

BY AUTHORITY

ORDINANCE NO. **3882**

COUNCILLOR'S BILL NO. **15**

SERIES OF 2017

INTRODUCED BY COUNCILLORS
Garcia, Pinter

**A BILL
FOR AN ORDINANCE AMENDING TITLE I OF THE WESTMINSTER MUNICIPAL CODE
CONCERNING ADMINISTRATIVE MATTERS BY THE ADDITION OF CHAPTER 34
GOVERNING COLLECTIVE BARGAINING FOR FIREFIGHTERS**

THE CITY OF WESTMINSTER ORDAINS:

Section 1. Title I, W.M.C., is hereby AMENDED by the addition of Chapter 34 which shall read as follows:

Chapter 34: COLLECTIVE BARGAINING FOR FIREFIGHTERS

1-34-1: Statement of Policy:

(A) It is the intent of the City to protect the integrity of the City Charter and preserve the City's Home Rule Authority under Colorado law, while maintaining competitive market-based wages and benefits for City employees, providing for Fire Department employee input, protecting management and employee rights, protecting the safety of employees and citizens, maintaining equity to all employees, facilitating employee engagement and opportunities for positive change, building respectful relationships between labor and management, keeping communication open, approaching bargaining in an interest-based manner whenever possible, all in a manner that is financially sustainable and fiscally responsible. Further, it is the public policy of the City to promote the public health, safety and welfare by assuring at all times the orderly and uninterrupted operations and services of City government. To carry out these policies and promote labor relations between the City and the commissioned members of the Fire Department, the City hereby recognizes the rights of qualified members of the Fire Department to join organizations of their own choosing for the purpose of representation in matters affecting employee relations; establishes a framework for collective bargaining and employee input; and provides that all bargaining impasses be submitted to non-binding arbitration and, if necessary, to a vote of the registered electors of the City.

1-34-2: Definitions: The following words, terms, and phrases, when used in this Chapter, shall have the following meaning:

"American Arbitration Association" shall mean the American Arbitration Association or its successor organization.

"Bargaining unit" shall mean all full-time commissioned members of the Westminster Fire Department up to and including the rank of Captain.

"Benefits" shall mean provision of: general leave, personal leave, leave for holidays, leave for illnesses, bereavement leave, pregnancy leave, birth of a child/adoption leave, family leave, injury leave (not to include workers' compensation), leave for jury duty/witness service, union leave, compensatory time, tuition reimbursement, uniform allowances, military leave, and levels of contribution to health insurance plans selected by the City.

"Certified employee organization" shall mean an organization or union elected by the bargaining unit and certified by the City pursuant to the provisions of this Chapter.

“Collective bargaining” shall mean to meet at reasonable times to confer in good faith on subjects for collective bargaining and to reduce agreements on such subjects for collective bargaining to a written contract.

“Collective bargaining agreement” shall mean any and all terms on subjects for collective bargaining: to which the corporate authorities and the certified employee organization have voluntarily agreed; accepted by the corporate authorities and the employee organization from the recommendations of an advisory fact-finder; or selected by the electorate pursuant to Section 1-34-10, W.M.C.

“Corporate authorities” shall mean the City Manager, the City Council, or their officially designated representatives.

“Final offer” shall mean the last written offer made by a party no less than seven (7) days prior to the commencement of the non-binding arbitration hearing.

“Good faith” shall mean an honest and sincere attempt to reach a mutually acceptable resolution of all issues in dispute through the bargaining process; however, the obligation to bargain in good faith does not compel a party to agree to a proposal or require the making of a concession.

“Impasse or bargaining impasse” shall mean that the City and certified employee organization have been unable to reach agreement and have become deadlocked on a specific subject for collective bargaining.

“Items related to personal safety” shall mean allowances for the purchase of non-issued personal safety equipment, the establishment and composition of a safety committee and the establishment and composition of (a) committee(s) to meet and confer on specifications for the purchase of fire and ambulance apparatus, Department tools and equipment and personal protective equipment.

“Non-binding arbitration” shall mean the use of a third-party neutral, an advisory fact-finder, who makes a determination on an issue-by-issue basis on any subjects for collective bargaining upon which the City and certified employee organization have reached a bargaining impasse. Such determination is non-binding upon the parties, and no enforceable arbitration award is issued.

“Principals” shall mean: (i) with respect to the corporate authorities, the City Council; and (ii) with respect to the certified employee organization, its members who are not on the team it designates to engage in collective bargaining.

“Subjects for collective bargaining” shall mean wages; benefits; items related to personal safety; representation in the disciplinary process, but not the decision to discipline; promotional procedure, but not the content/criteria for promotions nor the decision to promote; grievance procedures; dues deduction; and the payment of fair share fees. Subjects for collective bargaining shall not include those public and management rights set forth in Section 1-34-3, W.M.C. or matters that would conflict with federal or state constitutional, statutory, municipal ordinance, or Charter provisions. Upon mutual agreement, nothing prohibits the parties from negotiating over other matters, as long as such matters are not public and management rights as defined in Section 1-34-3. Such other matters shall not be subject to non-binding arbitration or submission to the electors of the City for final resolution unless both parties agree to submit the matter.

“Wages” shall mean the pay plan structure for the annual salary (base wage) of each position title within the bargaining unit and shall also include overtime, compensatory time, acting/provisional pay, call back pay, response pay and any other type of ancillary pay recognized by the City.

1-34-3: Public and Management Rights:

(A) The following are the inherent and exclusive rights of the City, which shall not be the subjects of collective bargaining:

- (1) To direct and schedule the work of its employees, including but not limited to determining schedules, staffing, shifts, hours and the scheduling of leave;
- (2) To determine training needs, methods of training, and employees to be trained;
- (3) To determine or consolidate operations, offices, and work sites, including, but not limited to permanently or temporarily moving operations in whole or in part to other locations;
- (4) To hire, promote, demote, classify, evaluate, and retain employees in positions within the City; however, the certified employee organization may negotiate promotional procedure, but not the content/criteria for promotions nor the decision to promote;
- (5) To demote, suspend, discharge, or otherwise discipline employees; however, representation in the disciplinary process shall be a subject of collective bargaining;
- (6) To make, alter and enforce rules, regulations, orders and policies, and from time to time, to change such rules, regulations, orders and policies;
- (7) To establish, select, administer, alter, amend and control insurance, pension, and retirement plans for employees;
- (8) To lay-off employees because of lack of work, lack of funds, or for other legitimate reasons determined by the corporate authorities and to determine the method and criteria for recall;
- (9) To determine and implement the methods, equipment, facilities and other means and personnel by which municipal operations are to be conducted, and to take steps it deems necessary to maintain the efficiency and safety of said operations and of the personnel engaged therein; and
- (10) To determine its budget, organization, and the merits, necessity, and level of any activity or service provided by the City.

1-34-4: Strikes, Work Stoppages, Slowdowns, and Mass Absenteeism Prohibited:

(A) In order for the City to discharge its Charter obligations to provide fire protection functions and protect the health, welfare, and safety of its citizens, it is essential that City services continue at all times without disruption. Acceptance of public employment carries with it an obligation and responsibility to act affirmatively at all times to ensure the continuation and promotion of the public's health, safety, and welfare. Accordingly, all employees and employee organizations are hereby prohibited from engaging in strikes, work stoppages, slowdowns, concerted disruptions or mass absenteeism. Any person who violates this prohibition shall be subject to any of the following without limitation: reprimand; suspension or discharge; and, in the case of violation of this prohibition by the certified employee organization: withdrawal of recognition, cancellation of any collective bargaining agreement with said organization, injunctive relief, suit for damages, and any other reasonable penalty or remedy, including attorneys' fees and costs in any such suit.

1-34-5: Employee Rights:

(A) Members of the bargaining unit shall have the right to form, join, and participate in the activities of employee organizations of their choosing for the purpose of representation for collective bargaining, and they shall also have the right to refuse to join or participate in any activities of employee organizations and shall have the right to represent themselves individually and have individual grievances adjusted without resort to employee organizations; provided, however, that any resolution reached as a result of such individual representation or grievance may not be contrary to the terms of any collective bargaining agreement actually in effect and applicable to such bargaining unit members.

(B) Neither the City, nor any member of the bargaining unit, nor any employee organization, nor any certified employee organization, shall interfere with, intimidate, restrain, coerce, or discriminate against any employee because of the exercise of the foregoing rights.

1-34-6: Selection, Recognition and Decertification of Certified Employee Organization:

(A) The employee organization selected in a secret ballot vote by the majority of the bargaining unit members shall be the certified employee organization recognized by the City as the sole and exclusive agent for all members of the bargaining unit for purposes of collective bargaining unless and until such certified employee organization is decertified by a majority vote of the members of the bargaining unit as set forth

herein. Only the certified employee organization shall be entitled to engage in collective bargaining for the bargaining unit.

(B) Questions concerning the selection or decertification of a certified employee organization may be raised by a petition signed by at least thirty percent (30%) of the members of the bargaining unit. Such a petition may be submitted at any time to the corporate authorities provided that in the event there is then a certified employee organization, no petition may be filed within twelve (12) months of the certified employee organization's certification by the American Arbitration Association; and provided further that no petition may be filed during the term of an existing collective bargaining agreement, except during the period from October 1 to October 31 before the final year of such agreement.

(C) When a petition is filed concerning the selection or decertification of a certified employee organization, the corporate authorities shall determine whether it contains the requisite number of signatures and whether such signatures are authentic and notify the American Arbitration Association of its conclusion. If the petition has the requisite number of authenticated signatures, the American Arbitration Association shall determine the question of selection or decertification of any certified employee organization by taking a secret ballot of members of the bargaining unit and certifying in writing the results thereof to the corporate authorities 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 that the petition contains the requisite number of authenticated signatures. The American Arbitration Association 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.

1-34-7: Obligation to Bargain Collectively:

(A) The City and the certified employee organization shall have the duty to engage in collective bargaining with respect to subjects for collective bargaining through their designated representatives. Bargaining meetings will not be public and neither party will attempt to negotiate directly with the Principals.

(B) In order to begin the collective bargaining process, it is the obligation of the certified employee organization to serve written notice of its request for collective bargaining on the corporate authorities no later than February 1st of the year before the contract period which will be the subject of collective bargaining, with bargaining to commence no later than April 1st immediately following the notice.

1-34-8: Collective Bargaining Agreement:

(A) Agreements reached by the corporate authorities and the certified employee organization shall be set forth in a written collective bargaining agreement prepared by them. The collective bargaining agreement shall not conflict with federal or state constitutional, statutory, municipal ordinance, or Charter provisions dealing with the same matters, and shall be restricted to the subjects for collective bargaining as defined in this ordinance. The term of any such collective bargaining agreement shall commence on the first day of the first full pay period of the calendar year and last not less than one (1) year and not more than three (3) years.

(B) Except as otherwise provided in this Chapter, the collective bargaining agreement shall not be binding upon the parties, either in whole or in part, until and unless the members of the certified employee organization have ratified said agreement by a majority vote in a secret ballot, and until and unless the City Council shall act by majority vote to formally approve said agreement.

(C) The collective bargaining agreement shall be signed by authorized representatives of the certified employee organization, the Mayor and attested by the City Clerk.

1-34-9: Impasse Resolution:

(A) In the event that the certified employee organization and the corporate authorities are unable within thirty (30) days from and including the date of their first collective bargaining meeting to reach agreement on a collective bargaining agreement, any and all unresolved subjects for collective bargaining shall be submitted to non-binding arbitration. The advisory fact-finder's recommendation shall be limited to the outstanding subjects for collective bargaining upon which the corporate authorities and the certified employee organization (the "parties") have not reached tentative agreement, but are at impasse.

(B) Within three (3) business days after the expiration of the time period referred to above, the parties shall inform the American Arbitration Association that non-binding arbitration is desired. Within ten (10) calendar days thereafter, the American Arbitration Association shall simultaneously send to each party an identical list of seven (7) names of those qualified to act in the capacity of an advisory fact-finder. Within seven calendar (7) days, beginning with the certified employee organization, the parties shall alternately strike one (1) name from the list until one (1) individual is selected. Upon completion of the selection process, the advisory fact-finder shall have twenty-five (25) days in which to commence a hearing. A subsequent period of seven (7) days shall be allowed for the conduct of such hearing and the parties shall have seven (7) days to submit briefs after the conclusion of the hearing. The advisory fact-finder shall be given a period of up to fifteen (15) days following the conclusion of the hearing or submission of briefs, whichever is later, in which to render a recommendation(s).

(C) The advisory fact-finder shall consider, weigh, and be guided by the following criteria:

- (1) The lawful authority of the City;
- (2) Stipulations and tentative agreements of the parties;
- (3) The interest and welfare of the public;
- (4) The cost of the parties' positions, taking into consideration all factors normally a part of sound fiscal policy;
- (5) Comparison of the wages, benefits, and other relevant terms or conditions of employment of the employees involved with other employees performing similar services in public employment in comparable Colorado communities;
- (6) The overall compensation presently received by the bargaining unit employees, including wages; vacation, holidays, and other excused paid time; insurance and pensions; medical and hospitalization benefits; the continuity and stability of employment; and all other benefits received; and
- (7) Other generally-accepted criteria or factors.

(D) The advisory fact-finder shall consider the final offer of the corporate authorities and the final offer of the certified employee organization on each subject for collective bargaining at impasse. The recommendation of the advisory fact-finder on each subject for collective bargaining at impasse shall be either the final offer of the corporate authorities or the final offer of the certified employee organization with respect to that subject for collective bargaining. The fact-finder may not craft his/her own resolution to an outstanding subject for collective bargaining. The advisory fact-finder shall state the reasons for the recommendations.

(E) The recommendations of the fact-finder shall be advisory only. Within twelve (12) calendar days of receipt of the recommendations of the fact-finder, the parties shall meet and simultaneously, and in writing, notify each other of their respective determination to accept or reject the recommendations of the advisory fact-finder. Only the unresolved subjects for collective bargaining remaining after this meeting shall be submitted to the election process set forth in 1-34-10, W.M.C. Nothing in this Chapter shall prohibit the parties from reaching a settlement on any or all subjects for collective bargaining prior to the last date the City Council can revoke or cancel any scheduled election.

(F) All fees and expenses related to non-binding arbitration will be shared equally by the City and the certified employee organization, except that each party shall be responsible for compensating its own representatives and witnesses.

(G) Whenever the parties deem it appropriate or beneficial to do so, they may jointly agree to engage the services of facilitators or mediators to assist in reaching agreement on one (1) or more items. It is specifically contemplated that the parties might engage individuals who have demonstrated knowledge or

expertise in a given topic under discussion or skills and abilities in dispute resolution to serve as facilitator or mediator. The parties will share the fees and expenses of such individuals equally, unless otherwise agreed.

1-34-10: Election:

(A) If the parties are unable to resolve all of the issues within the twelve (12) calendar day period described in 1-34-9, W.M.C., the City Council shall cause the rejected and unresolved recommendations of the fact-finder and the corresponding final offer of the rejecting party to be referred to a vote of the people held in a coordinated November election (pursuant to C.R.S Sec. 1-1-104 (6.5)), provided that such election shall take place in the year in which such impasse occurs. If both parties reject the recommendation(s) of the fact-finder, the ballot shall contain the respective rejected and unresolved final offers of the parties. The electorate shall be provided with the following choices: (1) the final offer of the corporate authorities; (2) the final offer of the certified employee organization; or (3) the recommendations of the fact-finder; whichever is applicable. The final offer or recommendations, as applicable, receiving approval by a majority vote of the registered electors voting on the issue shall be deemed approved and be binding on both parties.

(B) Expenses of any coordinated November election called under this section shall be paid by the party rejecting the advisory fact-finder's recommendation or shared equally if both parties reject the advisory fact-finder's recommendations. In the event that City issues other than those contemplated by this Chapter are also to be decided in the same election, then the certified employee organization shall pay only its proportionate share of the election expenses. Such fees shall be placed into an escrow fund at the time the notice of call of election is published in the newspaper of general circulation.

1-34-11: Time Limits:

(A) Any time limit contained in this Chapter, other than the time for notice and commencement of negotiations in 1-34-7, W.M.C. and the time for conducting the election in X-Y-10, W.M.C. may be modified for that year upon the written consent of the corporate authorities and the certified employee organization.

Section 2. This ordinance shall take effect upon its passage after second reading. The title and purpose of this ordinance shall be published prior to its consideration on second reading. The full text of this ordinance shall be published within ten (10) days after its enactment after second reading.

INTRODUCED, PASSED ON FIRST READING, AND TITLE AND PURPOSE ORDERED PUBLISHED this 15th day of May, 2017.

PASSED, ENACTED ON SECOND READING, AND FULL TEXT ORDERED PUBLISHED this 30th day of May, 2017.

ATTEST:

City Clerk

Mayor

APPROVED AS TO LEGAL FORM:

City Attorney's Office