

AGENDA ITEM SUMMARY
FORT COLLINS CITY COUNCIL

ITEM NUMBER: 3

DATE: March 11, 2008

STAFF: Wanda Krajicek

SUBJECT

Resolution 2008-026 Submitting a Citizen-initiated Charter Amendment to a Vote of the Registered Electors of the City at a Special Municipal Election on June 10, 2008.

RECOMMENDATION

Staff recommends adoption of the Resolution.

EXECUTIVE SUMMARY

On January 22, 2008, the City Clerk's Office received an initiative petition to amend the City Charter relating to collective bargaining. The Clerk's Office completed its review of the petition and determined that the petition contained an insufficient number of signatures to place the initiated measure on a special election ballot. The petition circulators withdrew the petition and filed an amended petition on February 21, 2008. The Clerk's Office has completed its review of the amended petition and has determined that it now contains a sufficient number of signatures to require Council to place the issue on a special election ballot. On March 4, Council adopted on second reading Ordinance No. 011, 2008, calling a special election on June 10, 2008. Council adjourned the March 4 meeting to this date for the purpose on considering this Resolution submitting the citizen-initiated Charter amendment to the voters at the June 10, 2008 special election, and setting the ballot title and submission clause for the measure.

Under Section 7-156 of the City Code, any registered elector wishing to protest the ballot title or submission clause must do so by filing a written protest with the City Clerk's Office no later than noon on Monday, March 10, 2008.

RESOLUTION 2008-026
OF THE COUNCIL OF THE CITY OF FORT COLLINS
SUBMITTING A CITIZEN-INITIATED CHARTER AMENDMENT
TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY
AT A SPECIAL MUNICIPAL ELECTION ON JUNE 10, 2008

WHEREAS, under Title 31, Article 2, Part 2 of the Colorado Revised Statutes, the registered electors of the city have the power to commence proceedings to amend the City's Charter; and

WHEREAS, a petition proposing to amend the Charter has been submitted to the City; and

WHEREAS, the amendment proposed by said petition would add a new article to the Charter for the purpose of establishing a system of collective bargaining for certain City employees; and

WHEREAS, the City Clerk has certified said petition as sufficient for submission of the initiated Charter amendment to a vote of the people at a special municipal election; and

WHEREAS, the City Clerk has heretofore certified the validity and sufficiency of said petition to the City Council as provided in Section 31-2-210(3), C.R.S.; and

WHEREAS, under Section 31-2-210(3), C.R.S., upon presentation of a petition certified as sufficient by the City Clerk, the Council must set a ballot title for the proposed amendment at its next meeting and must hold an election as near as possible to the approximate date stated in the petition pursuant to Section 31-2-210(4), C.R.S.; and

WHEREAS, the Council has adopted on second reading Ordinance No. 011, 2008, calling a special municipal election to be held on June 10, 2008.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS as follows:

Section 1. That there is hereby submitted to the registered electors of the City of Fort Collins at a Special Municipal Election to be held on Tuesday, June 10, 2008, the following proposed Charter amendment:

Charter Section ____

Section 1.1 - STATEMENT OF POLICY

It is the public policy of the City of Fort Collins to achieve and maintain harmonious relations between the City and its employees, to provide for equitable adjustment of differences that may arise, and to establish proper standards of wages, hours and other terms and conditions of employment for the employees. Therefore, all classified non-exempt employees and non-supervisory employees of any department are hereby accorded the right to organize and be represented by an employee organization of their collective choice and upon selection of such employee organization to bargain collectively regarding terms and conditions of employment.

Further, to promote the public policy of the City of protecting the public health, safety and welfare by assuring at all times the orderly and uninterrupted operations and services of City Government, employees shall not have the right to strike or engage in any work stoppage and the City shall not have the right to lockout said employees. Accordingly, in lieu of strikes or lockouts it is necessary to establish a method for resolving impasses in bargaining. The establishment of this method of impasse resolution shall be deemed to be recognition of the necessity to provide an alternative mode of settling impasses where employees as a matter of public policy, have been denied the ability to strike.

Section 1.2 - DEFINITIONS

As used in this section of the Charter, the following definitions shall be observed.

(a) "Appropriate Bargaining Unit" means a group of employees who have substantial mutual interest in wages, hours and other conditions of employment. As a matter of policy, it is determined that the following groups of employees shall each be appropriate bargaining units and the only appropriate bargaining units:

- 1) All full time police officers maintaining the rank of lieutenant and below employed by the Fort Collins Police Department, plus the community service officers, dispatchers, dispatcher supervisors, dispatch manager and/or their equivalent, and excluding the chief of police and captains.
- 2) Except as noted in 1.2(a)(1) above, all non-exempt employees (as defined under the Fair Labor Standards Act, 29 U.S.C Section 201 *et seq*) employees employed within a particular department of the City.
- 3) Any disputes over whether an employee is within a particular bargaining unit shall be submitted to a neutral arbitrator per Section 1.12 and a hearing shall be held following the process described in Section 1.13 and the arbitrator's determination as to whether the employee is part of the bargaining unit shall be final and binding on the employee organization and the City.

(b) "Certified Employee Organization" or "Employee Organization" means an organization selected by a majority of the appropriate bargaining unit and certified by the City pursuant to the provisions of this section.

(c) "Collective Bargaining" means the obligation to meet at reasonable times to confer in good faith and to reduce to a written contract the matters agreed upon; but the obligation to collectively bargain does not compel a party to agree to a proposal.

(d) "Collective Bargaining Agreement" means any and all terms to which the City and the employee organization have voluntarily agreed, and any and all terms decided by an arbitrator.

(e) "Final Offer" means the last written offer made by a party less than seven (7) days prior to the start of a binding arbitration hearing.

(f) Except as otherwise defined in this section, the term "day" shall be inclusive of Mondays through Fridays during which the administrative offices of the City are normally opened. The term "day" shall exclude Saturdays, Sundays and legal holidays.

Section 1.3 - TERM OF THE COLLECTIVE BARGAINING AGREEMENT

The obligation to meet at reasonable times and negotiate in good faith shall commence within 30 calendar days of recognition, or on or prior to October 1 of any applicable year in which the bargaining agreement expires or in which collective bargaining is otherwise proper. The initial collective bargaining agreement shall be for a term of not less than one (1) year, and shall be effective on a mutually agreed to date and shall terminate on a December 31 date. Subsequent collective bargaining agreements shall be for a term of not less than one (1) year and shall be effective on a January 1 date and shall terminate on a December 31 date. A contract for a period in excess of one year shall be fully enforceable during its term, notwithstanding any other provisions of this Charter or state statute to the contrary; provided, however,

that in the event a contract covered by the provisions of Article X, section 20, subsection (4) (b) of the Colorado Constitution is negotiated, the City must comply with those provisions.

Section 1.4 - SUBJECTS FOR COLLECTIVE BARGAINING

(a) **Mandatory Subjects.** The City and the certified employee organization shall have the mutual obligation to negotiate and bargain in good faith over matters related to terms or conditions of employment, including the following: recognition clause, wages, hours, shifts, vacation, insurance (contribution levels and levels of benefits only), special or additional pay, leaves of absence, dues/fees deduction, payment of fees as set forth in Section 1.9 herein, grievance resolution procedure, pension contribution levels and other retiree benefits, work uniform provisions, seniority, transfer procedure, layoff and recall procedures, department procedures for discipline, promotion procedures, education incentives, and duration.

(b) **Non-Negotiable Subjects.** The following subjects shall be excluded from the bargaining as non-negotiable subjects of bargaining: any subject over which the city has no authority to act because of state or federal law or is in conflict with the city charter, state or federally mandated pension provisions, administration of insurance programs, selection of insurance carriers, and all matters relating to the recruitment, examination, certification and hiring of entry level members of an employee.

(c) **Permissive Subjects.** Collective bargaining upon any other subject not related to a term and condition of employment (i.e., not mandatory or non-negotiable) is permissive and may be conducted if mutually agreed to by the parties.

Section 1.5 - RIGHT TO ORGANIZE AND BARGAIN COLLECTIVELY

(a) Members of the bargaining unit shall have the right to negotiate collectively with the City and to be represented by an employee organization in such negotiations. All members of the bargaining unit shall have the right to form, join and participate in the activities of the employee organization of their choosing.

(b) Neither the city, nor any person, firm or corporation acting on behalf of the city, shall initiate, create, or dominate an employee organization.

(c) Neither the city, nor any person, firm or corporation acting on behalf of the city, shall expend any city funds or resources on any question related to union representation or selection.

Section 1.6 - SELECTION AND RECOGNITION OF THE CERTIFIED EMPLOYEE ORGANIZATION

(a) The certified employee organization shall be the sole and exclusive representative of all members of the bargaining unit if the majority of the members of the bargaining unit voting in an election vote for such employee organization. For the purposes of this section, the city recognizes the current employee organization recognized and certified on behalf of the Fort Collins Police department pursuant to the provisions of Division 7 of Article VII, Chapter 2 of the City Code.

(b) Questions concerning the selection or removal of an employee organization may be raised by petition of any member of the bargaining unit or group of such, or organization representing or wishing to represent the employees of a particular department but only if such petition is signed by at least 33% of the employees employed in the bargaining unit on the day of the filing of the petition. Such petition may be submitted at any time to the City Clerk provided that in the event there is an employee organization then certified or recognized by the City, no petition may be filed until said certified or recognized employee organization has had 12 months in which to attempt to enter into a collective bargaining agreement with the city, unless said employee organization can be shown to have been initiated, created, or dominated by the City or persons acting on behalf of the City; and provided further that no petition may be filed during the term of an existing collective bargaining agreement, except during the period from November 1 to November 30 of the final year of such collective bargaining agreement.

(c) When a petition is filed, within three (3) days of receipt of signed petition, the City Clerk shall confirm that the petition is proper under Section b, above, and immediately upon such confirmation, the City Clerk shall notify the American Arbitration Association. The American Arbitration Association shall then conduct a secret ballot election of all employees employed in the bargaining unit on the day of the election and certify in writing the results thereof to all parties involved. This secret ballot election will be conducted not less than fifteen (15) or more than thirty (30) days from the date of filing the petition. The American Arbitration Association's costs shall be borne equally between the city and the petitioner.

(d) The employee organization selected by the majority of the members of the bargaining unit voting in an election conducted pursuant to subsection (c) of this section shall be recognized by the City as the sole and exclusive employee organization for all members of the bargaining unit. An employee organization may be decertified by following the same procedures set forth in this section.

Section 1.7 - OBLIGATION TO NEGOTIATE IN GOOD FAITH

(a) It shall be the obligation of the City to meet and bargain in good faith with the representatives of the employee organization at all reasonable times and places. This obligation shall include the duty to cause any agreements to be reduced to a written contract and executed in a timely manner.

(b) It shall be the obligation of the employee organization to meet and bargain collectively in good faith with the representatives of the City at all reasonable times and places. This obligation shall include the duty to cause any agreements to be reduced to a written contract and executed in a timely manner.

(c) In any binding arbitration hearing conducted pursuant to this section, the arbitrator shall consider any evidence about either the City's or the employee organization's refusal to bargain in good faith. If the arbitrator concludes that either the City or the employee organization has failed to bargain in good faith, he shall utilize this conclusion pursuant to Section 1.14 and may base his findings on this conclusion.

Section 1.8 - REQUEST FOR NEGOTIATING

(a) Whenever benefits or any other matters requiring appropriation of money by the City are included as matters of negotiation under this section, it is the obligation of the employee organization to serve written notice of request for negotiations on the City no later than the September 15 of the year before the contract period which will be the subject of the negotiation process. Negotiations shall begin no later than October 1 of that year.

(b) All time limits for action contained in this section, other than the times for requesting and commencing negotiations set forth in this section, may be waived by mutual consent of the parties.

Section 1.9 - PAYMENT OF FEES

Nothing in this article shall prohibit the City and the employee organization from negotiating a collective bargaining agreement which contains provisions requiring all members of the bargaining unit to pay, as a condition of employment, necessary fees and expenses of collective bargaining and enforcement of any collective bargaining contract which are incurred by the employee organization.

Section 1.10 - FACILITATION ASSISTANCE

It is recognized that from time to time, the negotiating teams of the parties may find it difficult readily to achieve agreement. Whenever it is deemed appropriate or beneficial to do so, the parties may engage the services of one or more experts, consultants, facilitators or mediators as they may jointly agree may benefit the process of reaching agreement on one 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 a facilitator, mediator or other assistant to promote the parties reaching a voluntary resolution. Fees and expenses of such consultants and facilitators will be shared equally by the parties, unless otherwise agreed.

Section 1.11 - UNRESOLVED ISSUES SUBMITTED TO BINDING ARBITRATION

In the event that the employee organization and the city are unable, within forty five (45) calendar days from and including the date of their first meeting, to reach an agreement on a contract, any and all unresolved mandatory issues shall be submitted to binding arbitration. The obligation of the parties to bargain in good faith shall continue after submission of unresolved issues to binding arbitration. Any or all issues which are unresolved between the employee organization and the City within the time periods contained in this paragraph may be resolved by the parties at any time. In the event the employee organization and the City are able to reach an agreement upon any or all issues prior to the receipt of the decision of the arbitrator, then the arbitrator shall not make a decision on such issue or issues. In the event that, within fifteen (15) calendar days following the receipt of the decision of the arbitrator, the employee organization and the City are able to reach an agreement upon any or all issues decided by the arbitrator, then those agreements shall supersede the decision of the arbitrator.

Section 1.12 - BINDING ARBITRATOR - SELECTION

(a) Within thirty (30) calendar days after the adoption of this section, the City shall, in some reasonable manner, solicit applications from persons who desire to be on a permanent panel of arbitrators to resolve impasses as described in Section 1.11 herein.

(b) In order to be eligible to be on the permanent panel of arbitrators, a person must be impartial and disinterested and must be qualified by experience and training as a neutral hearing officer or arbitrator in labor/management disputes. In order to be so qualified, the person must have served as a neutral hearing officer or arbitrator in labor/management disputes for at least three (3) years and have conducted at least five (5) hearing per year in each of two (2) of the last three (3) years. These hearings shall be either hearings to resolve an impasse in negotiations between labor and management, disputes over the meaning or application of contracts between labor and management or discipline. Any person whose only experience is as a hearings officer in any civil or career service system shall not be qualified. Persons who are members of the National Academy of Arbitrators or on the American Arbitration Association panel of labor arbitrators are presumptively qualified.

(c) The City Council shall create a permanent panel of at least five (5) arbitrators from those qualified persons who apply. Placement on the permanent panel shall be by a vote of the City Council. Any qualified person can be added to the permanent panel at any time by a vote of the City Council. Any person on the permanent panel may be removed by a vote of the City Council unless that person has been selected to conduct a hearing pursuant to subsection (e) of this section and then that person can only be removed after issuing a decision in that dispute.

(d) Each person put on the permanent panel shall sign an oath to uphold the terms of this section.

(e) Within three (3) days of the expiration of the 30-day time period referred to in section 1.11, the City Clerk shall submit a list with the names of all members of the permanent panel to the employee organization and the City. Within ten (10) days of receipt of this list, the employee organization and the City shall meet and alternatively strike one name from the list until one name remains (if the panel has an odd number of names) or two names remain (if the panel has an even number of names). If one name remains, that person becomes the arbitrator for that dispute. If two names remain, the Mayor shall select one of those two names to be the arbitrator for that dispute. The Mayor's selection must take place within three (3) days of the completion of the striking process by the employee organization and the City. The determination of whether the employee organization or the City strikes first shall be done by flip of a coin.

(f) Nothing herein shall be construed to prevent the employee organization and the City from agreeing to an arbitrator from the permanent panel.

Section 1.13 - HEARINGS

(a) The arbitrator shall call a hearing to begin within thirty (30) calendar days of his selection, and shall give at least ten (10) calendar days notice in writing to the employee organization and the City of the time and place of such hearing. The hearing shall be informal, and the rules of evidence prevailing in judicial proceedings shall not be binding.

Any and all documentary evidence and other data deemed competent and relevant by the arbitrator shall be received in evidence. The arbitrator shall have the power to administer oaths and to require by subpoena the attendance and testimony of witnesses and the production of books, records and other evidence relating to or pertinent to the issues presented to him for determination.

(b) The hearing conducted by the arbitrator shall be concluded within seven (7) calendar days of the time of commencement. Within ten (10) calendar days following the conclusion of the hearing, the parties may, if they deem necessary, submit written briefs to the arbitrator. Within ten (10) days of receipt of such briefs, or within ten (10) days after the conclusion of the hearing if no post-hearing briefs are filed, the arbitrator shall make written findings and decision on the issues presented, a copy of which shall be mailed or otherwise delivered to the employee organization and the City. Said written findings and decision shall be reached in accordance with the provisions of section 1.14 herein.

Section 1.14 - FACTORS TO BE CONSIDERED BY THE ARBITRATOR

The arbitrator shall conduct the hearing and render his decision with due consideration of the need for a prompt, peaceful and just settlement of all unresolved issues between the employee organization and the City. The factors to be considered by the arbitrator 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) Comparison of the compensation, benefits, hours and other terms or conditions of employment of the members of the particular department involved with employees in departments performing similar services in public employment in local and national comparable communities;
- (5) The cost of living;
- (6) Any claims of failure of a party to bargain in good faith pursuant to section 1.7(c); and
- (7) Other similar standards recognized in the resolution of interest disputes.

Section 1.15 - FINAL OFFER PROCEDURE

The arbitrator shall choose either the final offer of the City or the final offer of the employee organization on each issue and shall state his reasons for choosing such position.

Section 1.16 - FINALITY OF THE ARBITRATOR'S DECISION

(a) Except as provided in this section, the decision of the arbitrator shall be binding on the employee organization and the City. Nothing herein shall prohibit the parties from agreeing to terms different from the decision of the arbitrator as long as such agreements are made within fifteen (15) calendar days after receipt of the arbitrator's decision.

(b) The arbitrator's decision shall be subject to court review only pursuant to the terms of this section. Any party desiring court review must file suit in district court no later than thirty (30) calendar days after the date of the arbitrator's decision. Failure to file suit within this time frame shall waive the right to appeal the decision. The district court shall affirm the award unless it determines:

- (1) The award was procured by corruption, fraud or other undue means;

- (2) The decision on any issue is arbitrary and capricious, to wit, there is no competent evidence in the record to support the decision; or
- (3) The decision on any issue was reached without considering the factors listed in section 1.14 hereof.

(c) The court shall not conduct de novo review except to determine whether the award was procured by corruption, fraud or other undue means. If the court determines that the award was procured by corruption, fraud or other undue means, the entire award shall be vacated and the matter shall be remanded back to a different arbitrator selected pursuant to the terms of subsection 1.12 hereof. The arbitrator who issued the award determined to be procured by corruption, fraud or other undue means shall no longer be deemed qualified to be on the permanent panel of arbitrators and shall be removed from that panel and shall not be eligible for reappointment to the permanent panel. If the court determines that the arbitrator's decision on any issue is arbitrary and capricious, the court shall remand that issue to the arbitrator with instructions to conduct a new hearing on that issue if either the employee organization or the City so desires and, with or without a new hearing, to issue a new decision on that issue which is based on some competent evidence in the record. If the court determines that the arbitrator's decision on any issue was reached without considering the factors listed in section 1.14 hereof, the court shall remand that issue to the arbitrator with instructions to conduct a new hearing on that issue if either the employee organization or the City so desires and, with or without a new hearing, to issue a decision which considers the factors listed in section 1.14 hereof as the arbitrator deems proper.

Section 1.17 - FEES AND EXPENSES OF ARBITRATION

One-half of the necessary fees and necessary expenses of arbitration (excluding all fees and expenses incurred by either party in the preparation of presentation of its case) shall be borne by the City and one-half shall be borne by the employee organization.

Section 1.18 - TERMS AND CONDITIONS OF EMPLOYMENT NOT TO BE REDUCED

The compensation, benefits, hours, working conditions and other terms and conditions of employment granted to the members of the bargaining unit by Charter, applicable ordinances, collective bargaining agreement and/or personnel policy or procedure as of the date of the adoption of this section shall remain in full force and effect until such time as they are modified by agreement between the City and the employee organization.

Section 1.19 - PROHIBITION

(a) The protection of the public health, safety and welfare demands that no bargaining unit employee will cause, sanction or take part in any withholding of service to the City by means of a strike, walkout, sit-down, slowdown or stoppage of work. Therefore, all such actions are expressly *prohibited*.

(b) No person shall be appointed, promoted, demoted, discharged, or in any way discriminated against because of affiliations or non-affiliations with any employee organization, except as provided by section 1.9 and any contract clause implementing that section.

Section 1.20 - SEVERABILITY

If any clause, sentence, paragraph or part of this section or application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder of this section or its application.

Section 2. That the foregoing proposed Charter amendment is hereby submitted to the registered electors of the City of Fort Collins at said special municipal election in substantially the following form:

**CITY OF FORT COLLINS
CITIZEN-INITIATED CHARTER AMENDMENT**

An amendment to the City Charter granting the right to organize and bargain collectively with the City to all full-time police officers of the City maintaining the rank of lieutenant and below, as well as community service officers, dispatchers, dispatcher supervisors, dispatch managers or their equivalent, and also granting the right to organize and bargain collectively with the City to all other classified employees of the City within a particular department who are not "exempt" employees under the federal Fair Labor Standards Act; authorizing such employees to select a bargaining agent; establishing procedures for collectively bargaining with the City regarding compensation, benefits, hours, and other conditions of employment; authorizing an arbitrator, chosen by the bargaining agent and the City from a panel selected by City Council, to make a binding decision on all unresolved bargaining issues through binding arbitration; requiring the bargaining agent and the City to equally share the expenses of arbitration; prohibiting any change in the compensation, hours, working conditions, benefits, or other terms and conditions of employment for such employees, unless agreed to by the employee organization; and prohibiting such employees from withholding services to the City by strike or other method.

YES _____
NO _____

Section 3. That any registered elector desiring to protest the proposed ballot title and/or submission clause for said measure may file a written protest in the office of the City Clerk pursuant to, and within the period of time prescribed by, Section 7-156 of the City Code.

Passed and adopted at an adjourned meeting of the Council of the City of Fort Collins this 11th day of March, A.D. 2008.

Mayor

ATTEST:

City Clerk