

ORDINANCE NO. 1840

INTRODUCED BY: BENSON, BULLOCK, CARSON, JOHNSON, MCELLOWNEY, MORENO, NATALE, SNYDER, TETER

AN ORDINANCE AMENDING CHAPTER 2 OF THE COMMERCE CITY REVISED MUNICIPAL CODE BY ADDING ARTICLE V TO CHAPTER 2 OF THE COMMERCE CITY REVISED MUNICIPAL CODE REGARDING COLLECTIVE BARGAINING FOR CERTAIN DEFINED COMMERCE CITY EMPLOYEES.

WHEREAS, the City Council of the City of Commerce City has been requested to authorize a process for initiating bargaining rights on behalf of certain defined Commerce City employees; and

WHEREAS, after study and review of the request for initiating a process for bargaining rights on behalf of certain defined City employees, this City Council hereby determines that the selection of an employee organization for collective bargaining shall be authorized if approved by a vote of the defined City employees in accord with the requirements of this ordinance; and

WHEREAS, this ordinance sets forth the terms and conditions for initiating collective bargaining rights by certain defined City employees; and

WHEREAS, if the collective bargaining process is approved in accord with the requirements of this ordinance, the collective bargaining process shall be subject to continuation in accord with the requirements of this ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF COMMERCE CITY, COLORADO AS FOLLOWS:

SECTION 1. Chapter 2 of the Commerce City Revised Municipal Code is amended by adding Article V. to Chapter 2 regarding collective bargaining for certain defined Commerce City employees to read as follows:

Article V. Collective Bargaining – General Employees.

Sec. 2-5000. Definitions. For purposes of this article, the following words shall have the following meanings:

- (1) “Bargaining Unit” includes all persons employed by the city in a full time, Fair Labor Standards Act non-exempt position except for confidential and managerial employees and those employees who fall within the bargaining unit defined in section 21.2 of the charter.
- (2) “Collective bargaining agreement” means any and all terms to which the city manager and the employee organization have voluntarily agreed and any and all terms, if any, that have been approved by city council. After agreement, the terms thereof shall be finalized in writing.

- (3) “Confidential employee” means an employee who, in the city manager’s opinion, acts in an advisory or support capacity with respect to an individual who directly participates in the formulation of management policies in the field of labor-management relations, including appropriate employees in the city manager’s office, the city attorney’s office, and the human resources department, and one employee designated by and in the office of each department director who shall be designated by position no later than thirty (30) days after final approval of this ordinance by City Council or when a new position is established. The term also includes all members of the information technology department who, in order to fulfill their job duties, have access to the root or administrator password of any system or server.
- (4) “Employee organization” means an employee organization chosen by the bargaining unit in accordance with this article.
- (5) “Fair share contribution” means the reasonable expenses of the employee organization that are germane to negotiating the bargaining agreement that are proportionally allocated to the members of the bargaining unit who are not members of the employee organization.
- (6) “Managerial employee” means an employee who supervises another employee and has either the authority to direct, hire, transfer, suspend, discipline, promote, discharge or evaluate such supervised employee or the ability to effectively recommend the transfer, suspension, discipline, promotion or discharge of such supervised employee.

Sec. 2-5001. Right to Bargain Collectively.

- (1) Bargaining rights granted. Members of the bargaining unit shall have the right to bargain collectively with the city manager and to be represented by an employee organization in such collective bargaining regarding dues collection, insurance contribution levels, uniforms, wages, work hours, education incentives, general leave, and fair share contributions.
- (2) Management rights reserved. The following are the inherent and exclusive rights of the city and these shall not be the subjects of collective bargaining:
 - (a) To direct the work of its employees,
 - (b) To determine city policy and to manage the affairs of the city in all respects;
 - (c) To establish, amend and enforce personnel policies;
 - (d) To hire, promote, demote, classify, evaluate and retain employees;
 - (e) To demote, suspend and discharge or otherwise discipline employees;
 - (f) To train, transfer, assign and schedule employees;
 - (g) To determine whether to lay off employees because of lack of work, lack of funds, or for other legitimate reasons;
 - (h) To determine and implement the methods, equipment, facilities and other means and personnel by which municipal operations are to be conducted, and to take the steps it

deems necessary to maintain the efficiency and safety of said operations and of the personnel engaged therein; and

- (i) To determine its budget, organization, and the merits, necessity and level of any activity or service provided by the city.

Sec. 2-5002. Process for the Selection and Removal of an Employee Organization.

- (1) Petition. The selection or removal of an employee organization shall be initiated by filing with the city clerk a petition signed by at least 33% of the members of the bargaining unit. The city clerk shall have 10 business days to investigate and verify the sufficiency of the petition. If the city clerk determines that the petition does not contain at least 33% of the members of the bargaining unit, it shall be rejected as insufficient. In addition, the city clerk shall reject any petition for selection that is filed within one year of any previously held selection election. The filing of a petition for removal of the selected employee organization shall not be permitted during the period a collective bargaining agreement is in effect except during the period from January 1 to 31 of the final year of such collective bargaining agreement.
- (2) Election. The city clerk shall conduct a secret ballot election of the members of the bargaining unit within 30 calendar days of certifying the sufficiency of any petition. An employee organization shall only be selected if at least 50% plus one (1) of the votes cast are in favor of its selection. Any employee organization shall only be removed if at least 50% plus one (1) of the votes cast are in favor of its removal.

Sec. 2-5003. Fees.

An employee organization selected pursuant to section 2-5002 may require the payment of dues from any employee in the bargaining unit who becomes a member of such organization.

Sec. 2-5004. Negotiations and Agreements.

- (1) Recognition of selected employee organization. An employee organization which is selected as provided in this article shall be the sole and exclusive representative of all members of the bargaining unit.
- (2) Timing of negotiations. Negotiations shall commence on or prior to May 15 of any year in which the collective bargaining agreement expires.
- (3) Good faith negotiations. The city manager and the employee organization shall be obligated to meet and bargain in good faith at reasonable times and places. This obligation shall include the duty to cause any agreements to be reduced to written contract and executed in a timely manner.

- (4) Term of collective bargaining agreement. The collective bargaining agreement shall be for a term of not less than one (1) year and not more than three (3) years, and shall be effective on a January 1 date and shall terminate on a December 31 date.
- (5) Constitutional limitations. Any collective bargaining agreement in excess of one (1) year shall be subject to the applicable provisions of the Colorado Constitution, including article X, section 20.

Sec. 2- 5005. Unresolved Issues.

- (1) Submission to arbitration. In the event that the employee organization and the city manager are unable, within 30 days from and including the date of their first meeting, to reach an agreement, the unresolved issues shall be submitted to arbitration in accordance with the provisions of this section.
- (2) Selection of arbitrator. The arbitrator shall be selected in accordance with section 21.12 of the charter. Notwithstanding the title of section 21.12 of the charter, the authority of any arbitrator selected to hear unresolved issues pursuant to this article shall be limited to issuing the recommendations set forth in paragraph (4) of this section.
- (3) Hearing. Upon selection, the arbitrator shall schedule a hearing which shall commence within 25 days of his or her selection and the arbitrator shall provide at least 10 days written notice of the time and place of such hearing to the employee organization and the city. The hearing shall be informal in nature and shall not be governed by the rules of evidence applicable to judicial proceedings. The arbitrator shall have the power to administer oaths and to issue subpoenas compelling the attendance and testimony of witnesses and the production of evidence.
- (4) Decision. Within 10 days of the conclusion of the hearing, the arbitrator shall issue recommendations which the city council may choose to accept, reject or modify. The city council's decision on such issues shall be final and binding.
- (5) Fees and expenses. The city and the employee organization shall share equally in the expenses of arbitration, except that each party shall bear its own costs related to the preparation and presentation of its case before the arbitrator.

Sec. 2-5006. Prohibited Activity.

- (1) Strikes. The protection of the public health, safety and welfare demands that no employee in the bargaining unit shall be authorized to cause, sanction or participate in any strike, work stoppage, slowdown, mass or abnormal absenteeism, withholding of services, or any other interference with normal work routine. Employees engaged in such activities shall be subject to discipline, including termination, and such activity by the members of the employee

organization shall be cause for the city to immediately terminate the collective bargaining agreement.

- (2) Discrimination. No person shall be appointed, promoted, demoted, discharged, or in any way discriminated against because of affiliations or non-affiliations with the employee organization.

Sec. 2-5007. Sunset Provision.

This article shall be automatically repealed in its entirety in the event that no employee organization is selected on or before September 1, 2011.

INTRODUCED, PASSED ON FIRST READING AND PUBLIC NOTICE ORDERED THIS 11th DAY OF OCTOBER, 2010.

PASSED ON SECOND AND FINAL READING AND PUBLIC NOTICE ORDERED THIS 8th DAY OF NOVEMBER, 2010.

CITY OF COMMERCE CITY, COLORADO

BY: _____
Paul Natale, Mayor

ATTEST:

Laura J. Bauer, CMC, City Clerk