City Of Richmond, Virginia
Office of the City Clerk

Request to Withdraw Legislation

Paper Number: Ord. 2021-345

Chief Patron: Ms. Reva Trammell

Introduction Date: December 13, 2021

Chief Patron Signature: Reva M. Trammell

For Office Use Only

Attestation: Caudia Neal

Effective Date: 7-20-22

INTRODUCED: December 13, 2021

AN ORDINANCE No. 2021-345

To amend ch. 2, art. VI of the City Code by adding therein a new div. 6, consisting of §§ 2-1301.1—2-1301.20, concerning collective bargaining, for the purpose of providing for collective bargaining with certain City employees.

Patrons – Ms. Trammell, Ms. Nye, Vice President Robertson, Ms. Jordan, Ms. Lynch and Mr. Jones

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Approved as to form and legality
by the City Attorney

PUBLIC HEARING: JAN 10 2022 AT 6 P.M.

THE CITY OF RICHMOND HEREBY ORDAINS:

§ 1. That Chapter 2, Article VI of the Code of the City of Richmond (2020) be and is hereby amended by **adding therein a new** Division 6, consisting of sections numbered 2-1301.1 through 2-1301.20, as follows:

DIVISION 6

COLLECTIVE BARGAINING

Sec. 2-1301.1. Statement of policy.

AYES: _____ NOES: _____ ABSTAIN: _____

ADOPTED: _____ REJECTED: _____ STRICKEN: _____

the supreme right of the citizens of the City that their government provides 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 collective bargaining 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 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 (1) to achieve and maintain diversity, equity and inclusion in City government, and (2) to advance all things reasonably necessary to achieve organizational excellence, while at all times elevating principles of cooperation, ethics, honesty, initiative, and learning.

Sec. 2-1301.2. Definitions.

As used in this division, 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 section, submit their differences to a third party for a final and binding decision subject to the provisions of this division.

Benefits means, for the purpose of this division, leave (including paid and unpaid, vacation, and holidays), insurance (including contributions and levels of coverage), general supplemental retirement plans, and police and fire retirement plans presently made available under City authority.

City means the City of Richmond acting through the Chief Administrative Officer or the Chief Administrative Officer'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 regarding wages and benefits, as the term benefits is defined herein, hours, and other terms and conditions of employment, including procedures to resolve employee grievances with the good faith intention of reaching an agreement of no shorter duration than three years and remaining in effect until superseded by a new agreement.

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 division and resulting from collective bargaining as defined in this section.

Confidential employee means any employee who works in or for:

(1) Directly for a member of the City Council;

(2) Directly for the Mayor;

(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) The Office of Management and Budget;

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

(1) An employee of the courts or of any officer 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 Virginia 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, *exclusive bargaining agent*, and *bargaining agent* mean the employee organization recognized by the City as the only organization to bargain collectively for all employees in a bargaining unit.

Impasse means the failure of the City and an exclusive bargaining representative to agree upon the terms of a first or successor collective bargaining 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 an action challenged as a prohibited practice under this division; a dispute as to the negotiability of subject matters; and question of eligibility of disputes for resolution by mediation or impasse arbitration. It shall not mean disciplinary or other adverse personnel actions within the meaning of Code of Virginia, § 15.2-1507(A)(1), as implemented by any personnel rules adopted pursuant to section 2-1265 or a grievance filed pursuant to a negotiated grievance procedure.

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 division, 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 or layoffs, reorganizations, hiring, discipline, evaluations, pay, assignments, transfers, promotions or demotions.

Mediation means an effort by a neutral, third-party chosen under the terms of this division 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.

Seasonal employee means an employee who is hired into a position for which the customary annual employment is three (3) 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, assign, evaluate, reward or discipline other employees, or adjust grievances, or effectively to recommend any such actions. With respect to the Department of Fire and Emergency Services, “supervisor” includes all personnel at the rank of battalion chief or above. With respect to the Department of Police, “supervisor” includes all personnel at the rank of captain or above.

Strike means any strike or willful refusal to perform the duties of an employee's employment that would be deemed to terminate that employee's employment pursuant to Code of Virginia, § 40.1-55.

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 post-secondary 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.

Sec. 2-1301.3. 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 division 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 division.

Sec. 2-1301.4. City's rights and authority.

(a) 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, provided, however, that the City does have the obligation to negotiate with the exclusive bargaining representative over the number of employees used to perform any work or services if such decision has an impact on the safety of employees;

(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 or 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 its administrative regulations in the management of probationary employees.

(b) Notwithstanding the provisions of any collective bargaining agreement, the City retains the right to take whatever actions may be necessary to carry out the City's mission during emergencies declared by officials having legal authority to declare emergencies. If such actions result in specific alleged breaches of an applicable collective bargaining agreement, those disputes will be subject to the dispute resolution process set forth in the applicable collective bargaining agreement.

(c) In accordance with Code of Virginia, § 40.1-57.2 and other applicable law, nothing in this division, any provision of this division 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. Any collective bargaining agreement reached under this division shall be subject to the 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.

Sec. 2-1301.5. Employee activity on official work time; use of City communication systems.

(a) Solicitation of support, membership, or dues, or engaging in any other union activities is not permitted when any of the employees involved are on duty except as lawfully may be provided in a collective bargaining agreement entered into under this division.

(b) 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 division shall be authorized official time in amounts reasonable for such purposes, including attendance at impasse resolution proceedings.

(c) City electronic communication systems shall not be used to conduct intra-employee organization business or activities, or employee organizing activity, unless provided for by negotiated collective bargaining agreement provisions.

Sec. 2-1301.6. Bargaining units.

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

(1) *Police.* The police employees' bargaining unit shall consist of all sworn employees of the Department of Police.

(2) *Fire and Emergency Services.* The fire and emergency services employees' bargaining unit shall consist of the uniformed fire and emergency services employees, including fire marshals.

(3) *Labor and Trades.* The labor and trades employees' bargaining unit shall consist of 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.

(4) *Professional.* The professional employees' bargaining unit shall consist of non-supervisory and non-managerial employees within the definition of "professional employee" as set forth in section 2-1301.2.

(5) *Administrative and Technical.* The administrative and technical employees' bargaining unit shall consist of non-supervisory and non-managerial employees who are administrative employees or technical employees or who perform office support work and who are not confidential employees.

Sec. 2-1301.7. Labor relations administrator.

(a) A labor relations administrator, referred to in this division as the "administrator," shall be selected and appointed in the manner set forth in subsection (c) of this section to effectively administer this division as it governs exclusive bargaining representative selection, certification and decertification procedures, labor-management disputes as defined in section 2-5-68, and choice of mediators or arbitrators as needs arise under this division 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 division.

(c) The selection of the administrator will be conducted through competitive negotiation for nonprofessional services as provided in chapter 21 of this Code. Proposals will be evaluated by a panel that will consist of an equal number of City representatives and either (i)

representatives of those employee organizations that have notified the Chief Administrative Officer of their interest in representing bargaining units permitted by this division, if no bargaining agents have been recognized at the time the selection process begins or (ii) representatives of the bargaining agent for the bargaining unit permitted by this division. The panel shall evaluate and rank all proposals and recommend up to the three highest-ranked offerors for presentation to the City Council for approval. The City Council shall approve one of the offerors presented to the City Council as the administrator.

(d) The administrator's services shall be subject to termination by mutual agreement of the Chief Administrative Officer and a majority of the exclusive bargaining agents of the bargaining units permitted by this division, and with approval by the City Council by resolution.

(e) If the administrator dies, resigns, becomes disabled, or otherwise becomes unable or ineligible to continue to serve within six months of initial appointment, 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 entered into pursuant to Chapter 21 of this Code.

(h) The administrator shall:

(1) Hold and conduct elections for certification or decertification pursuant to the provisions of this division 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 division.

(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 division.

(4) Investigate and attempt to resolve or settle, pursuant to this division, charges of either the City or an employee organization engaging in prohibited practices as defined in this division. 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 division. The administrator must defer to the procedures in Code of Virginia, §§ 9.1-300—9.1-304 and 9.1-500—9.1-507, and any other procedure required by the Code of Virginia.

(5) Determine unresolved issues of employee inclusion in or exclusion from the bargaining units permitted under this division.

(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.

(8) Exercise any other powers and perform any other duties and functions specified in this division of an administrative nature.

Sec. 2-1301.8. Recognition of exclusive bargaining agent.

(a) A bargaining agent shall be the exclusive representative of all employees in an appropriate bargaining unit described in section 2-1301.6 if the employee organization is selected by a majority of the employees voting in the bargaining unit in an election conducted pursuant to this division and rules and procedures adopted by the administrator.

(b) In the event that more than one employee organization files a request for recognition or for election within ten 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 administrator. 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 Chief Administrative Officer or an employee organization may file exceptions to the election with the administrator alleging that there has been misconduct which has affected the outcome of the election, and the City need not recognize the employee organization pending the resolution of any process to review those exceptions. Any cost of such election shall be shared equally by the parties involved.

(c) "Administratively acceptable evidence" to support a petition for certification within the meaning of Code of Virginia, § 40.1-57.2(C) for certification or decertification under this division 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 (Code of Virginia, §§ 59.1-479—59.1-497), 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 administrator 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.

Sec. 2-1301.9. Request for election.

(a) An employee organization may request an election be held by submitting a petition for an election to the administrator who shall notify the Mayor pursuant to its rules and procedures. The petition must represent a showing of interest by at least 30 percent of the employees in a bargaining unit permitted by this division.

(b) Any additional interested employee organization must submit a petition of intervention to the administrator, which must be accompanied by a showing of interest by 30 percent of the employees in the appropriate bargaining unit within ten days of notice of the pending election.

(c) An election under this division shall be held within 45 days after written notice to all parties of the determination by the administrator of a valid petition for election in accordance with guidelines established by the administrator. 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, unless and until the administrator certifies a different organization or otherwise decertifies the bargaining 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

administrator in accordance with its rules, and the City will not recognize the employee organization pending the resolution of any process to review those exceptions.

(d) Nothing in this division shall require or permit an election in any bargaining unit within 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.

Sec. 2-1301.10. Decertification.

(a) Recognition of an employee organization as the exclusive bargaining agent for a bargaining unit permitted by this division shall continue only so long as such organization satisfies the requirements of this division.

(b) If a petition for decertification of a recognized exclusive bargaining agent is presented to the administrator showing that at least 50 percent of the employees in the bargaining unit no longer want the employee organization to be their bargaining agent, then the administrator shall hold an election pursuant to section 2-1301.9.

(c) A petition for decertification of a recognized exclusive collective bargaining agent in an appropriate unit may be filed in a 30-day period between the one hundred eightieth

and one hundred fiftieth 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 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 administrator.

Sec. 2-1301.11. Rights accompanying exclusive representation.

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

(1) To speak on behalf of all employees in the unit and shall be responsible for representing the interests of all employees in the bargaining unit without discrimination and without regard to employee organization membership;

(2) To meet at reasonable times and places to engage in good faith collective bargaining on matters that, under this division, may be the subject of collective bargaining, in an effort to reach an agreement, subject to the tentative approval of the Chief Administrative Officer.

(3) 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 a provision of a collective bargaining agreement.

(4) 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.

(5) 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 (Code of Virginia, §§ 59.1-479—59.1-497), 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.

(6) 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 (i) any matter that is within the scope of collective bargaining as set forth in this division's definition of collective bargaining, or (ii) 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 or any matter that may reasonably lead to discipline of that employee, and the employee requests representation.

(7) 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.

Sec. 2-1301.12. Good faith bargaining.

(a) The bargaining agent must submit a written request to the Chief Administrative Officer for any collective bargaining intended to result in a collective bargaining agreement to become effective for a given fiscal year in time for collective bargaining to begin on or before July 1 of the preceding fiscal year and conclude, including any impasse resolution procedures, by December 1 of the preceding fiscal year to ensure adequate time for inclusion in the Mayor's proposed budget for the given fiscal year.

(b) Nothing in this division 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 (i) violates the rights of employees as set forth in section 2-1301.3 or (ii) impairs, restricts, or delegates any authority of the City that this division has explicitly reserved solely to the City.

(d) The Mayor shall designate or appoint the City's representative(s) in collective bargaining negotiations in the Mayor's sole discretion.

(e) If an employee organization serves as the exclusive bargaining 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.

(f) The Chief Administrative Officer 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 division with the specific intent to address salary compression, as commonly defined or understood, resulting from collective bargaining with eligible police and fire uniformed employees.

Sec. 2-1301.13. Collective bargaining agreement.

(a) No collective bargaining agreement shall be effective or enforceable until the City Council has adopted an ordinance to approve the text of the collective bargaining agreement after reviewing the fiscal impact statement required by this section and holding the requisite public hearing.

(b) When the parties reach a tentative agreement, they shall reduce it to writing, and the Chief Administrative Officer and the duly authorized representative of the bargaining agent shall sign the tentative agreement to indicate their approvals. The bargaining agent's signature certifies that the bargaining unit has approved or ratified the tentative agreement in accordance with the procedures or governing rules of the bargaining agent.

(c) No later than 60 days after the parties have signed the tentative agreement, the Chief Administrative Officer shall (i) prepare a fiscal impact statement for the tentative agreement and (ii) submit the tentative agreement with the fiscal impact statement for approval by the City Council via ordinance in accordance with the City Council's standard procedures and schedules.

(d) Should the City Council reject the tentative agreement, it may cause the Council Chief of Staff to provide a detailed statement of the reasons for rejection to inform any further negotiations.

(e) A collective bargaining agreement reached by the parties shall be contrary to public policy and shall not bind the parties or be enforceable by either party to the extent that it is not the result of good faith bargaining in accordance with section 2-1301.12.

Sec. 2-1301.14. Labor-management dispute and impasse resolution.

(a) 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 resort 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 grounds for dismissal of a claim under this division. 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 administrator for mediation or arbitration, if applicable, pursuant to procedures instituted by the administrator.

(b) In the event that the City and the bargaining agent are unable to reach a collective bargaining agreement within 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 pursuant to the following process:

(1) The party declaring impasse will submit to the administrator a request for mediation. The mediation will be conducted by the administrator or a mediator selected through procedures established by the administrator. The administrator or other mediator shall set reasonable deadlines for all steps of the mediation process. Negotiations on all matters shall continue throughout impasse procedures.

a. The mediation process is advisory only, and the administrator or other mediator shall have no authority to bind either party.

b. The mediation process and any comments, statements or suggestions from the administrator 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. Only attendees and participants chosen by a party may attend or participate in the mediation.

c. The parties shall share the costs of mediation equally.

(2) At the request of either party, and not later than September 15, impasses not resolved through negotiation or mediation shall be submitted to non-binding fact-finding. The parties shall jointly select a fact-finder or, if they are unable to agree on a fact-finder, they shall request a list of seven arbitrators from the Federal Mediation and Conciliation Service. Each party in turn shall strike a name from the list until only one name remains. The party making the first strike will be chosen by a random method. Negotiations shall continue throughout the impasse procedures. The selected fact-finder shall proceed as follows:

a. The fact-finder will convene hearings for the parties to submit evidence in support of their positions. Such hearings will be open to the public.

b. In making any decision under the impasse procedure authorized by this division, the fact-finder shall give weight to the following factors:

1. The lawful authority of the City;

2. Stipulations of the parties;

3. The interests and welfare of the public;

4. The financial ability of the City to meet the costs of any items to be included in the agreement.

5. Comparison of wages, hours, and terms and conditions of employment of the employees involved in the arbitration proceedings with the wages, hours, and terms and conditions of employment of other persons performing similar services in the public and private sectors, if applicable.

6. The average consumer prices for goods and services, commonly known as the cost of living;

7. The overall compensation presently received by the employees involved in the arbitration;

8. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings; and

9. Such other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and terms and conditions of employment through voluntary collective bargaining, mediation, arbitration, or otherwise between the parties, in public service or in private employment.

c. The fact-finder shall produce a written decision that comprised of a proposed collective bargaining agreement and an explanation of the basis for the proposed collective bargaining agreement. The fact-finder shall submit the written decision to the Chief Administrative Officer and the exclusive bargaining representative not later than October 15.

d. During the seven-day period following the fact-finder's submission of the written decision, the parties shall meet and attempt to negotiate an agreement based on the fact-finder's recommendations. By mutual agreement, the seven-day period may be extended once for a maximum of seven days.

e. At the conclusion of the seven-day period, or a longer period, if agreed to by the parties, if the parties still have not reached an agreement, the fact-finder's decision will be submitted to the City Council. Each party will be allowed to submit written position statements to the City Council within ten days in support of or in opposition to the fact-finder's decision.

f. At its next meeting following the period for party submissions to the City Council, the City Council shall provide at least 30 minutes to each of the parties subject to the impasse for the purposes of explaining and justifying its last offer and thereafter render a decision on the matters subject to continuing impasse. The City Council may extend the 30-minute period and is not required to do so in a manner that gives equal time to each party.

g. The City Council will vote on whether to accept the fact-finder's decision. In doing so, it may amend parts of it consistent with the City Council's regular process for amending matters before the City Council. In considering

whether and how to approve or amend the fact-finder's decision, the City Council members will give deference to the fact-finder's evaluation of evidence, provided that the Council shall have complete legislative discretion in approving, amending, or rejecting the fact-finder's decision.

h. The results of City Council's vote on the fact-finder's decision will be a proposed new collective bargaining agreement to be acted upon by the City Council in the mode prescribed by section 2-1301.13.

i. The expenses of the fact-finder shall be borne equally by the parties.

Sec. 2-1301.15. Strikes and lockouts.

Pursuant to Code of Virginia, § 40.1-55, any employee who, in concert with two or more other such employees, strikes or willfully refuses to perform the duties of their employment shall be deemed by that action to have terminated their employment and shall be ineligible for employment in any position or capacity during the next 12 months by the City. The City shall not engage in a lockout of employees from the workplace. Any employee organization determined to have violated this section shall be deemed decertified under this division, shall cease to receive any dues or fees collected by paycheck withholding, and shall not be certified as a bargaining agent, otherwise accorded recognition as a bargaining agent, or receive any dues or fees collected by paycheck withholding for a period of one year.

Sec. 2-1301.16. Prohibited practices.

(a) 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 this division.

(b) The City and its agents shall not:

(1) Interfere with, restrain or coerce employees in the exercise of rights granted by this division;

(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;

(4) Discharge or discriminate against any employee because the employee has filed an affidavit, petition, or complaint or given any information or testimony under this division or because the employee has formed, 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 division;

(6) Refuse to participate in good faith in any agreed-upon impasse resolution procedures or those set forth in this division; 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 division, have been met.

(c) No employee organization or its agents shall:

(1) Interfere with, restrain, or coerce any employee with respect to rights granted in this division 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 division; or

(4) Refuse to participate in good faith in or violate any agreed-upon impasse resolution procedures or those set forth in this division.

Sec. 2-1301.17. Prohibited practice charge procedures.

(a) Proceedings against a party alleging a violation of section 2-1301.16 shall be commenced by filing a charge with the administrator within 90 days of the alleged violation, or acquiring knowledge thereof, and causing a copy of the charge to be served upon the accused party in accordance with section 2-1301.19. The accused party shall have 10 days within which to file a written answer to the charge. The administrator may conduct a preliminary investigation of the alleged violation, and if the administrator determines that the charge has no legal or factual basis, they may dismiss the charge. If the charge is not dismissed, the administrator 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 administrator 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.

(b) The administrator may designate a hearing officer to conduct any hearing. The hearing officer shall have such powers as may be exercised by the administrator for conducting the hearing and shall follow procedures adopted by the administrator for conducting the hearing. The decision of the hearing officer may be appealed to the administrator and the administrator may hear the case de novo or upon the record as submitted before the hearing officer.

(c) The administrator shall provide for an official written transcript to report the proceedings, the costs of which shall be borne equally by the parties.

(d) The administrator shall file its findings of fact and conclusions. If the administrator finds that the party accused has violated any provision of this section, the administrator 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, Code of Virginia, §§ 8.01-581.01—8.01-581.016, the administrator or either party may petition the circuit court within 21 days from the date of the decision for enforcement of an order made under this section.

(e) Any party aggrieved by any decision or order of the administrator may within 21 days from the date of 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, Code of Virginia, §§ 8.01-581.01—8.01-581.016.

Sec. 2-1301.18. Time limits.

Any time limits in this division may be extended by written agreement of the Chief Administrative Officer, the employee organization, and any other appropriate parties.

Sec. 2-1301.19. Notices.

Any notice required under this division 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 party to be served, unless otherwise provided in this division or by the rules of the administrator, which rules shall provide for the electronic service of documents. Refusal of certified mail by any party shall be considered service. Prescribed time periods shall commence from the date of the receipt of the notice.

Sec. 2-1301.20. Review of division.

The Mayor shall conduct a review of this division and its effectiveness for the purposes set forth in section 2-1301.1 and submit a report of the Mayor's findings and recommendations to the City Council within one year after the division has been in effect for two years.

§ 2. This ordinance shall be in force and effect upon adoption.

RECEIVED
By B L Fore at 12:16 pm, Dec 13, 2021

Ordinance/Resolution Request

TO	Haskell Brown, Interim City Attorney
THROUGH	Joyce Davis, Interim Council Chief of Staff
FROM	Steven Taylor, Council Policy Analyst
COPY	Reva Trammell, 8th District Council Member Rick Bishop, 8th District Liaison Tabrica Rentz, Interim Deputy City Attorney
DATE	November 30, 2021
PAGE/s	1 of 2
TITLE	**Establishing Collective Bargaining Procedures in the City of Richmond's Government.**

This is a request for the drafting of an **Ordinance** ☒ **Resolution** ☐

REQUESTING COUNCILMEMBER/PATRON
Trammell

SUGGESTED STANDING COMMITTEE
Government Operations

ORDINANCE/RESOLUTION SUMMARY
The patron requests that legislation be drafted for Council's consideration establishing requisite processes needed to establish collective bargaining with City employees, substantially as attached and where legally possible.

BACKGROUND
Effective May 1, 2021 the General Assembly allows local governments to collectively bargain with the employees of a local government. Local governments need to act to authorize collecting bargaining, to define the scope of collective bargaining, and to establish processes by which bargaining units are defined and representation recognized, all so that employees can effectively bargain with management towards one or more collective bargaining agreements.

The City of Alexandria and the County of Arlington have adopted organizing ordinances.

FISCAL IMPACT STATEMENT

Fiscal Impact	Yes ☐ No ☒
Budget Amendment Required	Yes ☐ No ☒
Estimated Cost or Revenue Impact	$ N/A

Note: Costs of establishing collective bargaining procedures cannot be fully determined at this time. This is not a paper authorizing any collective bargaining agreement with any group of employees, thus the fiscal impact should be limited to staff time. It is likely that expert assistance in labor relations may need to be procured by the City Attorney's Office and the Office of the CAO.

Attachment/s **Yes ☒ No ☐ Draft Collective Bargaining Framework Ord.**