



PETITION STATEMENT OF SUFFICIENCY

IO 18-002 Petition Title:

Shall the Charter of the City of Colorado Springs be amended by the addition of a new Article XVI thereto granting collective bargaining rights to all uniformed City fire employees except for the Fire Chief and his direct reports, and specifically: providing that such employees shall have the right to select and remove an employee organization to serve as the sole and exclusive bargaining representative, to bargain on behalf of such employees for a collective bargaining agreement with the City as employer, concerning items related to safety, wages, salaries, monetary payments, employer-paid health insurance, employer-paid accident, life and disability insurance, employer-paid pension programs including the amount of pension and contributions, employer-offered deferred compensation, health insurance for retired fire employees, paid time off, uniform and equipment allowances, employer-paid expense reimbursement, hours of work, and all other terms and conditions of employment of such employees; providing for the term of collective bargaining agreements of not less than one (1) year nor longer than three (3) years; providing for impasse between the City and the exclusive bargaining agent regarding any issues to be presented to a fact-finder, with the fact-finder to be selected by agreement between the exclusive bargaining representative and the City; providing the factors that the fact-finder shall consider in his or her decision; providing that if either the City or the collective bargaining representative does not accept the decision of the fact-finder on any issue, it shall be presented to the voters only at a special municipal election, with each issue to be a separate question; and providing that any adopted appropriations ordinance shall be amended as necessary to comply with the recommendations from the fact-finder or the special election results?

TEXT OF PROPOSED CHARTER AMENDMENT ADDING A NEW ARTICLE XVI THERETO TO READ AS FOLLOWS:

Section 16-10. Statement of policy. It is the policy of the City that members of the fire department shall not be allowed to strike without discipline consistent with Section 13-70 of the City Charter or engage in any work stoppage, slowdown, or mass absenteeism. Further, it is the policy of the City to promote the improvement of labor relations between the City and the members of the Fire Department and to protect the public health, safety and welfare by assuring at all times the orderly and uninterrupted operations and services of City Government.

Full time Fire Department employees who are in the bargaining unit are hereby provided the right to bargain collectively concerning certain subjects with the City as employer through a recognized bargaining agent and a method for resolving impasses in such bargaining. The establishment of this method of impasse resolution shall be deemed to be a recognition of the necessity to provide an alternative mode of settling impasses where employees such as members of the Fire Department, as a matter of public policy, must be and are denied the ability to strike.

Further, it is the public policy of the City to achieve and, maintain harmonious relations between the City and the bargaining unit described below, to provide for equitable adjustment of differences which may arise in this bargaining unit, and to establish proper standards of wages, hours and other terms and conditions of employment for this bargaining unit.

Section 16-20. Definitions. As used in this Article, unless the context otherwise requires:

(a) "Advisory fact-finder" means the person agreed upon by the parties or appointed by the American Arbitration Association, its successor organization, or a similar organization agreed upon by both parties in accordance with section 16-60.

(b) "Bargaining unit" means all firefighters employed by the City, excluding supervisors.

(c) "Collective bargaining" means the performance of the mutual obligation of the City, through its designated representatives, and an exclusive representative to meet at reasonable times and places and negotiate in good faith with respect to terms and conditions of employment, to meet and negotiate in good faith any question arising under a collective bargaining agreement, and to execute a written contract incorporating any agreements reached.

(d) "Collective Bargaining Agreement" means an agreement negotiated between an exclusive representative and the City, including one accepted by the parties after fact-finding, in addition to any terms approved by the registered electors of the City pursuant to section 16-80.

(e) "Compensation" means base wages or salary; any form of direct monetary payments; employer-paid health, accident, life, and disability insurance programs; employer-paid pension programs, including the amount of pension and contributions to the extent not controlled by law; deferred compensation; retiree health programs; paid time off; uniform and equipment allowances; expense reimbursement; and all eligibility conditions for compensation.

(f) "Employee Organization" means an organization that admits firefighters employed by the City to membership and represents firefighters in collective bargaining.

(g) "Exclusive Representative" means the employee organization recognized by the City pursuant to Section 16-30.

(h) "Firefighter" means an employee of the City whose primary duties are directly involved with the provision of fire protection or firefighting services. "Firefighter" does not include clerical personnel or volunteer firefighters as defined in section 31-30-1102, C.R.S.

(i) "Final Offer" means the latest written offer made by an exclusive representative to the City and by the City to an exclusive representative at least seven days prior to the beginning of an impasse resolution hearing as described in section 16-70.

(j) "Party" means the City or the exclusive representative.

(k) "Strike" means the following concerted actions taken by members of a bargaining unit for any purpose including inducing, influencing, or coercing a change in the terms and conditions of employment, compensation, rights, privileges, or obligations of employment:

(1) Failure to report for duty;

(2) Willful absence from a position;

(3) Stopping or deliberately slowing work;

(4) Withholding, in whole or in part the full, faithful, and proper performance of duties of employment; or

(5) Interrupting the operations of the public employer.

(l) "Supervisor" means the chief and all officers in the rank or position immediately below the chief who report directly to the chief. No other firefighter is included in the definition of supervisor for the purposes of collective bargaining.

(m) "Terms and conditions of employment" means compensation, hours, and all matters affecting the employment of firefighters, including items related to safety, except the budget and organizational structure of the City.

Section 16-30. Selection and recognition of the exclusive representative.

(a) The employee organization selected in a secret ballot vote by the majority of the bargaining unit members shall be the exclusive representative recognized by the City as the sole and exclusive agent for all members of the bargaining unit for purposes of collective bargaining. The City shall not bargain in regard to matters covered by this Article with any firefighter or group of firefighters in the bargaining unit, or other employee organization in the bargaining unit unless as outlined in subsections (b)-(c) below.

(b) Questions concerning the selection or removal of an exclusive representative may be raised by petition of any member of the bargaining unit or group of such, or an employee organization representing

or wishing to represent the fire department employees but only if such petition is signed by at least 30% of the bargaining unit. Such a petition may be submitted at any time to the City provided that in the event there is then an exclusive representative, no petition may be filed within twelve (12) months of the exclusive representative's certification by the American Arbitration Association or its successor organization; and provided further that no petition may be filed during the term of an existing collective bargaining agreement, except during the last twelve months of such collective bargaining agreement.

(c) When a petition is filed concerning the selection or removal of an exclusive representative the City shall within a reasonable period determine whether it contains the requisite number of signatures and whether such signatures are authentic and notify the American Arbitration Association, or its successor organization of its conclusion. If the petition has the requisite number of authenticated signatures, the American Arbitration Association or its successor organization shall determine the question of selection of any exclusive representative by taking a secret ballot of members of the bargaining unit and certifying in writing the results thereof to the City and the employee organization(s) involved. The secret ballot election shall be conducted not less than fifteen (15) calendar days or more than thirty (30) calendar days from the date the corporate authorities notify the American Arbitration Association or its successor organization that the petition contains the requisite number of authenticated signatures. The American Arbitration Association or its successor organization shall certify the results of the above-described election within three (3) business days of the close of the polls. The cost of running the election shall be borne equally by each employee organization on the ballot.

(d) Nothing in this section prevents firefighters, individually or as a group, from presenting complaints to the City and from having complaints adjusted without the intervention of the exclusive representative for the bargaining unit of which they are a chapter if:

(1) The exclusive representative is given an opportunity to be present at the adjustment and to express its views; and

(2) The adjustment is not inconsistent with the terms of a collective bargaining agreement then in effect between the City and the exclusive representative.

(e) The ability to adjust complaints as described in subsection (c) does not include the use of any process in a collective bargaining agreement to resolve grievances over the application and interpretation of the agreement.

(f) An exclusive representative has the right to have its dues, initiation fees, assessments, or other moneys deducted and collected by the City from the pay of those firefighters within the bargaining unit who authorize, in writing, the deduction of the moneys. The authorization is revocable at the firefighter's written request. The deductions commence upon the exclusive representative's written request to the City along with the simultaneous tendering of the written dues authorization from the individual firefighter. The right to the deduction remains in force as long as the exclusive representative remains the exclusive representative for the employees in the bargaining unit.

Section 16-40. Obligation to negotiate in good faith. The City and the exclusive representative, through appropriate officials or their representatives, have the authority and the duty to bargain collectively in good faith. The obligation to bargain in good faith does not compel either party to agree to a proposal or make a concession. The obligation to bargain in good faith requires, upon request, the exchange of information possibly relevant to the terms and conditions of employment of the firefighters or the interpretation or application of the terms of any collective bargaining agreement.

Section 16-50. Collective bargaining agreement.

(a) A collective bargaining agreement entered into pursuant to this provision is for a term of at least one year and no more than three years, beginning January 1 and ending December 31, unless a different beginning date is agreed to by the parties, set as a result of a special election held pursuant to section 16-80. Any multi-year collective bargaining agreement will contain a non-appropriations clause collectively bargained by the parties to ensure compliance with Article X, section 20(4)(b) of the Colorado Constitution.

(b) Collective bargaining is required to take place if a party requests collective bargaining by sending notice to that effect to the other party no later than July 15 of the last year of the existing collective bargaining agreement or, in the case of a newly recognized exclusive representative, by July 15 of the year in which bargaining will take place. If no party requests bargaining under this section by July 15 of the last year of

an existing collective bargaining agreement, the agreement will continue for the next calendar year unless the parties agree to negotiate and reach a voluntary agreement on all terms of a new contract.

(c) The City and the exclusive representative shall begin collective bargaining for the purpose of creating a new collective bargaining agreement no later than August 25 after notice to begin collective bargaining is given pursuant to subsection (b) of this section.

Section 16-60. Impasse Resolution.

(a) At any time after thirty days from the start of the bargaining process, either party may declare an impasse in negotiations. The obligation of the parties to bargain in good faith shall continue after a declaration of impasse. Any or all issues which are unresolved between the exclusive representative and the City within the time periods contained in this paragraph may be resolved by the parties at any time. In the event the exclusive representative and the City are able to reach an agreement upon any or all issues prior to the receipt of the decision of the advisory fact-finder, then the advisory fact-finder shall not make a decision on such issue or issues. In the event that, within fourteen (14) days following the receipt of the decision of the advisory fact-finder, the exclusive representative and the City are able to reach an agreement upon any or all issues decided by the advisory fact-finder, then those agreements shall supersede the decision of the advisory fact-finder.

(b) (1) Within three days after an impasse is declared, the exclusive representative or the City shall notify the American Arbitration Association, a successor organization, or a similar organization agreed upon by both parties, referred to in this section as the "arbitration organization", and request the arbitration organization to submit simultaneously to each party within fourteen days an identical list of seven persons qualified to serve as an advisory fact-finder. The parties may agree upon an advisory fact-finder that is not on the list requested.

(2) Within ten days after the arbitration organization delivers the list to the parties pursuant to paragraph (1) of this subsection (b), each party may strike two names from the list, rank the remaining names in order of preference, and return the list to the arbitration organization. If a party does not return the list within the specified time, all persons named in the list are deemed acceptable to that party.

(3) Within ten days after the last list is returned to the arbitration organization pursuant to paragraph (2) of this subsection (b), or within ten days after the time the list must be returned by the parties, whichever is earlier, the arbitration organization shall appoint one advisory fact-finder from the persons who have been approved on both lists and shall notify the parties of the appointment.

Section 16-70. Hearings.

(a) The advisory fact-finder shall hold a hearing on the unresolved issues between the parties within thirty days after being appointed. The advisory fact-finder shall give written notice of the time and place of the hearing to the parties no later than ten days before the hearing. The hearing must be informal, and the rules of evidence prevailing in judicial proceedings are not binding. The advisory fact-finder may receive into evidence any documentary evidence and other information deemed relevant by the advisory fact-finder. The advisory fact-finder may administer oaths and require by subpoena the attendance and testimony of witnesses and the production of books, records, and other evidence relevant to the issues presented for determination. If a person refuses to obey a subpoena, take an oath, or testify, or if any witness, party, or attorney is guilty of contempt while in attendance at a hearing, the advisory fact-finder may, if requested, invoke the aid of the City municipal court, and the court shall issue an appropriate order. The court may punish a failure to obey the order as contempt.

(b) The hearing conducted by the advisory fact-finder shall be concluded within ten (10) days of the time of commencement. Within ten (10) days following the conclusion of the hearing, either party may, if they so choose, submit written briefs to the advisory fact-finder. Within thirty (30) days of receipt of such briefs, or within thirty (30) days after the conclusion of the hearing if no post-hearing briefs are filed, the advisory fact-finder shall make written findings and decision on the issues presented. The decision is limited to a recommendation of which portion of the final offers made by each party on each issue in dispute should be accepted. The decision must include written findings and a written opinion on the issues presented. The advisory fact-finder shall mail or otherwise deliver a copy of the written decision to the exclusive representative and the City. Said written findings and decision shall be reached in accordance with the provisions of section 16-90 herein.

Section 16-80. Special Election.

(a) The City and the exclusive representative have fourteen days after the issuance of the advisory fact-finder's decision to consider the recommendations and further negotiate the disputed issues. No later than the end of the fourteen-day period, the City and the exclusive representative shall notify the other party whether it accepts or rejects the recommendations on each of the remaining unresolved issues. If either party rejects any of the recommendations, the final offers of the parties on all of the issues remaining unresolved shall be referred by City Council as alternative single measures to a vote of the registered electors of the City at a special election. The registered electors shall select either the final offer of the City or the final offer of the exclusive representative, as presented to the advisory fact-finder. Issues agreed to during the fourteen-day period specified in this subsection must not be included in the final offers submitted to the registered electors. The party that refuses to accept the recommendations of the advisory fact-finder shall pay the cost of the special election. If both parties refuse to accept the advisory fact-finder's recommendations, the City and the exclusive representative shall pay the cost of the special election equally.

(b) The special election will be held as follows:

(1) If the year in which the parties initiate impasse proceedings pursuant to section 16-60 is even, the special election will be held in coordination with the next regular municipal election in the following year.

(2) If the year in which the parties initiate impasse proceeding pursuant to section 16-60 is odd, the special election must not be held in conjunction with, or on the same day as, any other election and may be held on any date set by the City as provided for in section 11-20 of Article XI of the Charter, as long as it is:

(i) held no more than ninety days after the date of the rejection of an advisory fact-finder's recommendation; and

(ii) at least thirty days' notice is given.

(c) Nothing in this Article prohibits or impedes the City and an exclusive representative from continuing to bargain in good faith or from using the services of a mediator at any time during collective bargaining. If at any point in the advisory fact-finding proceedings the parties are able to conclude the dispute, or any portion thereof, with a voluntarily reached agreement, the parties shall notify the advisory fact-finder of the agreement, and the advisory fact-finder shall terminate the proceedings or discontinue the consideration of an issue resolved by the agreement. If an agreement is reached after a special election has been scheduled and the election cannot be canceled or issues cannot be removed from the ballot, the votes on the final offers of the City and the exclusive representative shall not be counted or in the event that the City Clerk cannot avoid counting the ballots, the results shall not be released.

(d) During impasse resolution proceedings conducted pursuant to this section, existing terms and conditions of employment may not be changed except by an agreement between the City and the exclusive representative, but any such agreement must be without prejudice to either party's rights or position in the advisory fact-finder's hearing. Any changes in the collective bargaining agreement from the expired agreement must be retroactive to January 1 unless the parties agree otherwise.

(e) The City shall amend any adopted appropriations ordinance to comply with the results of accepted recommendations from an advisory fact-finder or of a special election held pursuant to this section.

Section 16-90. Factors to be considered by the advisory fact-finder.

(a) The advisory fact-finder shall conduct the hearing and render his or her decision with due consideration of the need for a prompt, peaceful and just settlement of all unresolved issues between the exclusive representative and the City. The factors to be considered by the advisory fact-finder in arriving at a decision shall include:

(1) The interests and welfare of the public and the financial ability of the City to bear the costs involved;

(2) The lawful authority of the City;

(3) Stipulations of the parties;

(4) The terms and conditions of employment of the firefighters involved in the collective bargaining in comparison with the terms and conditions of employment, including firefighter safety issues, of other firefighters in comparable communities as determined by the advisory fact-finder;

(5) Changes in the cost of living;

(6) Any claims of failure of a party to bargain in good faith pursuant to section 16-40; and

(7) Other factors that are normally or traditionally taken into consideration in the determination of terms and conditions of employment through voluntary collective bargaining, interest arbitration, or otherwise between parties in public or private employment.

(b) The advisory fact-finder shall give due weight to each factor listed herein. If the advisory fact-finder determines that a factor listed herein is not relevant, the advisory fact-finder shall state in the findings the specific reason why the factor is not relevant to the advisory fact-finder's determination.

(c) The exclusive representative and the City shall equally bear the cost of the advisory fact finder and related hearings.

Section 16-100. Final offer procedure. The advisory fact-finder shall choose either the final offer of the City or the final offer of the exclusive representative on each issue submitted and shall state his or her reasons for choosing such position.

Section 16-110. Calculation of time and extension of time limits.

(a) For purposes of calculating the time periods included in this Article, days shall be calendar days starting the day following the event that triggers the period. Holidays and weekends shall be counted; however, when the last day falls on a day when City offices are closed, then the next following business day shall be the last day of the period.

(b) The parties may agree to extend any of the time limits specified in this Article except the date for beginning bargaining pursuant to subsection 16-50(c), and the time limits contained in subsection 16-80(a) and (b) regarding the setting and timing of a special election.

Section 16-120. Strikes prohibited. A firefighter or exclusive representative shall not strike. Nothing in this section limits or impairs the right of any firefighter to lawfully express or communicate a complaint or opinion on any matter related to terms and conditions of employment.

Section 16-130. Severability. All provisions of this Article are severable and supersede any provisions of the City Charter or ordinance sections that conflict with this Article. If any provision or clause of this Article or the application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Article that can be given effect without the invalid provision or application.

Petitioner's Committee: John M. Roy, David Noblitt, Kenneth Jones, Jesse Weddle, Robert Hicks

Date on which the petition was submitted for verification: November 28, 2018

Total number of signature lines submitted: 33,291

Total number of signature lines not accepted: 15,959

Total number of signature lines accepted: 17,332

Total number of valid signature lines required: 15,907

Petition signature requirements are hereby determined to be: **SUFFICIENT**.

Signed this 20th day of December, 2018.



Sarah B. Johnson
City Clerk

