

ORDINANCE NO.

AN ORDINANCE ADDING A NEW CHAPTER 2-12 TO THE CITY CODE RELATING TO MEET AND CONFER NEGOTIATIONS PROCEDURES FOR CIVIL SERVICE EMPLOYEES.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. A new Chapter 2-12 of the Code is adopted to read:

CHAPTER 2-12. MEET AND CONFER NEGOTIATIONS PROCEDURES FOR FIRE AND POLICE EMPLOYEES.

§ 2-12-1 APPLICABILITY.

This Chapter applies only to employees whose employment is subject to Chapter 143 (*Municipal Civil Service*) of the Texas Local Government Code. This Chapter does not apply to employees who have collective bargaining under Chapter 174 (*Fire and Police Employee Relations*) of the Texas Local Government Code.

§ 2-12-2 PURPOSE AND EFFECT OF CHAPTER.

The purpose of this chapter is to establish procedural rules for how the City conducts labor negotiations under Subchapter I (*Fire Fighter and Police Officer Employment Matters in Certain Municipalities*) of Chapter 143 (*Municipal Civil Service*) of the Texas Local Government Code.

§ 2-12-3 DUTY TO BARGAIN.

If the fire fighters or police officers are represented by an association that is an exclusive bargaining agent under Subchapter I (*Fire Fighters and Police Officer Employment Matters in Certain Municipalities*) of Chapter 143 (*Municipal Civil Service*) of the Texas Local Government Code, the city manager shall request that an association bargain regarding subjects on which both parties agree to negotiate. The subjects may include wages, salaries, rates of pay, hours of work, other terms and conditions of employment, and other personnel issues.

§ 2-12-4 OPEN SESSIONS.

(A) A negotiation between the City and an association under this chapter shall be open to the public and shall be videotaped. This section applies only to a

negotiation that includes both a representative of the City and a representative of the association.

(B) A separate conference that a mediator conducts with one of the parties is not open to the public.

(C) The city manager shall post the time and place of a negotiation that is open to the public under this section on the bulletin board of the city clerk used for posting notices of public meetings. The notice shall be posted not less than 72 hours before the time the deliberation is scheduled to begin.

§ 2-12-5 AVAILABILITY OF RECORDS.

(A) An agreement made under Subchapter I (*Fire Fighter and Police Officer Employment Matters in Certain Municipalities*) of Chapter 143 (*Municipal Civil Service*) of the Texas Local Government Code is a public record for purposes of Chapter 552 (*Public Information Act*), Texas Government Code. Any document prepared by the City that is distributed to an association during a public negotiations session is available to the public.

(B) This section does not affect the application of Subchapter C (*Information Excepted from Required Disclosure*), Chapter 552 (*Public Information Act*), Texas Government Code, to a document prepared and used by the City in connection with the agreement.

§ 2-12-6 INITIATION OF NEGOTIATIONS.

(A) If a current meet and confer agreement exists between the City and an association, the city manager shall request that the association enter into negotiations for a successor agreement in accordance with the provisions of that agreement.

(B) If no meet and confer agreement exists between the City and an association, or if an existing agreement does not specify the date for either party to request negotiations for a successor agreement, no later than December 1, the city manager shall request that the association enter into negotiations for an agreement for the following fiscal year.

§ 2-12-7 TIMELINES.

(A) If an association agrees to negotiate, the negotiations shall begin no later than the 30th day after the date of the city manager's request.

(B) If negotiations do not result in agreement on all issues on which the parties agreed to negotiate by the 90th day after the date that the negotiations

began:

(1) the negotiations end; and

(2) the city manager shall, no later than the fifth day after the last day of the 90-day negotiation period, request that the association agree to use mediation in accordance with Section 2-12-8 (*Mediation*).

(C) If an association does not respond to the city manager's request for mediation under Subsection (B)(2) by the fifth day after the date of the request, the association is deemed to have declined the city manager's request. If mediation is declined, the parties must proceed to the fact finding process under Section 2-12-16 (*Fact Finding*) no later than the fifth day after the date that mediation is declined.

(D) Mediation shall begin no later than the 10th day after the date on which the parties agree on a mediator or the date on which a mediator is appointed by the Federal Mediation and Conciliation Service as provided in Section 2-12-8 (*Mediation*).

(E) If the parties do not reach agreement on all disputed issues by the 10th day after the first day of mediation, the mediation ends and the parties must proceed to the fact-finding process under Section 2-12-16 (*Fact Finding*) no later than the fifth day after the end of mediation.

(F) If an association does not accept a final offer made by the city council following the fact-finding process, or if the city council does not make a final offer following the fact-finding process, the city manager may request that the association agree to voluntary binding arbitration under Section 2-12-9 (*Voluntary Binding Arbitration*). A request for voluntary binding arbitration must be made on or before the later of the 20th day after the city manager submits the fact finder's report to the city council or the 10th day after the association rejects a final offer.

(G) If the city council does not make a final offer or if an association rejects a final offer and the parties do not agree to proceed to voluntary binding arbitration, the negotiations terminate until the city manager is required to request negotiations under Section 2-12-6 (*Initiation of Negotiations*).

§ 2-12-8 MEDIATION.

(A) The purpose of mediation is to use the assistance of an outside party to help the City and an association resolve disputes and bring negotiations to a successful close within a reasonable time.

(B) If a mediator is used, then a mediator may be appointed by agreement of the parties or by the Federal Mediation and Conciliation Service. If the parties agree to use mediation, but are unable to agree on a mediator by the 10th day after date of the city manager's request for mediation, no later than the fifth day after the date of the request, the city manager shall request that the Federal Mediation and Conciliation Service appoint a mediator.

(C) A mediator may:

(1) hold separate or joint conferences as necessary to settle disputed issues quickly and efficiently; and

(2) present the parties with recommendations or suggestions, including a proposal or procedure that the mediator believes might lead to settlement.

§ 2-12-16 FACT FINDING.

(A) The purpose of fact finding is to have an outside party make findings of fact related to specific issues that the City and an association were unable to resolve through negotiation and make recommendations on the parties' proposals on issues.

(B) The fact finder may be selected by agreement of the parties. If the parties cannot agree on the selection of a fact finder on or before the fifth day after the end of mediation, the parties shall request a list of seven persons with fact finding experience designated as neutrals by the American Arbitration Association, and shall specify the date on which the fact finder must be available. Not later than the fifth day after the parties receive the list of names, the parties shall select the fact finder by alternately striking names. The remaining name on the list is appointed as the fact finder.

(C) The City and an association shall pay equal amounts of the fee and expenses of the fact finder. The party incurring other expenses, including witness fees, shall pay the expenses.

(D) The parties may agree to submit to the fact finder any number of issues over which they bargained but did not reach agreement.

(E) If the parties cannot agree on the issues to be submitted to the fact finder, each party may select two of the issues over which the parties bargained but failed to reach agreement. Each party will submit those two issues to the fact finder, together with their specific proposal for resolving each issue. Each party may respond to the other party's specific proposals by submitting a

specific counter-proposal. As a result, the fact finder will consider four issues with a specific proposal and counter-proposal for each issue.

(F) Each party shall submit its selected issues and specific proposals in writing to the fact finder and the other party on or before the fifth day after selection of the fact finder. On or before the fifth day after receipt of the issues and proposals, each party shall submit to the fact finder and the other party a written specific counter-proposal to each of the other party's proposals.

(G) If there is any dispute regarding the wording of an issue or whether an issue was the subject of bargaining, the parties will submit the dispute to the fact finder at the beginning of the hearing. After hearing both sides of the dispute, the fact finder will resolve the dispute and make a verbal ruling, after which the hearing will proceed.

(H) The fact finder shall conduct a full and fair hearing on the issues submitted. A fact finding hearing shall be informal and the rules of evidence and procedure applicable to judicial proceedings do not apply. The fact finding process shall be completed no later than the 30th day after the date of the appointment of the fact finder. The parties may agree to one 10-day extension of the fact finding process.

(I) After hearing the evidence offered by the parties, and additional evidence requested by the fact finder, no later than the 10th day after the conclusion of the hearing, the fact finder shall render a written report which shall include findings of fact on each issue and recommendations on each proposal and counter-proposal submitted by the parties. The findings of fact and recommendations are advisory only.

(J) In rendering findings of fact and making recommendations, the fact finder shall exercise independent judgment and may not attempt to "split the difference." The fact finder's report must recommend either the proposal or the counter-proposal submitted for each issue.

(K) The fact finder's report shall be transmitted to the city manager and the association. The city manager shall submit the report to the members of the city council not later than the fifth day after receipt of the report. The city council may accept, reject, or modify the fact finder's recommendations. After considering the fact finder's report, the city council may, through the city manager, present a written final offer to the association on each issue submitted to the fact finder. If the association does not accept the City's final offer on or before the fifth day after it is presented, the association is deemed to have rejected the offer. If an association rejects the final offer, no later than

the 10th day after the date the association rejects a final offer, the city manager may request that the association agree to voluntary binding arbitration as under Section 2-12-9 (*Voluntary Binding Arbitration*).

(L) Any of the deadlines in this section may be extended by agreement of the parties.

§ 2-12-9 VOLUNTARY BINDING ARBITRATION.

(A) If the City and an association agree to use voluntary binding arbitration, the parties shall execute a written agreement stating that the parties are voluntarily submitting to binding arbitration on the issues submitted to the fact finder.

(B) An agreement under this section shall be executed not later than the fifth day after the date that the parties agree to binding arbitration.

(C) Not later than the fifth day after the date an agreement to arbitrate is executed, each party shall:

- (1) select one arbitrator; and
- (2) immediately notify the other party in writing of the name and address of the arbitrator selected.

(D) Not later than the 10th day after the date an agreement to arbitrate is executed, the arbitrators named under Subsection (A) shall attempt to select a third, neutral, arbitrator. If the arbitrators are unable to agree on a third arbitrator, the parties shall request that the American Arbitration Association select the third arbitrator. Unless both parties agree, the third arbitrator may not be the same individual who served as a mediator under Section 2-12-8 (*Mediation*).

(E) The arbitrator selected under Subsection (D) presides over the arbitration board.

§ 2-12-10 ARBITRATION HEARING.

(A) Not later than the fifth day after the date on which the presiding arbitrator is appointed the presiding arbitrator shall set a date for a hearing. The presiding arbitrator shall notify the parties of the time and place of the hearing not later than the 8th day before the date for which the hearing is set.

(B) An arbitration hearing shall end not later than the 30th day after the date the presiding arbitrator is appointed.

(C) The hearing shall be informal and the rules of evidence and procedure applicable to judicial proceedings do not apply.

(D) The arbitration board may:

(1) administer oaths; and

(2) issue subpoenas to require:

(a) the attendance and testimony of witnesses; and

(b) the production of relevant books, records, and other evidence.

§ 2-12-11 SCOPE OF ARBITRATION.

The issues to be arbitrated are restricted to the issues that were submitted to the fact finder. The arbitration board is bound by the findings of fact made by the fact finder and may not reject or modify the findings.

§ 2-12-12 ARBITRATION AWARD.

(A) Not later than the 10th day after the end of the hearing, an arbitration board shall render a written award on the specific issues presented to the board.

(B) The arbitration panel's award is limited to the four issues that were presented to the fact finder, but the panel is not bound by the fact finder's recommendations.

(C) An increase in compensation awarded by an arbitration board under this subchapter may take effect only at the beginning of the next fiscal year after the date of the award.

(D) A copy of the findings and award shall be mailed or delivered to the City and the association.

(E) An arbitration panel's award is binding on the City only to the extent that all obligations of the City may be paid out of current revenues or other funds lawfully available and appropriated for that purpose by the city council as prescribed by Article XI (*Municipal Corporations*), Sections 5 (*Cities of More Than 5,000 Population; Adoption or Amendment of Charters; Taxes; Debt Restrictions*) and 7 (*Counties and Cities on Gulf of Mexico; Tax for Sea Walls, Breakwaters, and Sanitation; Bonds; Condemnation of Right of Way*) of the Texas Constitution. If the City cannot meet a funding obligation resulting from an arbitration award, the award is null and void.

(F) The parties to an arbitration award may amend the award by written agreement at any time.

§ 2-12-13 EXTENSION OF PERIOD.

A period for arbitration specified by Section 2-12-10 (*Arbitration Hearing*) may be extended:

- (1) by the written agreement of the parties for a reasonable period not to exceed 10 days; or
- (2) by the arbitration board for good cause for one or more periods that in the aggregate do not exceed 20 days.

§ 2-12-14 COMPULSORY ARBITRATION NOT REQUIRED.

This chapter does not require compulsory arbitration.

§ 2-12-15 COMPENSATION OF ARBITRATORS; EXPENSES OF ARBITRATION.

- (A) The compensation of an arbitrator selected by the City shall be paid by the City.
- (B) The compensation of an arbitrator selected by an association shall be paid by the association.
- (C) The City and the association representing the employees shall jointly pay in even proportions:
 - (1) the compensation of the neutral arbitrator; and
 - (2) the stenographic and other expenses incurred by the arbitration board in connection with the arbitration proceedings.
- (D) If a party to arbitration requires a transcript of the arbitration proceedings, the party shall pay the cost of the transcript.

§ 2-12-17 JUDICIAL RECOURSE.

Nothing in this chapter limits a party's right to seek redress in a court of competent jurisdiction.

PART 2. This ordinance takes effect on _____, 2004.

PASSED AND APPROVED

_____, 2004

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Will Wynn
Mayor

APPROVED: _____
David Allan Smith
City Attorney

ATTEST: _____
Shirley A. Brown
City Clerk