

3
4 **AN ORDINANCE GRANTING CERTAIN EMPLOYEES OF**
5 **THE CITY OF FORT WAYNE THE RIGHT TO**
6 **“COLLECTIVELY BARGAIN” IN CHAPTER 40 OF THE**
7 **FORT WAYNE MUNICIPAL CODE OF ORDINANCES**
8

9 **WHEREAS**, Collective bargaining is an employment right permitted to many workers
10 in the private sector across the United States;
11

12 **WHEREAS**, Collective bargaining in the private sector is largely governed by the
13 National Labor Relations Act;
14

15 **WHEREAS**, public sector employees in the State of Indiana, including those
16 employees of the City of Fort Wayne, do not have the same existing right to collectively
17 bargain and their employment relationships with their employers are not subject to the
18 terms of the National Labor Relations Act;
19

20 **WHEREAS**, employees of the City of Fort Wayne were permitted to collectively
21 bargain by local ordinance for a number of decades until that ordinance was repealed in 2014;
22

23 **WHEREAS**, employees of the City of Fort Wayne can be granted a right to
24 collectively bargain if the legislative body creates an ordinance permitting collective
25 bargaining for certain city employees;
26

27 **WHEREAS**, Common Council believes that it is in the best interest of the employees
28 of the City of Fort Wayne to provide them the right to choose whether or not they want to
29 participate in collective bargaining with the City;
30

31 **WHEREAS**, Common Council wishes to provide an effective collective bargaining
32 process for certain employees of the City of Fort Wayne, the City of Fort Wayne, and any
33 union(s) appropriately selected by eligible employees of the City of Fort Wayne; and
34

35 **WHEREAS**, Common Council wishes to introduce the accompanying Ordinance
36 drafted in collaboration with the City of Fort Wayne and other interested parties.
37

38 **NOW, THEREFORE, BE IT ORDAINED BY THE COMMON COUNCIL OF**
39 **FORT WAYNE, INDIANA, AS FOLLOWS:**
40

41 **Section 1.** That § 40.01 and § 40.02 of the Fort Wayne Municipal Code of Ordinances are
42 deleted in in their entirety and replaced, and § 40.03 is changed to § 40.14 and restated as follows
43 (Ordinance will read §§ 40.01 – 40.14 as identified below):
44

SEE EXHIBIT A attached to this submission.

Section 2. In an abundance of caution and to eliminate any confusion, Common Council states that this ordinance does not impact the remainder of Chapter 40, specifically, “***Arbitration and Collective Bargaining for Police Officers and Firefighters***” §§ 40.20 – 40.37. Those provisions remain in effect.

Section 3. That the City is directed to take all action necessary and proper for the implementation of this Ordinance, including notifying all City departments, divisions, or City-operated utilities of the Ordinance and its requirements. This shall include, but not be limited to, notifying impacted departments of their new obligations under this Ordinance.

Section 4. After passage and approval by the Mayor, this Ordinance shall be effective as of January 1, 2023.

**COMMON COUNCIL OF THE CITY OF FORT
WAYNE**

Glynn Hines, Council Member

Sharon Tucker, Council Member

Michelle Chambers, Council Member

Geoff Paddock, Council Member

APPROVED AS TO FORM AND LEGALITY:

Joseph G. Bonahoom, Attorney for City Council

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§ 40.01 APPLICATION.

(A) This section shall apply to all **ELIGIBLE EMPLOYEES** (defined below) of the City of Fort Wayne and its utilities (other than those public safety employees who are subject to §§ 40.20 – 40.37 of the Fort Wayne Municipal Code of Ordinances). This section shall apply to the City of Fort Wayne and all of its authorities, divisions and departments.

(B) The following definitions shall apply to this section:

(1) **CONFIDENTIAL EMPLOYEE.** This is an employee:

- (a) Who works in the City's personnel office;
- (b) Who has access to confidential or discretionary information that may be used by the City in negotiating a collective bargaining agreement under this section;

(c) Who works in a close and continuing working relationship with:

1. An individual holding elective office; or
2. Individuals who represent the City in negotiations under this section;

(d) Whose:

1. Functional responsibilities; or
 2. Knowledge;
- concerning employee relations makes the employee's membership in an employee organization incompatible with the employee's duties; or

(e) Who is the administrative assistant or administrative aide of:

1. A division or department head; or
2. An individual holding elected office.

(f) Whose primary role is to handle and disseminate the City's public information but is not a public safety or computer facility communications employee.

1. No union contract presented to Council for approval after the effective date of this provision shall contain a provision that prevents the City from participating in a nonunion multiple political subdivision communications department or county public safety communications system and computer facilities district, that requires the terms of the union contract to apply to the operation of, and the City's participation in, a multiple political subdivision communications department or county public safety communications system and computer facilities district, or that requires the City to provide employment for individuals whose jobs may be eliminated as the result of the City's participation in a joint communications department or a county public safety communications system and computer facilities

1 district.

2 (2) **PROFESSIONAL EMPLOYEE.** Any employee engaged in work (a) predominantly intellectual
3 and varied in character as opposed to routine mental, manual, mechanical, or physical work; (b) involving
4 the consistent exercise of discretion and judgement in its performance; (c) of such a character that the
5 output produced or the result accomplished cannot be standardized in relation to a given period of time;
6 (d) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a
7 prolonged course of specialized intellectual instructions and study in institution of higher learning or a
8 hospital as distinguished from a general academic education or from an apprenticeship or from training in
9 the performance of routine mental, manual, or physical processes. Additionally, an employee holding the
10 position of "Chief Operator with WT5 certification" or "Chief Operator with WT4 certification" shall be
11 considered a **PROFESSIONAL EMPLOYEE**.

12 (3) **PUBLIC SAFETY EMPLOYEE.** A member of either the City's police or fire department who is
13 also a member of a police or fire pension fund and subject to §§ 40.20 – 40.37 of the Fort Wayne
14 Municipal Code of Ordinances.

15 (4) **SUPERVISORY EMPLOYEE.** An individual having authority in the interest of the City, or its
16 utilities, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other
17 employees, or responsibility to direct other employees, or to adjust employee grievances, or effectively to
18 recommend such action, if the exercise of the authority is not of a merely routine or clerical nature, but
19 requires the use of independent judgment.

20 (5) **SEASONAL EMPLOYEE.** An individual hired by the City into a position of a limited duration
21 and may work either full or part time hours not to exceed 1,560 hours annually.

22 (6) **INTERLOCAL EMPLOYEE.** An employee of the City whose employment is subject to an
23 interlocal agreement or joint employment relationship with the City and a non-City party.

24 (7) **PART-TIME EMPLOYEE.** An individual that is employed by the City under the conditions one
25 of the following categories:

26 (a) Benefits part-time employee hired into positions of indefinite duration, normally
27 working less than 30 but at least 20 hours per week; or

28 (b) No benefits part-time employee hired into positions of indefinite duration and
29 working less than 20 hours per week.

30 (8) **ELIGIBLE EMPLOYEE.** An individual currently employed employee of the City that is not a
31 **PUBLIC SAFETY EMPLOYEE, CONFIDENTIAL EMPLOYEE, SUPERVISORY EMPLOYEE,**
32 **SEASONAL EMPLOYEE, INTERLOCAL EMPLOYEE** or **PART-TIME EMPLOYEE**.
33

34  **§ 40.02 RIGHTS OF ELIGIBLE EMPLOYEES AND SELECTION OF BARGAINING UNITS.**

1 (A) **ELIGIBLE EMPLOYEES** shall have the right to bargain collectively with and to be represented
2 by such labor organization or organizations as so selected by a majority of **ELIGIBLE EMPLOYEES** in
3 a bargaining unit voting in an election satisfying the requirements contained in 40.01 – 40.14.

4
5 (B) **BARGAINING UNIT** shall be defined, for purposes herein, as a one of two groups of
6 **ELIGIBLE EMPLOYEES**, experiencing commonality of work and job functions, notably eligible civil
7 City employees in one bargaining unit and eligible city utility employees in the second bargaining unit.
8 No civil city employee shall be included or otherwise belong in the bargaining unit for city utility
9 employees and no city utility employee shall be included or otherwise belong in the bargaining unit for
10 civil city employees. A bargaining agent may represent **ELIGIBLE EMPLOYEES** of both civil city and
11 city utilities, but separate agreements must be negotiated for each group.

12
13 (C) The determination of two bargaining units, one for civil city **ELIGIBLE EMPLOYEES** and one
14 for city utility **ELIGIBLE EMPLOYEES**, shall be the sole adopting mechanism for bargaining units of
15 the **ELIGIBLE EMPLOYEES** of the City , irrespective of whether a subdivision or subdivisions of civil
16 city employees and/or city utility employees was or were previously recognized by the City , or identified
17 by certification, contract, or past practice, as a unit for collective bargaining.

18
19 (D) Union contracts negotiated after the effective date of this section will include a provision granting
20 qualified employees with seniority rights within that union, as of the effective date of this section, the
21 ability to exercise those seniority rights over similarly qualified or lesser qualified employees of other
22 departments represented by that same union, even though the department may be covered by a different
23 contract negotiated by the city/city utilities and that union for the purposes of fulfilling job vacancies.

24
25 **§ 40.03 ANNUAL ELIGIBLE EMPLOYEE LIST.**

26 (A) Common Council shall determine the employees that are considered **ELIGIBLE EMPLOYEES**
27 and shall ratify a list of **ELIGIBLE EMPLOYEES** on an annual basis per the requirements of this
28 subsection 40.03. Any list requiring submission shall include job position and title.

29
30 (B) No later than January 31, 2023 and no later than January 31 of any subsequent year, each
31 **BARGAINING UNIT** shall submit to Common Council a list identifying the job position and title that
32 the **BARGAINING UNIT** believes the employees holding those titles in those positions should be
33 considered for purposes of this Chapter 40. The list shall be presented to the City Clerk who shall notify
34 Common Council of its receipt of the list at the next meeting of Common Council. If a **BARGAINING**

1 **UNIT** is represented by a **BARGAINING AGENT**, the list shall be submitted by the representative agent.
2 If a **BARGAINING UNIT** is not represented by a **BARGAINING AGENT**, the list shall be submitted by
3 an interested agent that desires to be selected as the **BARGAINING AGENT** for the **BARGAINING**
4 **UNIT** for which an **ELIGIBLE EMPLOYEE** list is being compiled. Disputes arising under this 40.04(B)
5 from lists submitted by multiple interested agents shall be resolved by Common Council in its sole
6 discretion.

7
8 (C) No later than January 31, 2023, and no later than January 31 of any subsequent year, the City,
9 through the City's Legal Department, shall submit to Common Council by presenting the submission to
10 the City Clerk who shall notify Common Council of its receipt of the petition at the next meeting of
11 Common Council a list for each **BARGAINING UNIT** identifying the job position and title that the
12 **BARGAINING UNIT** believes the employees holding those titles in those positions should be considered
13 for purposes of this Chapter 40.

14
15 (D) All employees that appear on both the list submitted by the **BARGAINING UNIT** to Common
16 Council and the list submitted by the City pertaining to the same **BARGAINING UNIT** shall be ratified as
17 **ELIGIBLE EMPLOYEES** within that **BARGAINING UNIT**.

18
19 (E) The eligibility of any employee whose job position and title appears on only one of the lists
20 submitted to Common Council for a particular **BARGAINING UNIT**, but not both, must be reviewed by
21 Common Council within 30 days of the date in which the last timely submitted list was given to Common
22 Council by the City Clerk. Common Council shall have exclusive authority to determine classification of
23 any such job position and title and shall make a final determination as to the list of eligible employees by
24 job position and title within 30 days of the date in which the last timely submitted list was given to
25 Common Council by the City Clerk. If Common Council determines that a job position and title reviewed
26 under this subsection 40.03 should be considered eligible and makes an affirmative declaration of the
27 same, then the employee holding that job position and title shall be ratified as an **ELIGIBLE**
28 **EMPLOYEE** within a particular **BARGAINING UNIT**.

29
30 (F) If, by the date identified in 40.03(B) or 40.03(C), only one list of job positions and titles is
31 submitted for the purported eligible employees of a **BARGAINING UNIT**, then the job position and title
32 identified on the list that is submitted shall be the ratified as the complete list of **ELIGIBLE**
33 **EMPLOYEES** for the year in which the list was submitted and all employees in those job positions and
34 titles on it shall be ratified as the complete list of **ELIGIBLE EMPLOYEES** for the **BARGAINING**

1 **UNIT** for the year in which the list was submitted.

2
3 (G) If, by the date identified in 40.03(B) or 40.03(C), no job position and title list is submitted to
4 Common Council, the City of Fort Wayne shall not engage in collective bargaining negotiations with any
5 entity authorized to negotiate on behalf of a **BARGAINING UNIT**, until a job position and title list of
6 purported eligible employees is submitted to Common Council. If a job position and title list is submitted
7 to Common Council under this subsection 40.03(G), the employees corresponding to the job position and
8 title list shall be ratified as the complete list of **ELIGIBLE EMPLOYEES** for the **BARGAINING UNIT**
9 for the year in which the list was submitted, unless the non-submitting party submits a responsive
10 eligibility job position and title list within fifteen (15) days of the submission of an eligibility job position
11 and title list submitted by the party who submitted. If the non-submitting party later submits an eligibility
12 job position and title list within fifteen (15) days of the submission of the first list submitted to Common
13 Council, then the subsections 40.03(C)-(E).

14
15 (H) Common Council may appoint a hearing officer to hear evidence on any issues and discrepancies
16 arising out of the actions authorized under this Section 40.03 and report findings to Common Council
17 based on any evidence presented, subject to any date or time restrictions identified in this Section 40.03.
18 Payment for the hearing officer(s)' services arising out of this Section 40.03 shall be shared equally by the
19 **BARGAINING AGENT** representing or purporting to represent the **BARGAINING UNIT** at issue and
20 the Administration of the City.

21
22 **§ 40.04 SELECTION OF INITIAL BARGAINING AGENT.**

23 (A) Recognition as the exclusive bargaining agent for any bargaining unit shall be determined by those
24 **ELIGIBLE EMPLOYEES** belonging to a particular bargaining unit according to the terms Sections
25 40.04 and 40.05.

26
27 (B) Any petition for recognition of an **INITIAL BARGAINING AGENT** must be signed by at least
28 30% of **ELIGIBLE EMPLOYEES** who are members of the bargaining unit seeking to select a bargaining
29 agent and submitted to the City Clerk who shall notify Common Council of its receipt of the petition at
30 the next meeting of Common Council. For purposes of this Chapter 40, **INITIAL BARGAINING**
31 **AGENT** shall be defined as the first bargaining agent selected by an eligible and authorized bargaining
32 unit for purposes of representing the bargaining unit in collective bargaining with the City after January 1,
33 2023.

(C) If a petition that satisfies subsection 40.04(B) above is filed with Common Council, an election shall be held within 60 days in which the membership may select an **INITIAL BARGAINING AGENT**. Common Council, through the City Clerk, shall give notice of the election to all **ELIGIBLE EMPLOYEES** in the bargaining unit for which a valid petition was filed to Common Council. The notice shall include the date and manner of the election. Said notice to **ELIGIBLE EMPLOYEES** shall be considered as sufficiently provided if it is made by the City Clerk to the City's Legal Department with a copy to Human Resources. The City's Legal Department shall provide the notice it receives to all affected **ELIGIBLE EMPLOYEES** in a manner identified by Common Council in its notice that may include, but is not limited to, posting notice in an commonly trafficked area at the place of employment, sending electronically to the last known email address of the **ELIGIBLE EMPLOYEES**, or mailing to the last known physical address of the **ELIGIBLE EMPLOYEES**. The election shall be by secret ballot, and shall be held on the premises where those voting are employed unless Common Council shall determine that the election cannot be fairly held there, in which case it shall be held at such place as Common Council shall determine, with notice of the change of location included in the required notice to **ELIGIBLE EMPLOYEES**. Common Council may promulgate rules as necessary to effectively conduct any election, including provisions for absentee voting. The provisions shall facilitate voting by all **ELIGIBLE EMPLOYEES**, and shall insure secrecy of the ballot. Common Council may determine after proper hearing any disputed issue concerning the eligibility of a person or persons to vote in the election or it may appoint a hearing officer pursuant to subsection 40.04(G). Payment for the hearing officer(s)' services arising out of this subsection 40.04(C) shall be shared equally by the **BARGAINING AGENT** and the Administration of the City. The hearing must be held before an election and may be conducted by an authorized representative appointed by Common Council. A determination with respect to eligibility shall be applicable in the administration of this section and for any other purpose under this Chapter 40. In any election, there shall also be the option of "no representation" included on the ballot. In order for an **INITIAL BARGAINING AGENT** or "no representation" to be selected, it must receive an affirmative vote from a majority of those **ELIGIBLE EMPLOYEES** of the bargaining unit voting in the election. The decision of a majority of those voting shall control. If there are more than two candidates for bargaining agent, including "no representation," and no bargaining agent candidate or choice of "no representation" receives a majority of the votes cast, there shall be a run-off election between the two choices receiving the greatest number of votes. In the run-off election, the candidate or choice receiving the most votes cast shall be declared the winner. If, in the run-off, a candidate receives a majority of the votes cast in the run-off, that candidate shall be determined the bargaining agent for that bargaining unit. If, if the run-off, "no representation" receives a majority of the votes cast in the run-off, there shall be no bargaining agent selected for the bargaining unit and the bargaining unit shall not be represented by a

1 bargaining agent until the next permissible certification and election occurs.

2
3 (D) If a majority of the **ELIGIBLE EMPLOYEES** of a bargaining unit voting in an election to select
4 an **INITIAL BARGAINING AGENT** does not select an **INITIAL BARGAINING AGENT** at said
5 election, there shall be no representation by a bargaining agent for the remainder of the year in which the
6 valid petition for certification was submitted to Common Council by presenting the submission to the
7 City Clerk who shall notify Common Council of its receipt of the petition at the next meeting of Common
8 Council. In order to select an **INITIAL BARGAINING AGENT** in a subsequent year, the bargaining unit
9 must file a new petition for representation with Common Council by presenting the submission to the
10 City Clerk who shall notify Common Council of its receipt of the petition at the next meeting of Common
11 Council that is signed by at least 30% of the **ELIGIBLE EMPLOYEES** of the bargaining unit. Once a
12 valid petition is filed with Common Council, an election shall be held within 60 days according to the
13 terms of subsection 40.04(C).

14
15 (E) Any properly conducted selection of an **INITIAL BARGAINING AGENT** under this Section
16 40.04 shall continue in full force and effect unless a petition for decertification that satisfies the
17 requirement of subsections 40.04(A) and 40.04(B) is filed with Common Council by presenting the
18 submission to the City Clerk who shall notify Common Council of its receipt of the petition at the next
19 meeting of Common Council.

20
21 (F) Common Council may appoint a hearing officer to hear evidence on any issues arising out of the
22 actions authorized under this Section 40.04 and report findings to Common Council based on any
23 evidence presented. Payment for the hearing officer(s)' services arising out of this subsection 40.04(F)
24 shall be shared equally by the **BARGAINING AGENT** and the Administration of the City.

25
26 (G) After the filing of a petition, but prior to the selection of an **INITIAL BARGAINING AGENT**,
27 all currently existing terms and conditions of employment, employment contracts, and any other contracts
28 or agreements between the City of Fort Wayne and **ELIGIBLE EMPLOYEES** belonging to a particular
29 bargaining unit shall remain valid and in effect until a valid petition for selection of an **INITIAL**
30 **BARGAINING AGENT** is submitted for a bargaining unit and any terms and conditions of employment,
31 employment contracts, and any other contracts or agreements between the City and **ELIGIBLE**
32 **EMPLOYEES** are properly repealed and/or replaced or are otherwise terminated.

33
34 (H) No person who is not an employee of the City shall solicit employees for union membership in

1 employee working areas or on the employee's working time.

2
3 **§ 40.05 DECERTIFICATION OF EXISTING BARGAINING AGENT AND SELECTION OF**
4 **NEW BARGAINING AGENT.**

5
6 (A) A petition for decertification must be filed with the City Clerk who shall notify Common Council
7 of its receipt of the decertifying petition at the next meeting of Common Council.

8
9 (B) Upon the filing of a petition for decertification signed by at least 30% of **ELIGIBLE**
10 **EMPLOYEES** who are members of a bargaining unit, Common Council shall hold an election within 30
11 days of Common Council having received notice of the filing of the petition from the City Clerk to
12 determine whether a majority of the **ELIGIBLE EMPLOYEES** of the bargaining unit voting desire to
13 have the previous bargaining agent continue to represent the bargaining unit. Notice of the election shall
14 be given to the affected bargaining agent and to all affected **ELIGIBLE EMPLOYEES**. Ballots shall be
15 returned to the City Clerk and counted by a committee of people authorized and appointed by Common
16 Council. The committee authorized and appointed by Common Council to count ballots must total at
17 least three people and must include at least one person appointed from Common Council, one person
18 appointed by the Mayor, and one person appointed from the **BARGAINING AGENT** at concern. The
19 ballot question shall be: "Should the [insert bargaining agent] continue as the exclusive bargaining agent
20 for [insert bargaining unit]? YES__ NO__." If a majority of the **ELIGIBLE EMPLOYEES** of the
21 bargaining unit voting vote no, Common Council shall grant the decertification petition and the agent
22 shall be considered decertified. No more than one petition to decertify may be filed against any
23 bargaining agent in any twelve month period.

24
25 (C) **ELIGIBLE EMPLOYEES** who are members of an existing bargaining unit may not petition the
26 Council to recognize them as a separate bargaining unit with the right to select their own bargaining
27 agent.

28
29 (D) If an existing bargaining unit's agent is decertified, no election for a new bargaining agent may
30 take place before 90 days have elapsed since decertification occurred. After 90 days have elapsed after a
31 decertification, a bargaining unit's **ELIGIBLE EMPLOYEES** who wish to select a new bargaining agent
32 must submit a petition signed by at least 30% of the **ELIGIBLE EMPLOYEES** to the City Clerk who
33 shall notify Common Council of its receipt of the petition at the next meeting of Common Council. Once
34 Common Council is notified of the petition for election of a new bargaining agent, an election that

satisfies the requirements of 40.04(C) shall be held within 60 days of the petition having been presented to Common Council in which **ELIGIBLE EMPLOYEES** of the bargaining unit may select a new bargaining agent. In any event, no election contemplated under this subsection 40.05(D) shall take place until 90 days have elapsed since decertification occurred. Common Council, through the City Clerk, shall give notice of the election to all **ELIGIBLE EMPLOYEES** in the bargaining unit for which a valid petition was filed to Common Council. The notice shall include the date and manner of the election. Said notice to **ELIGIBLE EMPLOYEES** shall be considered as sufficiently provided if it is made by the City Clerk to the City's Legal Department. The election shall be by secret ballot, and shall be held on the premises where those voting are employed unless Common Council shall determine that the election cannot be fairly held there, in which case it shall be held at such place as Common Council shall determine, with notice of the change of location included in the required notice to **ELIGIBLE EMPLOYEES**. Common Council may promulgate rules as necessary to effectively conduct any election, including provisions for absentee voting. The provisions shall facilitate voting by all **ELIGIBLE EMPLOYEES**, and shall insure secrecy of the ballot. Common Council may determine after proper hearing any disputed issue concerning the eligibility of a person or persons to vote in the election or it may appoint a hearing officer pursuant to subsection 40.05(G). The hearing may be held either before or after an election and may be conducted by an authorized representative appointed by Common Council. A determination with respect to eligibility shall be applicable in the administration of this section and for any other purpose under this Chapter 40. In any election, there shall also be the option of "no representation" included on the ballot. In order for a new **BARGAINING AGENT** or "no representation" to be selected, it must receive an affirmative vote from a majority of those **ELIGIBLE EMPLOYEES** of the bargaining unit voting in the election. The decision of a majority of those voting shall control. If there are more than two candidates for bargaining agent, including "no representation," and no bargaining agent candidate or choice of "no representation" receives a majority of the votes cast, there shall be a run-off election between the two choices receiving the greatest number of votes. In the run-off election, the candidate or choice receiving the most votes cast shall be declared the winner. If, in the run-off, a candidate receives a majority of the votes cast in the run-off, that candidate shall be determined the bargaining agent for that bargaining unit. If, in the run-off, "no representation" receives a majority of the votes cast in the run-off, there shall be no bargaining agent selected for the bargaining unit and the bargaining unit shall not be represented by a bargaining agent until the next permissible certification and election occurs.

(E) If a majority of the **ELIGIBLE EMPLOYEES** of a bargaining unit voting in an election does not select a new bargaining agent at said election, there shall be no representation by a bargaining agent for

1 the remainder of the year in which decertification occurred. In order to select a bargaining agent in a
2 subsequent year, the bargaining unit must file a new petition for representation with Common Council
3 that is signed by at least 30% of the **ELIGIBLE EMPLOYEES** of the bargaining unit. Once a valid
4 petition is filed with the City Clerk and received by Common Council, an election shall be held within 60
5 days of Common Council's receipt of notice according to the terms of subsection 40.05(D).

6
7 (F) Any properly conducted selection of a **BARGAINING AGENT** under this Section 40.05 by a
8 bargaining unit selecting an agent to represent the bargaining unit in collective bargaining with the City
9 shall continue in full force and effect unless a petition for decertification that satisfies the requirement of
10 subsections 40.05(A) and 40.05(B) is filed with the Common Council.

11
12 (G) Common Council may appoint a hearing officer to hear evidence on any issues arising out of the
13 actions authorized under this Section 40.05 and report findings to Common Council based on any
14 evidence presented. Payment for the hearing officer(s)' services arising out of this subsection 40.05(G)
15 shall be shared equally by the **BARGAINING AGENT** and the Administration of the City.

16
17 (H) Upon decertification, but prior to the selection of a successor **BARGAINING AGENT**, all
18 currently existing terms and conditions of the existing employment contracts between the City and
19 **ELIGIBLE EMPLOYEES** belonging to a particular bargaining unit shall remain valid and in effect until
20 the earliest of the following occurs: (1) a subsequent election for a bargaining agent is held and
21 completed; (2) the current collective bargaining agreement expires; or (3) 90 days have passed since the
22 previous bargaining agent was decertified. If a bargaining unit does not have a **BARGAINING AGENT**
23 at the time of the existing labor contract's termination, the **ELIGIBLE EMPLOYEES** within the
24 bargaining unit shall be considered to not have representation for purposes of subsequent employment
25 negotiations until a successor **BARGAINING AGENT** is duly selected.

26
27 (I) No person who is not an employee of the City shall solicit employees for union membership in
28 employee working areas or on the employee's working time.

29
30 **§ 40.06 PAYROLL DEDUCTION.**

31 The City shall, upon written receipt of authorization from a represented City employee, deduct from the
32 pay of such employee any fee designated or certified by the appropriate officer of the employee's labor
33 organization and remit those fees or fee to the employee's organization. To revoke such authorization,
34 employees shall provide a written revocation to the City's labor director.

1
2 **§ 40.07 AGENCY SHOP PROVISIONS.**

3 There shall be no agency shop provisions in any labor agreements that require employee within a
4 bargaining unit to either join the labor organization or pay dues. Such agency shop provisions are
5 prohibited.
6

7 **§ 40.08 NEGOTIATION PROCESS.**
8

9 (A) It shall be the obligation of the City and the applicable labor organizations to meet and bargain in
10 good faith for collective bargaining purposes. To ensure effective collective bargaining, as much as is
11 possible, and to further expedite the collective bargaining process, the following negotiation procedure
12 shall be utilized:
13
14

15 *Step 1:* To commence collective bargaining, the parties shall follow the terms and conditions of their
16 labor agreement with respect to notification regarding the intent and desire to negotiate. The parties shall
17 attend and collectively bargain in good faith at all negotiation meetings that may be required under each
18 such collective bargaining agreement. This requirement to initially meet and negotiate shall include three
19 mandatory collective bargaining sessions between the parties, such meetings all to take place within 30
20 calendar days after initial notification as provided by one party to the other concerning the
21 commencement of collective bargaining;

22 *Step 2:* If after exhaustion of step 1 above, the parties have not reached an agreement, the parties will
23 still be obligated to bargain in good faith. In that regard, the parties shall be required to have at least two
24 bargaining sessions within a 30 calendar-day period referenced in step 1 above;

25 *Step 3:* If an agreement has not been reached after steps 1 and 2 above, then the parties shall continue
26 to confer and meet for purposes of collective bargaining and the parties shall utilize a three-member
27 mediation committee. The three-member committee shall be appointed as follows: a representative
28 designated by the Mayor, such representative not previously involved in this collective bargaining process
29 with the City and the union in question; a representative designated by the union, such representative not
30 previously involved in the collective bargaining process with the City and the union in question; and a
31 member of Common Council designated by a majority of Common Council not previously involved in
32 the collective bargaining process with the City and the union in question. Members of the committee shall
33 serve without compensation. The three-member committee shall perform mediation functions between
34 the parties and shall be utilized to define the differences between the parties and their respective

positions. The three-member committee shall have the right to meet with either side alone or with both sides and further require meetings between the parties for purposes of collective bargaining. Such mediation process under this step 3 shall occur for a period of 30 calendar days.

(B) The time limits and other requirements as referenced in steps 1 and 2 may be altered or changed by mutual agreement of the City and the appropriate labor organization. The requirements to bargain and negotiate as herein referenced in this subsection shall not impose upon either side the duty to bargain over what are part and parcel of a collective bargaining agreement has not expired. That is, certain terms and conditions contained in a collective bargaining agreement will have a duration of greater than one year. If the term for such issues has not elapsed there shall be no requirement to bargain over same.

§ 40.09 FURTHER MEDIATION.

After completion of steps 1, 2, and 3 in subsection 40.08(A) and an impasse still exists, both parties are urged to continue collective bargaining in hopes of reaching a settlement. In that regard, the parties shall, within 10 days from completion of step 3 in subsection 40.08(A), once again meet and confer. Such meeting shall include in attendance a designated representative of the Mayor and a designated international staff representative of the union who will assist the representatives of the City and the union in hopes of reaching a settlement. If a settlement cannot be reached, then either the City or union shall have the right to request the services of a Mediator through the Federal Mediation and Conciliation Service. The Mediator's session shall be scheduled as soon as a Mediator is available. In addition, throughout the process, the labor agreement shall remain in full force and effect.

§ 40.10 DECISIONS SUBJECT TO COUNCIL APPROVAL.

Notwithstanding the entirety of this Chapter 40, all decisions in regard to annual pay, annual raises, and monetary fringe benefits shall be subject to approval by the Common Council, in accordance with budgetary guidelines, as provided by IC 36-4-7-3. All contracts negotiated under this Chapter 40 shall include language stating that all decisions in regard to annual pay, annual raises, and monetary fringe benefits shall be subject to approval by Common Council.

§ 40.11 STANDARDS FOR PAYMENT OF PREMIUM PAY UNDER COLLECTIVE BARGAINING AGREEMENTS.

Payments for work in excess of the employee's work schedule shall be governed by the Federal Fair Labor Standards Act and the collective bargaining agreement.

1
2 **§ 40.12 NO STRIKE AND NO LOCKOUT.**

3 (A) Notwithstanding any right or protection created or otherwise identified in this Chapter 40, no City
4 employee shall have the right to **STRIKE**. For purposes of this Chapter 40, **STRIKE** means the concerted
5 failure to report for duty, the willful absence from one's position, the stoppage of work, or the abstinence
6 in whole or in part from the full, faithful, and proper performance of the duties of employment for the
7 purpose of inducing, influencing, or coercing a change in employment conditions, compensation, or the
8 rights, privileges, or obligations of employment.

9
10 (B) This act does not limit, impair, or affect the right of a City employee to the expression or
11 communication of a view, grievance, complaint, or opinion on any matter related to the conditions or
12 compensation of employment or their betterment as long as the expression or communication does not
13 interfere with the full, faithful, and proper performance of the duties of employment.

14
15 (C) Notwithstanding any right or protection created or otherwise identified in this Chapter 40, the City
16 shall not have the right to **LOCKOUT** City employees. For purposes of this Chapter 40, **LOCKOUT**
17 means the exclusion of employees by the City from their place of work until certain terms are agreed to.

18
19 **§ 40.13 NO AUTOMATIC MODIFICATION.**

20 The City shall not enter into any collective bargaining agreement that contains a clause providing for an
21 automatic modification of that agreement based upon the terms and conditions of employment contained
22 in any other collective bargaining agreement, commonly known as a “me too” clause.

23
24 **§ 40.14 PROHIBITION ON PROVISIONS REGARDING HEALTH INSURANCE.**

25 (A) Applicability. This section shall be effective for all agreements or contracts (including collective
26 bargaining agreements) covering employees of the City (excluding police officers or firefighters as
27 defined in § 40.22) entered into after the effective date of this section by the City, or entered into by any
28 City subdivision, department, division, commission, authority, institution, establishment, facility, or
29 governmental unit under the supervision of the City.

30
31 (B) Prohibition against provisions regarding spousal and/or retiree health insurance. The City, and any
32 City subdivision, department, division, commission, authority, institution, establishment, facility, or
33 governmental unit under the supervision of the City is prohibited from entering into any agreement or
34 contract (including collective bargaining agreements) that includes any provision that purports to establish

1 the terms and conditions of eligibility or coverage, for spousal health insurance, and/or retiree health
2 insurance.

3
4 (C) Employees hired prior to January 1, 2014 who retire from the City shall be provided health
5 insurance subject to the same terms and conditions, and with the same premium contributions,
6 deductibles, and co-pays as active employees.

7
8 (D) Nothing in this section shall limit the City's authority or ability to contract for employee health
9 insurance with a health insurance provider or broker.