

**BILL NO:** \_\_\_\_\_

**ORDINANCE NO:** \_\_\_\_\_

**AN ORDINANCE OF THE CITY OF KIRKSVILLE, MISSOURI, AMENDING CHAPTER 2 – ADMINISTRATION OF THE CITY CODE BY ESTABLISHING A COLLECTIVE BARGAINING SYSTEM FOR CERTAIN EMPLOYEES OF THE CITY.**

**WHEREAS**, certain employees of the City have collective bargaining rights arising under Art. 1, Sec. 29, of the Missouri Constitution as interpreted by the Missouri Supreme Court; and

**WHEREAS**, state law does not provide any system for certain City employees not covered under Sec. 105.500 *et seq.* to exercise their constitutional bargaining rights; and

**WHEREAS**, the City Council has the authority to exercise its legislative prerogative to establish a collective bargaining system for certain City employees as determined by the Missouri Supreme Court in interpreting Art. 1, Sec. 29; and

**WHEREAS**, the City has determined that it is in the best interests of the City residents to have an orderly system for its employees to select an exclusive bargaining representative and for engaging in collective bargaining with its employees' exclusive bargaining representative consistent with the Missouri Constitution and with state law;

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF KIRKSVILLE, MISSOURI**, that the following Ordinance implement collective bargaining activities within the City consistent with the mandate of the Missouri Supreme Court, by amending Chapter 2 – Administration of the Kirksville City Code as follows:

**Section 1.** The administration of this Ordinance shall be under the management and direction of the City Manager. The City Manager shall have the authority to adopt rules, regulations, and forms necessary to carry out the provisions of this Ordinance. Such rules, regulations, and forms shall become effective after fifteen (15) City business days after filing with the City Council and the City Clerk.

**Section 2.** Employees of the City who are not covered by the state laws governing collective bargaining under Sec. 105.500 RSMo *et seq.* shall be covered by this Ordinance for the exercise of their collective bargaining rights.

**Section 3.** Definitions. For purposes of this Ordinance, the following terms as used in this Ordinance shall have the following meanings:

- A. "Employee" is defined as any full-time non-probationary employee of the City who seeks to be involved in collective bargaining through the petitioning process established in Sec. 5 of this Ordinance, but excluding supervisors, managerial employees, confidential employees, and employees who have a conflict of interest with bargaining unit employees in exercising their duties for the City;
- B. "Appropriate bargaining unit" or "bargaining unit" means a unit of City employees who enjoy a clear and identifiable community of interest among the employees concerned,

but no such unit shall include employees who are supervisors, managerial employees, confidential employees, and employees who have a conflict of interest with bargaining unit employees in exercising their duties for the City;

- C. "Confidential employees" means employees employed by the City who, in the normal performance of their duties, have authorized access to confidential information affecting the employer-employee relationship or who have a confidential working relationship with a manager or supervisor employed by the City;
- D. "Exclusive Bargaining representative(s)" means an organization which has as its purpose the representation of public employees, and which has been designated through an election process by a majority of all employees in an appropriate bargaining unit as the representative of such employees in such unit for purposes of collective bargaining; and which conforms to the requirements of this Ordinance for continued designation as an exclusive bargaining representative;
- E. "Managerial employees" means persons employed by the City who formulate, determine, implement, or effectuate policies for the City;
- F. "Other conditions of employment" means the conditions as determined by the City Manager pursuant to the rules that are adopted to implement this Ordinance, but such conditions shall not include: retroactive application of pay and benefits, mandatory dues payments as a condition of employment with the City of any employee, or which violate federal or state law; or items identified in the section relating to good faith bargaining;
- G. "Salaries" means the hourly rate of pay of employees;
- H. "Strike" means an employee's refusal, in concerted action with others, to report to duty; a willful absence from the employee's position; a stoppage, reduction, or slowdown of work; or the use of leave for the purpose of inducing, influencing, or coercing a change in the conditions, compensation, rights, privileges, or obligations of employment, or a decision of the City; and
- I. "Supervisory employees" means persons employed by the City who have the authority to recommend hiring, promotion, transfer, discipline, or discharge of employees, to direct and assign the work force, to adjust grievances, or to engage in evaluations of employees, regardless of the amount of time engaged in such activities.

**Section 4.** The following rules have been adopted to manage the petitioning and election process for employees to seek an election to determine if an organization is selected by election to be designated as an exclusive bargaining representative consistent with this Ordinance.

A. *Petition for Certification or Decertification*

A group of employees, an employee, or a labor organization seeking recognition in a proposed appropriate bargaining unit, must file a petition for certification (or representation petition) with the City Manager or the City Manager's designee. A petition for decertification of a public employee representative may be filed by any group of employees, or any individual acting on their behalf, alleging the certified or recognized employee representative is no longer the majority representative of such employees. A petition for unit clarification or amendment may be filed by the majority representative of the employer or by the employer. All such petitions shall be in writing and must be filed with the City Manager or the City Manager's designee.

B. *Appropriateness of Unit*

A "bargaining unit" means a class of jobs or positions that are held by employees whose collective interests may be suitably represented by a labor organization for collective bargaining. A bargaining unit that contains peace officers shall contain no employees other than peace officers. Supervisors, as defined by this Ordinance, shall be excluded from bargaining units.

In determining whether a petitioned-for or proposed bargaining unit is appropriate, in that employees within the proposed unit share a clear and identifiable community of interest, the following factors may be considered:

1. Degree of functional integration;
2. Nature of their supervision;
3. Extent of common supervision;
4. Nature of employee skills and functions;
5. Interchangeability and contact among employees;
6. Whether there is any substitution of one group of employees for another and the frequency of such substitution, if any;
7. Work situs;
8. Types of equipment operated or utilized by employees;
9. Education, training, and experience;
10. Work schedules;
11. Compensation, including the method of compensation for both regular and overtime work, and the salary or wage rates;
12. Methods used to record employees' time;
13. Nature and extent of similar or dissimilar working conditions;
14. Amount of time spent in the field in relation to that spent at the employer's facilities;
15. Work clothes, uniforms, insignia, badges, or other specialized equipment;
16. Previous bargaining history and extent of organization; and

17. Employer organization and structure, including name or designation given the particular department by the employer.

No one factor shall be dispositive, but shall be accorded its proper weight as determined by the investigating or hearing officer.

C. *Timeliness of Petitions and Bars to Election*

Contract Bar When there is a collective bargaining agreement of one (1) year or shorter duration covering all or some of the employees in the bargaining unit, representation and decertification petitions may be filed during the window period (between 90 and 60 days prior to the scheduled expiration date of the collective bargaining agreement) or any time after the expiration of the collective bargaining agreement. The collective bargaining agreement, however, shall serve as a bar (contract bar) to filing representation or decertification petitions outside of the window period.

When there is a collective bargaining agreement of more than one (1) year in duration covering all or some of the employees in the bargaining unit, representation and decertification petitions may be filed during any time after the first year of the agreement has elapsed.

Certification Bar No representation or decertification petition may be filed within twelve (12) months following the date of certification of an exclusive representative for all or some of the employees in the bargaining unit.

Election Bar With respect to any bargaining unit, no election may be conducted in a bargaining unit, or subdivision thereof, when a valid City-conducted election has been held within the preceding twelve (12) month period in which the petitioner, employee, or labor organization has lost the election. Moreover, representation and decertification petitions filed within the last three (3) months of the twelve (12) month period will be processed, and any resulting election will be held after the twelve (12) month period has elapsed.

D. *Contents of Petition for Certification*

A petition for certification (or a representation petition) may be filed by an employee, a group of employees, a labor organization, or the employer alleging that one or more labor organizations have presented a claim to be recognized as the exclusive bargaining representative of a majority of the employees in an appropriate unit.

Such petitions shall be signed by a representative of the petitioning party and shall contain:

1. Name, address, telephone number, facsimile number, e-mail address, and affiliation, if any, of the labor organization;
2. Name, address, telephone number, facsimile number, and e-mail address of petitioner's representative;

3. A specific and detailed description of the bargaining unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall include the general classifications of employees sought to be included and those sought to be excluded, including job titles to the extent known, and the approximate number of employees in the unit claimed to be appropriate;
4. A statement of whether the proposed unit combines professional and nonprofessional employees;
5. A statement of whether the proposed unit is to be included within an existing bargaining unit;
6. Name, address, telephone number, facsimile number, e-mail address, and affiliation, if any, of any existing exclusive representative of any employees in the proposed bargaining unit, including the date of such certification or recognition and the expiration date of any applicable contract, if known to the petitioner;
7. Name(s), address(es), telephone number(s), facsimile number(s), e-mail address(es), and affiliation(s), if any, of any other interested employee organizations, if known to the petitioner; and
8. Any other relevant facts.

The petition must be accompanied by a showing of interest of not less than forty-five percent (45%) of the employees in the unit alleged to be appropriate. Any evidence submitted as a showing of interest must contain legible signatures, and each signature must be dated by the employees. The evidence submitted as a showing of interest must indicate the employee's desire for the named labor organization or employee organization to act as his or her exclusive bargaining representative. Such showing of interest shall be dated not more than two (2) months prior to the filing of the petition.

A petition filed by the employer shall state that a claim for representation has been made by one (1) or more public employees, groups of public employees, individuals, or employee organizations, and that the employer has a good faith doubt concerning the majority representative of its employees. No showing of interest must accompany any such petition filed by the employer.

E. *Contents of a Petition for Decertification*

A petition for decertification of a public employee representative shall contain substantially the following:

1. A statement that the employee representative certified by the City no longer represents a majority of employees in the collective bargaining unit in which it is

currently certified and such employee organization asserts a claim to be the majority representative of the employees;

2. Name, address, telephone number, facsimile number, and e-mail address of petitioner and petitioner's representative;
3. Name, address, telephone number, facsimile number, e-mail address, and affiliation, if any, of the exclusive representative;
4. A specific and detailed description of the bargaining unit claimed to be appropriate for the purpose of exclusive representation by the petitioner. Such description shall include the general classifications of employees sought to be included and those sought to be excluded, including job titles to the extent known, and the approximate number of employees in the unit claimed to be appropriate;
5. The date of such certification or recognition and the expiration date of any applicable contract, if known to the petitioner; and
6. Any other relevant facts.

The petition must be accompanied by a showing of interest of not less than twenty percent (20%) of the employees in the unit alleged to be appropriate. The showing of interest in support of a decertification petition may consist of cards or petitions indicating that the employees do not want the incumbent labor organization or employee organization to continue serving as the exclusive representative. Such showing of interest shall be dated not more than six (6) months prior to the filing of the petition.

F. *Petition for Unit Clarification*

A petition for unit clarification may be filed by the certified representative, the employer, or both. Such a petition shall include:

1. A description of the present certified recognized unit and the date of such certification;
2. The proposed clarification of the unit; and
3. A statement by petitioner setting forth the reasons as to why clarification is requested.

G. *Petition for Amendment of Certification*

A petition for amendment of certification may be filed by the certified representative, the employer, or both. Such a petition shall include:

1. A description of the present certified recognized unit and the date of such certification;
2. The proposed amendment of the certification; and
3. A statement by petitioner setting forth the reasons as to why amendment is requested.

H. *Processing of Petition*

Upon the filing of any petition, the City Manager or his or her designee shall investigate the petition to determine the facts. The City Manager or his or her designee shall determine whether or not a valid question concerning representation of employees exists in a *prima facie* appropriate unit.

I. *Determination of Showing of Interest*

Whenever an employee has signed authorization cards or petitions for two (2) or more labor organizations, each card or petition shall be counted in computing the required showing of interest for both labor organizations. Duplicates for the same labor organization shall be counted as one.

The adequacy of the showing of interest shall be determined administratively by the City Manager or his or her designee. The showing of interest determination is not subject to review or litigation; however, any person who has evidence that the showing of interest was obtained improperly, such as through fraud or coercion, may bring the evidence to the attention of the City Manager or his or her designee investigating the petition.

If the City Manager or his or her designee determines that the evidence submitted does not demonstrate the appropriate level of the showing of interest, the petitioner shall have twenty-four (24) hours to provide the necessary showing of interest. If the petitioner is unable to present any necessary additional evidence of a showing of interest within that time, then the petition shall be dismissed, and such dismissal shall serve to bar petitioner from filing any subsequent petition seeking to represent employees in the petitioned-for unit or a similar unit for twelve (12) months.

If the City Manager or his or her designee determines the evidence submitted meets the appropriate level of a showing of interest, he or she shall order that an election be conducted to determine whether employees in the petitioned-for unit desire exclusive representation by the petitioning labor organization for purposes of collective bargaining. The order shall contain the date of the election and set forth the date of eligibility for purposes of voting in the election.

If the City Manager or his or her designee determines that there is reasonable cause to believe that there are unresolved issues relating to the question concerning representation, the

City Manager or his or her designee shall set the matter for hearing before the City Clerk. All parties shall be given a minimum of fourteen (14) days' notice of the hearing.

J. *Hearings*

A notice shall be served at least fourteen (14) days in advance of the hearing on all interested parties, and shall include:

1. A statement of the time, place, and nature of the hearing;
2. The name of the public employer, petitioners, and intervenors, if any; and
3. A statement of the legal authority and jurisdiction under which the hearing is to be held.

Hearings under these rules are considered investigatory and not adversarial. Any party shall have the right to appear in person, by counsel, or by other representative, to call, examine, and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence, except that the participation of any party shall be limited to the extent permitted by the hearing officer. The hearing officer shall have the power to issue subpoenas for the production of documents and/or the testimony of necessary witnesses.

Any party shall be entitled, upon request, to a reasonable period prior to the close of the hearing for oral argument, which shall be included in the official transcript of the hearing. Any party shall be entitled, upon request made before the close of the hearing, to file a brief or proposed findings and conclusions, or both, with the hearing officer, who may fix a reasonable time for such filing, but not in excess of thirty (30) days, excluding Saturdays, Sundays, and legal holidays, from the close of the hearing. Requests for further extensions of time for good cause shown shall be made to the hearing officer.

Following the hearing, the hearing officer shall make a determination conclusively resolving any unresolved issues, which shall be final and binding and not subject to review. If the hearing officer orders an election, the order shall contain the date of the election and set forth the date of eligibility for purposes of voting in the election. The date of the election shall not be less than thirty (30) days from the date an election is directed.

K. *Withdrawal of Petition; Effect*

A petitioner may file a request to withdraw its petition at any time prior to a valid election being conducted. Where a petitioner files such a withdrawal request prior to a hearing or the setting of an election, the request shall be granted; however, it shall result in six (6) months' prejudice to the petitioner, and no subsequent petition in the same or a similar unit from petitioner shall be entertained for a period of six (6) months. Where a petitioner files such a withdrawal request after a hearing has been conducted or an election has been set, the request shall be granted; however, it shall result in twelve (12) month's prejudice, and no subsequent petition in the same or a similar unit from petitioner shall be entertained for a period of twelve (12) months. Where more than one labor organization or employee organization is involved, the remaining labor organization or employee organization may, at its



option, seek to proceed to an election. In no event, however, shall a petitioning or intervening labor organization be permitted to withdraw within seventy-two (72) hours of the scheduled election.

L. *Election*

Appropriate notices of election shall be furnished to all interested parties, and shall be prominently posted by the employer no less than three (3) days prior to the opening of the polls. Such notice shall contain the date, hours, and place of the election; the eligibility period; the details and procedures for an election; the appropriate unit(s); and a sample ballot.

The employer shall furnish a list including the names, addresses, and job titles of all eligible voters in the unit as determined by the hearing officer or agreed to by the parties. This list must be supplied to the labor organization or employee organization not less than three (3) days prior to the election.

Each of the interested parties may designate an observer for the poll. Unless otherwise stipulated by the parties, observers must be non-supervisory employees of the public employer.

Any observer or authorized officer may challenge an employee's eligibility to vote. Challenged ballots shall be folded and placed in a sealed envelope with the name of the voter plainly written on the outside. Challenged ballots will not be considered unless they might affect the result of the election. Challenged ballots which are allowed will be counted; challenged ballots which are disallowed will be destroyed. The names of the persons whose ballots are challenged shall be made part of the record of the election proceedings. Should a labor organization or employee organization challenge an employee on the basis that he or she is not eligible to vote for any reason, other than that he or she was hired after the date of eligibility as specified in the stipulated election agreement or direction of election, the labor organization or employee organization shall be barred from seeking to include such individual in the unit through the clarification or amendment procedure for a period of not less than twelve (12) months.

All elections shall be conducted by secret ballot.

The City Manager or his or her designee conducting the election shall prescribe the area in proximity to the polling place in which electioneering shall be prohibited. Cameras, video equipment, cellular telephones, and similar equipment shall be prohibited within the actual polling area while employees are voting.

Ballot boxes shall be examined in the presence of observers immediately prior to the opening of the polls and shall be sealed at the opening of the polls. The seal shall allow for one opening on the top of the ballot box for voters to insert their ballots.

A voter shall mark a cross (X) or check mark in the circle or block designating the voter's choice in the election. The intent of the voter shall be followed in the marking of the ballot. If the ballot is defaced, torn, or marked in such a manner that it is not understandable, or identifies the voter, the ballot shall be declared void. If the voter inadvertently spoils a ballot, it

may be returned to the board agent who shall give the voter another ballot. The spoiled ballot shall be placed in a "spoiled ballot" envelope, which shall be sealed, initialed by the observers, and placed in the ballot box.

A voter shall fold the ballot so that no part of its face is exposed and, on leaving the voting booth, shall deposit the ballot in the ballot box. If the election is continued for more than one period, the ballot box shall be sealed by the City Manager or his or her designee and initialed by the observers until the subsequent opening of the polls, and shall remain in the custody of the City Manager or his or her designee.

Ballots may not be tallied until after the posted time for closing of the polls unless all eligible voters have cast their ballots. Upon the conclusion of the election, the ballots shall be counted and a tally of ballots completed.

An organization shall be certified if it receives a majority of the valid votes cast.

Within seven (7) days after the tally of ballots has been furnished, any party may file objections to the conduct of the election or the conduct affecting the results of the election, which shall contain a short statement of the reasons therefore with the City Manager or his or her designee. If objections are filed, the City Manager or his or her designee shall investigate such objections. Where objections are filed or challenges are determinative, a hearing shall be conducted. The objecting party shall bear the burden of proof on all issues and matters alleged in the objections.

If no objections are filed within the time permitted, the City Manager or his or her designee shall issue a certification of results, including certification of the representative, where appropriate.

M. *Runoff Election*

When the results of an election are inconclusive, a runoff election may be conducted by the City Manager or his or her designee. An inconclusive election is an election in which the ballot provides for not less than three (3) choices (that is, at least two (2) labor organizations or employee organizations and "neither") and result in no choice receiving a majority of the valid ballots cast.

The ballot in a runoff election shall provide for a selection among the two (2) or more choices receiving the largest number of votes, the sum of whose aggregate at least one (1) more than half of the total votes cast. Where, however, all choices receive an equal number of votes or where two (2) choices received an equal number of votes and a third choice received a higher, but less than a majority, vote, a nullity should be declared and a rerun election conducted. If the second election results in another such nullity, the petition shall be dismissed. Where two (2) or more choices receive an equal number of votes and another receives no votes, there are no challenges, and all eligible voters have voted, neither a runoff nor a rerun election shall be conducted; rather, a certification of results should issue.

**Section 5.** An exclusive bargaining agent shall file an annual financial disclosure report with the City Clerk no later than the last business day of the City's fiscal year on a form adopted by the City Manager which shall require the reporting of the following information: all income derived from the bargaining unit in the City; a list of officers and authorized representatives for the exclusive bargaining representative with the amount of their annual salary and benefits; the detailed expenses incurred in providing representation to the employees in the bargaining unit in the City; the method for determination of dues and/or fees and/or assessments for employees the bargaining unit in the City; and such other financial information deemed appropriate by the City Manager.

**Section 6.** The parties to any collective bargaining process shall engage in good faith bargaining in carrying out their respective duties under state law.

Good faith bargaining means the obligation of the City through its representatives, and an exclusive bargaining representative through its representatives, to meet at reasonable times and at reasonable places to engage in negotiations, with the intent of reaching an agreement that shall be committed to writing when completed for approval by a majority secret ballot vote of all of the employees in the bargaining unit regardless of membership, and by the City Council. The mandatory subjects of bargaining are salaries and other conditions of employment as set out in this Ordinance. The City may, in its sole discretion, agree to and adopt as part of a collective bargaining agreement, a provision permitting the resolution of grievances through a grievance and arbitration mechanism. The exercise of good faith shall not require the City to accept any proposal of the exclusive bargaining agent; shall permit the City Council or its representatives to accept, reject, modify, or otherwise act or refuse to act on any or all proposals presented for consideration; and upon completion of negotiations, reduce the results to writing and be presented to the City Council in the form of an Ordinance, resolution, bill, or other form required for adoption, modification, or rejection of any or all parts of the submitted proposal.

As a matter of public policy, good faith bargaining shall not require the City to discuss or negotiate over the following topics: the sole responsibility to make managerial policy; direction, supervision, evaluation, selection, and retention of employees; the governmental operations and the organization of the City operations; the disciplining of employees; the adequacy of the work force including manning decisions; the determination of the overall budget of the City or allocations within such a budget; the overall mission of the City; and the determination of emergency conditions for operations of the City. Inclusion of such items in a collective bargaining agreement does not change the City's ability to determine what it is willing to discuss or negotiate for each period of agreement. No action in collective bargaining shall require the City Council to appropriate any funds to implement a particular provision of any collective bargaining agreement.

**Section 7.** Severability. If any provision of this Ordinance is determined by a court of competent jurisdiction to be unconstitutional, illegal, or unenforceable, that provision shall be severed from the Ordinance and the remaining provisions shall remain in force and effect.

**Section 8.** This Ordinance shall become effective upon the execution of the document by the Mayor.

**Section 9.** The provisions of this Ordinance shall be included and incorporated in the Code of Ordinances of the City of Kirksville, Missouri, as an addition or amendment thereto, and shall be appropriately re-numbered to conform to the uniform numbering system of the Code.

**PASSED BY THE CITY COUNCIL AND SIGNED BY THE MAYOR ON THIS 18th DAY OF MARCH, 2013.**

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Richard L. Detweiler, Mayor

ATTEST:

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Vickie Brumbaugh, City Clerk