee of their interest in representing bargaining units permitted by this chapter, if no union has been certified as an exclusive representative at the time the selection process begins, or (2) by the exclusive bargaining representatives of the bargaining units permitted by this chapter, and
  - b. an equal number of nominees of the City Manager

The City Manager shall submit his or her selection from the three nominees for appointment as the LRA to the City Council for confirmation within five days after the parties reach agreement on the names of the nominees. If the City Council does not confirm the appointment of an LRA, an appointment must be made from a new agreed list of nominees compiled in the same manner. (The new list can include any prior jointly-agreed on nominees who were not selected.)

4. The LRA's services shall be subject to termination by mutual agreement of the City Manager and a majority of the certified unions of the bargaining units permitted by this chapter, and with the approval of the City Council. If no unions have been certified as exclusive bargaining representatives, then the LRA’s services shall be subject to termination by mutual agreement of the City Manager and a majority of representatives of those unions that have notified the City Manager or City Manager’s designee of their interest in representing bargaining units permitted by this chapter.
5. If the LRA dies, resigns, or otherwise becomes unable or ineligible to continue to serve within six months of initial appointment, the City Manager shall appoint a new LRA from the list from which that LRA was selected, subject to City Council confirmation, to serve the remainder of the previous LRA’s term. Otherwise, the LRA vacancy shall be filled as provided in subsection 3 above.
6. An LRA appointed under this section may be reappointed as provided in subsection 3.
7. The terms of payment for the services of the LRA shall be paid as specified by contract with the City.
8. The LRA shall:
  - a. Be responsible for holding and supervising elections for certification or decertification of exclusive bargaining representatives pursuant to the provisions of this chapter and issuing the certification or decertification or causing these actions to occur.

- b. Request from the City or a union, and the City or such union shall provide, any relevant assistance, service, and data that will enable the LRA to properly carry out duties under this chapter.
  - c. Hold hearings and make inquiries, administer oaths and affirmations, examine witnesses and documents, take testimony, and receive evidence, and request the attendance of witnesses and the production of relevant documents in proceedings within the responsibility of the LRA under this chapter.
  - d. Investigate and attempt to resolve or settle, charges of the City or a union engaging in prohibited practices as defined in this chapter.
  - e. Determine unresolved issues of employee inclusion in or exclusion from the bargaining units permitted under this chapter.
  - f. Obtain any necessary support services and make necessary expenditures in the performance of duties, subject to appropriation.
  - g. Exercise any other powers and perform any other duties and functions specified in this chapter of an administrative nature.
9. If a petition is filed requesting certification of an exclusive bargaining representative, or a party seeks to file an unfair labor practice claim, or some other dispute arises that would normally be decided by the LRA, but the LRA has not yet been appointed, the parties shall bring the certification petition or dispute to a mutually agreed upon impartial entity. The impartial entity shall perform the duties of the LRA set forth in this chapter, and follow all of the procedures that the LRA must follow, to certify a union or resolve the dispute. The impartial entity shall perform the duties of the LRA set forth in this chapter for the matter for which the interim LRA was mutually selected.
10. Findings of the LRA shall be considered as a final award of an arbitrator in accordance with the Virginia Uniform Arbitration Act, Virginia Code Section 8.01—581.01 et. seq.

J. Selection, Certification, and Decertification Procedures

1. An employee, group of employees, or union seeking the certification of a union as the exclusive representative of a bargaining unit shall file a petition with the LRA stating the filer's name, the name and address of the union, and the desire of the filer for the union to become the certified union. The petition to the LRA must be accompanied by a copy of showing of interest forms from at least thirty percent of the employees within the unit signifying their desire to be represented by the union for purposes of collective bargaining. The City is precluded from having access to the signatures from the supporting employees or any other information which would reveal the identity of the supporting employees.
  - a. The LRA must accept showing of interest forms from employees signifying their desire for representation by a union regardless of whether the signatures are in a digital, electronic, telephonic or paper format. A showing of interest form that satisfies the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 *et seq.*) shall be valid. Showing of interest forms shall not expire unless affirmatively revoked by the signer.
  - b. In addition, a membership card or dues deduction authorization constitute a showing of interest form under this Article.
2. The City must furnish to the LRA and the union a list of employees in the petitioned-for bargaining unit within three days after the filing of the petition. The LRA shall then determine the sufficiency of the representation petition within seven days of receiving the City's list by comparing the showing of interest forms with the total number of employees in the bargaining unit, as may be evidenced by an accurate list of employees furnished by the City to the LRA and the union.

3. If the LRA determines after a tabulation of the submitted showing of interest forms that the union has not met the required showing of interest, then the LRA must allow not less than 30 days (from the LRA's determination) for the union to submit additional showing of interest forms to correct the insufficient showing of interest. The LRA may provide the union additional time for good cause beyond 30 days to submit additional showing of interest forms to satisfy the showing of interest.
4. If the LRA determines that a union's representation petition is sufficient (i.e. has met the 30% showing of interest), then any union shall be allowed to intervene within 10 days of the LRA's determination. To intervene, the intervening union must file a petition with the LRA stating its name, address, and its desire to be certified. The petition to the LRA must be accompanied by a copy of showing of interest forms from 30 percent of the employees within the unit signifying their desire to be represented by the intervening union for purposes of collective bargaining. The City is precluded from having access to the signatures from the supporting employees or any other information which would reveal the identity of the supporting employees. The LRA shall then determine the sufficiency of the intervention petition within five days of receiving the City's list by comparing the showing of interest forms with the total number of employees in the bargaining unit, as may be evidenced by the list of employees furnished by the City to the LRA and the union.
5. If the LRA determines that one or more unions have met the 30% showing-of-interest threshold in a bargaining unit, then the LRA shall direct the City to provide the union(s) that have met the showing of interest, as well as the LRA, with a list of all employees in the bargaining unit and their contact information. The list of employees must be in a manipulable digital file format that is agreed to by the union(s). The City shall provide the list of employees to the LRA and the union that has met the showing of interest threshold within five (5) calendar days of the LRA's finding of the notice of sufficiency.
  - a. The list must provide the following information that the City maintains in its possession of every employee in the petitioned-for bargaining unit: The employee's name, department, job title, worksite address, home address, work telephone number, home and personal cellular phone number, workplace email address, personal email address, and unique ID number (such as employee ID).
  - b. The following are not public records as defined in the Virginia Freedom of Information Act, §§ 2.2-3700 - 2.2-3715 and are confidential and may not be otherwise disclosed by the City, except as provided in this Section: (1) Home addresses, home and personal cellular telephone numbers, personal email addresses, dates of birth, and unique ID numbers (such as employee IDs) of employees and (2) Communications between a certified union and its members.
6. If a union has been certified, an employee within the unit may file a petition with the LRA for decertification of the certified union. The employee must also send a copy of the petition to the certified union. The petition to the LRA must be accompanied by the signatures of thirty percent of the employees within the unit alleging that the union presently certified is no longer the choice of the majority of the employees in the unit. If the LRA determines that the petition for decertification has met the requisite thirty percent showing of interest and has been timely filed under this Article, then the LRA shall conduct a decertification election following the procedures for a certification election laid out in this section.

- a. No decertification election shall be conducted in a bargaining unit for the first 12 months after a union is certified in that bargaining unit or until after the first contract ratification vote takes place, whichever occurs later.
  - b. If a collective bargaining agreement is in effect, a petition filed under this section must not be entertained unless it is filed not more than 180 days and not less than 150 days before the expiration of the collective bargaining agreement.
  - c. If a different union is certified as the result of an election carried out under this section that union shall be treated as a successor in interest and party to any collective bargaining agreement that the previous union was a party to.
7. If the LRA determines that a petition has met the showing-of-interest threshold, it shall conduct a secret ballot election for all bargaining unit employees to be begin no less than 30 days from the finding of sufficiency, to determine if and by whom the employees wish to be represented, as follows:
  - a. The election shall take place via mail ballot, unless all parties request an in-person election, in which case the LRA shall order an in-person election. The LRA may use a qualified vendor to assist in conducting the election.
  - b. The election ballots must contain, as choices to be made by the voter, the names of the petitioning or certified union, the name or names of any intervening unions that the LRA has found to have filed sufficient petitions, and a choice that the employee does not desire to be represented by any of the named unions.
  - c. The LRA shall serve upon the City and the participating union(s) a report certifying the results of the election. If a union receives the votes of a majority of the employees who voted, the LRA shall certify the union so elected as the certified union.
  - d. If no union receives the votes of a majority of the employees who voted, the LRA shall not certify a representative. Unless a majority of the employees who vote choose “no representative,” a runoff election must be conducted. The runoff election shall contain the two unions that received the largest and second largest number of votes in the original election.
  - e. If a properly supported and timely filed petition to decertify an existing certified union, and a properly supported and timely filed petition to certify another union, are filed during the same time period, one election must be held to determine which union, if any, the employees in the unit desire to represent them. The election ballot must contain, as choices to be made by the voter, the names of the petitioning and certified unions, and a choice that the employee does not desire to be represented by any of the named unions. All other applicable requirements and procedures for the election must be followed.
8. The LRA’s certification of results is final unless, within 14 days after service of the report and the certification, any party serves on all other parties and files with the LRA objections to the election. Objections must be verified and must contain a concise statement of facts constituting the grounds for the objections. The LRA must investigate the objections and, if substantial factual issues exist, must hold a hearing. Otherwise, the LRA may determine the matter without a hearing. The LRA may invite, either by rule or by invitation, written or oral argument to assist it in determining the merits of the objections. If the LRA finds that the election was not held in substantial conformity with this Article, or if the LRA 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

LRA must confirm the certification initially issued. In any event, the LRA must make a determination as to whether or not to certify the election within 21 days of the filing of objections.

K. Good Faith Bargaining and Impasse

1. After a union has been certified, the union shall initiate the collective bargaining process. Bargaining shall commence no fewer than 10 days after the union initiates the collective bargaining process.
2. The City and the certified union must meet at reasonable times and negotiate in good faith with respect to wages, benefits, and other terms and conditions of employment.
  - a. Such obligation does not compel either the City or the certified union to agree to a proposal or require the making of a concession.
  - b. A union representing employees of the Police Department as identified in section H(1)(b) shall be prohibited from negotiating with the City over any discipline, discharge, or disciplinary procedures.
3. Agreements with certified unions shall provide for final and binding arbitration of grievances concerning the interpretation, implementation, or alleged violation of the agreement in accordance with Virginia Code Section 15.2-1404. Arbitration proceedings conducted pursuant to collective bargaining agreements and this Article shall be governed by the Uniform Arbitration Act, Virginia Code Section 8.01—581.01 et. seq.
  - a. The details of these grievance and arbitration processes shall be subject to negotiation.
  - b. Disciplinary actions taken by the City against employees of the Police Department shall be prohibited from being contested through the grievance and arbitration processes of the union representing employees of the Police Department as identified in section H(1)(b).
4. In any year in which the City and a certified union bargain collectively, the City and certified union upon mutual agreement must appoint an arbitrator. If the parties do not agree on an arbitrator, then they shall request a list of arbitrators from an impartial agency (such as the American Arbitration Association or the Federal Mediation and Conciliation Service) and use that agency's process of ranking and/or striking until an arbitrator is selected. The arbitrator must be selected within thirty days of the start of bargaining and shall be available during the bargaining process. Fees and expenses of the arbitrator shall be shared equally by the City and the certified union.
5. When the City and a certified union reach agreement on a collective bargaining agreement (with or without mediation), they shall reduce it to writing, sign the agreement, and submit it to the certified union for ratification. The certified union may adopt its own ratification procedures. The collective bargaining agreement shall only take effect if the certified union ratifies the collective bargaining agreement. If the certified union does not ratify the agreement, then the parties shall return to negotiations.
6. *Mediation.*
  - a. After 90 days of collective bargaining, either party may request the services of the arbitrator, or the parties may jointly request those services before 90 days have elapsed. The arbitrator shall engage in mediation by bringing the parties together to encourage a voluntary agreement.
  - b. A bona fide impasse exists if the arbitrator finds, in the arbitrator's sole discretion, that the parties are at a bona fide impasse or if the parties remain at impasse 30 days after the arbitrator began the mediation process.

- c. If the parties are at a bona fide impasse, then the dispute must be submitted to binding arbitration.
7. *Invocation of binding arbitration.*
- a. If binding arbitration is invoked, the arbitrator must require each party to submit jointly a memorandum of all items previously agreed on.
  - b. The arbitrator may require the parties to submit oral or written evidence and arguments in support of their proposals on the disputed issues. The arbitrator may hold a hearing to assist the arbitrator in making a determination on these issues.
  - c. The arbitrator must issue a determination resolving the impasse between the parties and must consider all previously agreed-on items, integrated with the disputed items, to reach his or her determination. The arbitrator shall issue a determination no more than 30 days after a bona fide impasse is declared.
  - d. In making a determination under this subsection, the arbitrator may consider only the following factors:
    - i. 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 terms and conditions of employment.
    - ii. Comparison of wages, hours, benefits, and terms and conditions of employment of employees of comparable unionized employers by size and function;
    - iii. Comparison of wages, hours, benefits, and conditions of employment of other Charlottesville personnel;
    - iv. The interest and welfare of the public;
    - v. The cost of living;
    - vi. The ability of the City to finance economic adjustments, and the effect of the adjustments on the standard of public services provided by the City.
  - e. The determination made by the arbitrator integrated with all previously agreed on items, has the effect of a collective bargaining agreement agreed to by the parties
8. Funding for implementation of agreements.
- a. When a negotiated agreement has been reached, or a final and binding arbitration decision has been rendered in accordance with this Article, if the funds necessary to implement the agreement have not yet been adopted by the City Council, the City shall submit a request for funds necessary to implement the agreement within five days after:
    - i. the date on which the certified union ratifies the agreement, or
    - ii. the date on which the arbitration decision is issued.
  - b. If the funds necessary to implement an agreement have not yet been adopted by the City Council, the City Council shall approve or reject the request for funds as a whole when it adopts the annual budget. If the annual budget for any term of the agreement has been adopted prior to the submission of a request for funds to implement the agreement by the City Council, the City Council shall consider the request for funding as a budget modification at the first meeting subsequent to the submission of the request for funds necessary to implement the agreement.
  - c. If the City Council does not fund the agreement, either party may reopen negotiations.

- d. At the request of the certified union, those provisions of the agreement not requiring action by the City Council shall be effective and operative in accordance with the terms of the agreement.
9. A collective bargaining agreement shall continue in full force and effect past its expiration date until it is replaced by a subsequent collective bargaining agreement. Negotiations for a subsequent collective bargaining agreement shall begin at either party's request in advance of the expiration of the current collective bargaining agreement.

#### L. Dues Deduction & Authorization

1. The City shall deduct and promptly remit dues for any employee, including a retired employee, who has authorized union dues deductions, or deductions for any other service, program or committee provided or sponsored by a union, in accordance with this section and the terms of the employee's authorization.
2. An authorization that satisfies the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 *et seq.*) shall be valid for employees' authorizations for payroll deductions.
3. If there is no certified union in a given bargaining unit, then any union shall be eligible to receive dues or other payments deducted from the pay of City employees.
4. If there is a certified union for a bargaining unit, then that union shall be the only union eligible to receive dues or other payments deducted from the pay of City employees.

#### M. Union Rights

1. Unions, whether or not they are certified, shall have the following rights:
  - a. To meet with bargaining unit employees on the premises of the City during times when the employees are on break or in a non-duty status, including the right to conduct worksite meetings during meal periods and other nonwork breaks, and before and after the workday, on the City's premises.
  - b. To use City email systems, telephones, fax systems, bulletin boards, and other communication systems to communicate with employees regarding workplace issues, union business or activities, or employee organizing activity. The City shall not invade the privacy of employees or unions who are using City email, phone, or fax systems for union purposes.
  - c. The provisions of this section shall not limit the rights of a union to communicate with employees.
2. Certified unions shall have the following rights:
  - a. To receive from the City, not less than every 30 days, a list of all bargaining unit employees that lists each employee's name; job title; department; work location; work, home, personal cellular telephone numbers; work and personal email address(es) on file with the City; home address, and unique ID number (such as employee ID). The union shall also have the right to receive this information for any newly hired employee not later than ten days after such employee is hired. The City must provide this information in an editable digital file format agreed to by the certified union.
    - i. The following are not public records as defined in the Virginia Freedom of Information Act, §§ 2.2-3700 - 2.2-3715 and are confidential and may not be otherwise disclosed by the City, except as provided in this Section: (1) Home addresses, home and personal cellular telephone numbers, personal email addresses, dates of birth, and unique ID numbers (such as employee IDs) of employees and (2) Communications between a certified union and its members.

- b. To meet with individual employees on the premises of the City during the workday to investigate and discuss grievances, workplace-related complaints, and other workplace issues.
- c. *Official Time*: Any employee representing a certified union in the negotiation of an agreement or the processing of grievances under this Chapter shall be authorized to engage in such negotiations and grievance handling during work time. Such official time shall be granted in any amount the City and the certified union involved agree to be reasonable, necessary, and in the public interest.
- d. *Orientation*: Certified unions shall have the right to meet with newly hired employees for 60 minutes during new employee orientation or, if the City fails to conduct new employee orientation, at individual or group meetings within the first 30 days of hire, without charge to the pay or leave time of those employees. The City shall provide the certified union with at least ten (10) days' notice of the time and place of the new employee orientation (including the virtual location, if applicable), and shall provide the certified union with an electronic list of expected participants and their contact information at least forty-eight (48) hours in advance of the orientation. The certified union shall also have the right to provide materials for the orientation packet.
- e. To meet with all employees within the bargaining unit, at the worksite and without charge to the pay or leave time of the employees, for not less than 30 minutes, within 60 days from the date of certification or from the date of ratification of the latest collective bargaining agreement, whichever is more recent, and within every 120 days thereafter. These meetings can take place during employee orientations or trainings, or if the City does not hold such orientations or trainings, at individual or group meetings.
- f. To be represented at:
  - i. any formal discussion between one or more representatives of the City and one or more employees in the unit or their representatives concerning any grievance or any personnel policy or practice or other condition of employment; or
  - ii. any examination of an employee in the unit by a representative of the City in connection with an investigation if:
    - 1. the employee reasonably believes that the examination may result in disciplinary action against the employee; and
    - 2. the employee requests representation.
  - iii. The City shall annually inform its employees of their rights under this subsection and under Section G(3).
- g. The requirements set forth in this section establish the minimum requirements for access to and communication with bargaining unit employees by a certified union. These requirements must not prevent the City from granting the certified union greater access to or communication with employees and must not prevent the parties from negotiating for increased access.

#### N. Unfair Labor Practices

- 1. The City, its agents or representatives are prohibited from:
  - a. Interfering, restraining, or coercing employees in the exercise of the rights guaranteed by this Article; discriminating in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any union; or discharging or otherwise

- discriminating against an employee because she or he has signed or filed an affidavit, petition or complaint or given any information or testimony under this Article;
- b. Deterring or discouraging employees or applicants for public employee positions under this Article from becoming or remaining members of a union, or from authorizing representation by a union, or from authorizing dues or fee deductions to a union, or from exercising any of their rights under Section G;
  - c. Dominating or interfering with the formation, existence or administration of any union; or knowingly aiding any other entity in their effort to discourage membership in or authorization of dues or fee deductions to a union, or from authorizing representation by a union, including by permitting that entity's use of the City's email systems for such purposes
  - d. Refusing to bargain collectively in good faith with the certified union;
  - e. Refusing to participate in good faith in the dispute resolution procedures under this Article;
  - f. 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.
  - g. Providing any private entity, other than the certified union or petitioning union as provided for in this Chapter, any portion of personally identifiable information about the employees within a bargaining unit that is exempt from disclosure, including but not limited to the following: (1) Home addresses or other personal mailing addresses; (2) Telephone numbers; (3) Email addresses; (4) Dates of birth; (5) Categories of employees within a bargaining unit, including an employee's membership status with the union; (6) Unique ID numbers (such as employee IDs); (7) Email correspondence or other communication between a certified union and the employees within the bargaining unit; or (8) Any other information that is exempt from disclosure under state law.
2. Employees, unions, their agents or representatives are prohibited from:
    - a. Discriminating against an employee with regard to the terms or conditions of membership in the union on the basis of race, color, creed, national origin, sex, sexual orientation, gender identity, immigration status, age, preferential or non-preferential civil service status, marital or pregnancy status, or disability or handicapping condition;
    - b. 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 certified union of employees in a bargaining unit;
    - c. Refusing to participate in good faith in the dispute resolution procedures under this Article;
    - d. Willfully failing to represent an employee who is in a bargaining unit for which the union is the certified union fairly regarding matters within the scope of collective bargaining, without regard to membership in the union;
    - e. Engaging in a strike which is prohibited by this Article.
  3. Procedure Concerning Alleged Unfair Labor Practices.
    - a. Any allegation that a person has engaged in an unfair labor practice shall be submitted to the LRA within 180 days of the alleged unlawful conduct, subject to such procedural rules and regulations as the LRA may issue. Upon receiving a complaint, the LRA shall issue a ruling within 60 days. If an employee or union files a complaint alleging that one or more employees

has been terminated in violation of Section N(1), the LRA shall issue a ruling within 15 days. These timelines may be extended by mutual agreement of the parties.

- b. Compliance with the technical rules of evidence shall not be required. If upon the preponderance of the testimony taken, the LRA finds that any person named in the complaint has engaged in or is engaging in an unfair labor practice, then the LRA shall state its findings of facts and shall issue and cause to be served on such person an order requiring that he cease and desist from such unfair labor practices and take such affirmative action, including reinstatement with or without back pay, as will effectuate the policies of this Article. If the LRA finds that the City discharged, demoted, or reduced the hours of an employee in violation of Section N(1), the employee shall be entitled to the same damages as an employee who recovers for wage theft under Virginia Code Section 40.1-29. LRA orders regarding unfair labor practices may further require a party to make reports from time to time showing the extent to which the party has complied with the order. The LRA's remedial powers shall not be limited to the effects of the immediate case and may be designed to prevent future unfair labor practices, notwithstanding the penal nature of such requirement.
- c. If the preponderance of evidence has not shown that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the LRA shall state its findings of facts and shall issue an order dismissing the said complaint.

O. Strikes and Lockouts

1. An employee or union must not engage in any strike in violation of Va. Code Ann. § 40.1-55, nor the City engage in any lockout. If the City, an employee, or a union alleges a violation of this section, the alleged violation will be resolved in accordance with the procedures in Section N.

P. Arbitration

1. Findings of the LRA or of a neutral arbitrator in this Article, as well as findings of a neutral arbitrator concerning the interpretation, implementation, or alleged violation of a collective bargaining agreement negotiated under this Article, shall be conclusive and binding upon the parties and shall be considered as an award of an arbitrator in accordance with the Virginia Uniform Arbitration Act, Virginia Code Section 8.01—581.01 et. seq.

Q. Severability

1. If any provision of this chapter or the application of such provision, is held to be unconstitutional or unlawful, the remainder of this chapter and the application of its remaining provisions shall not be affected and shall remain in full force and effect.