

**AN ORDINANCE ADOPTING A BARGAINING FRAMEWORK FOR THE CITY OF CHESTERFIELD, FOR COLLECTIVE BARGAINING WITH THE FRATERNAL ORDER OF POLICE**

**WHEREAS**, in light of the Missouri Supreme Court's rulings in *Independence National Education Association v. Independence School District*, 223 S.W.3d 131 (Mo. banc 2007); *American Federal of Teachers v. Ledbetter*, 387 S.W.3d 360 (Mo. banc 2012), and *Eastern Missouri Coalition of Police Fraternal Order of Police, Lodge 15 v. City of Chesterfield*, 386 S.W.3d 755 (Mo. banc 2012), the City of Chesterfield believes it is necessary to establish a framework for its police officers to engage in collective bargaining; and

**WHEREAS**, adopting and implementing procedures for a secret ballot election and conducting a secret ballot election in response to the submission of signed cards in a prospective bargaining unit is critical to ensure that eligible voters can select a bargaining representative without pressure or undue influence and to ensure the propriety of the union's status as the exclusive bargaining representative;

**NOW THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHESTERFIELD, MISSOURI, AS FOLLOWS:**

**SECTION 1**

The City's framework is as follows:

**Article I  
Establishment of Appropriate Bargaining Unit**

1.1 The provisions of this Ordinance shall apply to all regular full-time, non-probationary personnel employed in the City's Police Department.

1.2 Any labor organization attempting or desiring to represent covered individuals employed by the City shall submit a specific, written description of the bargaining unit sought, together with specific exclusions, to the City, via certified mail addressed to the City Administrator. The request by the labor organization shall also include a representation that the labor organization has obtained the necessary showing of interest required in Article 2.

1.3 Within 15 days of receipt of the proposed bargaining unit description, the City shall convene a three-person Personnel Committee that shall be responsible for representing the City in the collective bargaining process. The Personnel Committee shall consist of the City Administrator, the department head for the department that includes the sought-after bargaining unit, and the

City Attorney. In addition, the City may retain the services of a Special Counsel to aid and advise the Personnel Committee.

1.4 Within 30 days of receipt of the proposed bargaining unit, the Personnel Committee shall determine whether the proposed bargaining unit is appropriate and either (a) agree to the unit, (b) send the description back to the labor organization for further specificity, or (c) reject the unit as being inappropriate with specific, written reasons for the rejection.

1.5 In deciding whether the proposed bargaining unit is appropriate, the Personnel Committee shall determine whether the employees sought to be included in the proposed bargaining unit share a clear and identifiable community of interest. The Personnel Committee shall consider the following criteria:

- (a) Similarity in the kind of work performed;
- (b) Similarity in the qualifications, skills, and training of the employees;
- (c) Common supervision and determination of labor-relations policy;
- (d) Frequency of contact or interchange among the employees;
- (e) Geographical proximity among the employees;
- (f) Similarity in employment benefits, compensation or method of determining compensation, hours of work, and other terms and conditions of employment;
- (g) Continuity or integration of work processes;

## **Article 2 Showing of Interest**

2.1 Any labor organization attempting or desiring to represent individuals employed by the City shall upon request present to the City's Finance Director authorization cards containing the signatures of at least fifty percent (50%) of the eligible employees in the proposed bargaining unit, indicating that they wish to be represented by the labor organization in question as their exclusive bargaining representative for the purpose of collective bargaining.

2.2 The adequacy of the showing of interest shall be determined administratively by the Finance Director. The showing of interest determination is not subject to review or litigation. Any person who has evidence that the showing of interest was obtained improperly, such as through fraud or coercion, may bring the evidence to the attention of the Finance Director.

2.3 The Finance Director shall keep the identity of the individuals in the proposed bargaining unit who have signed authorization cards in support of the

union strictly confidential, and may not disclose that information to the affected department head, the City Administrator, or any other official of the City.

2.4 The Finance Director shall issue a written report immediately following the Finance Director's determination of the adequacy of the labor organization's showing of interest. The report shall only indicate whether the labor organization has, or has not, provided the necessary showing of interest.

### **Article 3 Election Procedure**

3.1 As soon as administratively feasible after the later of the date the Personnel Committee determines the proposed bargaining unit is appropriate pursuant to Article 1 (including any appeal of that determination as provided in Article 4), or the date the Finance Director determines the labor organization has provided a sufficient showing of interest pursuant to Article 2, the Personnel Committee shall order that an election be conducted to determine whether a majority of employees in the proposed bargaining unit desire exclusive representation by the petitioning labor organization. The election shall be by secret ballot and shall be conducted at City Hall not later than forty-five (45) days but not earlier than thirty (30) days following the later of the final determination of the appropriateness of the unit or the adequacy of the labor organization's showing of interest; provided, however, that the Personnel Committee and the petitioning labor organization may mutually agree to any other date for the secret ballot election.

3.2 Once an election date has been set, the City Administrator shall issue a notice informing all eligible voters of the date, time, and place of the election. Such notice shall be distributed to all eligible employees and shall be posted within the affected department.

3.3 No employee of the City and no representative of the labor organization shall attempt to threaten, intimidate, coerce, or otherwise restrain any eligible voter in the free exercise of his or her individual choice to support or oppose the selection of the labor organization in question as the exclusive bargaining representative of the employees in the proposed bargaining unit.

3.4 The ballot shall read "Do you wish to select [labor organization] as the Exclusive Bargaining Representative for [description of bargaining unit] employed within the City of Chesterfield?" The ballot will include check boxes for marking "yes" or "no" in response to this question.

3.5 No labor organization will be recognized as representing any employee by any means other than as prescribed in Articles 1 through 4 of this Ordinance.

3.6 The City shall retain the services of an independent, neutral party to serve as an Election Official to oversee the conduct of the election. The

Election Official shall ensure the eligible employees are provided adequate means by which each employee may exercise their right to vote by secret ballot during the election. Each employee must cast his or her ballot in person at the time of the election; there shall be no absentee voting or mail ballot voting unless the City and the petitioning labor organization mutually agree to an alternative voting procedure. The City and the petitioning labor organization shall have the right to have one observer each to oversee the balloting procedure; the City's representative may not be a supervisory official from among the department involved in the election.

3.7 Immediately following the conduct of the secret ballot election, the Election Official shall open each ballot and count the number of ballots in favor of representation by the petitioning labor organization. The City and the petitioning labor organization shall have the right to have representatives present when the ballots are unsealed and counted. Immediately following the ballot count, the Election Official shall issue a report indicating how many ballots were cast in favor of representation by the labor organization and shall certify the results of the election pursuant to the provisions of Section 3.8.

3.8 No labor organization shall be authorized as the exclusive bargaining representative of an appropriate bargaining unit unless a majority of those employees eligible to vote in the proposed bargaining unit cast ballots in favor of representation by the petitioning labor organization.

3.9 No labor organization may seek to represent any bargaining unit (or portion of any bargaining unit) by secret ballot election more than once in any consecutive, twelve (12) month period.

3.10 Managerial personnel are not covered by this Ordinance, and may not be included within any proposed bargaining unit within the City. Managerial personnel include but are not limited to any officials of the Police Department holding the rank of Lieutenant, Captain, Assistant Chief of Police and Chief of Police. Confidential employees shall not be included within the same bargaining unit as non-supervisory employees within the Police Department.

#### **Article 4 Hearing Procedure**

4.1 In the event the petitioning labor organization disputes the Personnel Committee's determination regarding the appropriateness of the unit, the petitioning labor organization must file written objections with the City Administrator, via certified mail, within seven (7) days of the Personnel Committee's written decision. For this purpose, the date of mailing of the written objections shall constitute the date of the filing of objections. Failure to appeal the Personnel Committee's determination within this time period shall constitute a waiver of any objections to the Personnel Committee's determination, which shall become final and binding.

4.2 Any appeal under this Article shall be heard and adjudicated by the City Council. The City Council may, in its sole discretion, delegate its responsibility to adjudicate any unit appropriateness issues to a committee of its members designated for this purpose.

4.3 The City Council (or appointed committee) shall elect a hearing officer from among its members to moderate and preside over the hearing. The hearing officer shall determine the admissibility of any disputed evidence and/or witness testimony. Formal rules of evidence shall not apply to the hearing but may be used as a guide by the hearing officer in making any determinations required by this section. Decisions of the hearing officer regarding the admissibility of evidence or witness testimony shall be final and binding, and not subject to review.

4.4 Each party shall have the right to present arguments, witnesses and supporting documentation at the hearing in support of its position(s). The petitioning labor organization shall have the burden of proof by a preponderance of the evidence that the Personnel Committee's determination is erroneous. The City Council (or appointed committee) may allow each party to make opening statements. Thereafter, the petitioning labor organization shall present its case-in-chief, including its witnesses and evidence in support of its position. Each party shall have the right to cross examine witnesses called by the opposing party. The City shall be given the opportunity to rebut the petitioning labor organization's case-in-chief, including presenting its witnesses and any evidence in support of its position. Further rebuttal or surrebuttal shall be at the discretion of the City Council (or appointed committee). The City Council (or appointed committee) may allow each party to make closing statements and/or to file post-hearing briefs at its sole discretion. The hearing shall be transcribed by a court reporter, the cost of which shall be borne equally by the City and by the petitioning labor organization.

4.5 Within fourteen (14) days of the later of the conclusion of the hearing or the filing of post-hearing briefs, the City Council (or appointed committee) shall render a decision by majority vote on the disputed unit description issues, which shall be final and binding and not subject to review. The City Council (or appointed committee) shall appoint one of its members to prepare a written decision that reflects the majority view of the City Council (or appointed committee). The decision of the City Council (or appointed committee) shall be final and binding, and not subject to further appeal.

## **Article 5**

### **Collective Bargaining**

5.1 Any solicitation of City employees to consider joining a labor organization or a bargaining unit may not be conducted while such employee is on duty in his or her capacity as an employee of the City. Any meetings of City employees to discuss joining a bargaining unit, selecting an exclusive bargaining representative, or negotiating a labor contract with the City, shall be held by

employees while off duty. Any such solicitation or meetings are deemed a violation of this Ordinance, and disciplinary action may be considered for such a violation.

5.2 No labor organization may seek to represent any bargaining unit (or portion of any bargaining unit) by secret ballot election more than once in any consecutive, twelve (12) month period.

5.3 The City may not enter into any collective bargaining unit that requires employees in the bargaining unit to become members of the union or to pay union dues, fees or assessments as a condition of employment by the City. Each employee in the affected bargaining unit shall be free to join and/or to support, or to refuse to join and/or to support, any labor organization that is designated as the exclusive representative for a unit of City employees.

5.4 In the event a labor organization is certified as the exclusive bargaining representative of a unit of City employees, the Personnel Committee and the labor organization shall meet as soon as administratively feasible and commence negotiations for a collective bargaining agreement. Both sides shall bargain in good faith, and make an earnest effort to reach a mutually acceptable agreement, but neither side shall be required to offer any particular concession or to agree to any particular proposal.

5.5 If the parties reach a tentative agreement, the Personnel Committee shall present the tentative agreement to the City Council for approval or rejection. The Council may approve the entire agreement or any part(s) thereof. If the Council rejects any portion of the tentative agreement, the Council may return the rejected portion(s) of the agreement to the parties for further bargaining, or may adopt the agreement absent the rejected portion(s) of the agreement provided the rejected portion(s) of the agreement have been the subject of good faith negotiations between the parties. The decision of the City Council shall be final and binding, and not subject to review or appeal.

5.6 In the event the parties are unable to reach a tentative agreement, the Personnel Committee may present to the City Council the most recent contract offer made to the labor organization during contract negotiations. If the City Council determines that the Personnel Committee has engaged in good faith negotiations with the labor organization concerning the terms and provisions of the proposed contract, the City Council may enact part or all of the tendered contract offer. The decision of the City Council shall be final and binding, and not subject to review or appeal.

## **Article 6 Decertification**

6.1 In the event a majority of the employees included within a designated bargaining unit determine they no longer wish to be represented by a recognized labor organization, they may revoke their designation of the labor

organization by tendering a signed and dated petition for revocation to the City Administrator. Upon receipt of such a petition, the Personnel Committee appointed pursuant to Article 2 shall investigate the veracity of the petition. If the Personnel Committee determines that the petition to revoke representation is authentic, it will so advise the City Council, which shall then revoke recognition of the labor organization.

**Article 7  
Strikes**

7.1 In accordance with RSMo. § 105.530, strikes and other unlawful conduct by any employee, whether individually or in concert with others (including sympathy, unfair labor practice, or wildcat strikes), sit downs, slow downs, work stoppages, boycotts, any acts honoring a picket line, or any other acts that interfere with the city's operations are prohibited. Employees who violate this provision are subject to disciplinary action, up to and including termination of employment.

**Article 8  
Severability**

8.1 If any term or provision of this Ordinance is found to be invalid or unenforceable, the remaining terms and provisions of this Ordinance shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**Section 2.**

This Ordinance shall be in full force and effect from and after its passage and approval as provided by law.

Passed and approved this 5<sup>TH</sup> day of December, 2016.

Bob Nation  
PRESIDING OFFICER

Bob Nation  
MAYOR - BOB NATION

ATTEST:

Vickie Hass  
CITY CLERK

First Reading Held: 12/5/16