

# **Mayor and Council Work Session June 6, 2017 Agenda**

*"A diverse, business-friendly, and sustainable community with clean, safe and strong neighborhoods."  
"Providing the most efficient and highest-quality services as the municipal location of choice for all  
customers."*

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**"Think little goals and expect little achievements. Think big goals and win big success."  
David J. Schwartz**

## **4:30 PM WORK SESSION**

1. Update from Washington County Museum of Fine Arts - *Rebecca Massie-Lane, Director; Al Martin, President*

- 4:45 PM** 2. Review of Binding Interest Arbitration Draft Ordinance - *Jennifer Keefer, City Attorney*

## **CITY ADMINISTRATOR'S COMMENTS**

## **MAYOR AND COUNCIL COMMENTS**

## **ADJOURN**

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Update from Washington County Museum of Fine Arts - *Rebecca Massie-Lane, Director; Al Martin, President*

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Review of Binding Interest Arbitration Draft Ordinance - *Jennifer Keefer, City Attorney*

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

Binding\_Interest\_Arbitration\_Draft\_Ordinance.pdf

**Description**

Binding Interest Arbitration



# CITY OF HAGERSTOWN, MARYLAND

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**Donna K. Spickler**

City Clerk

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TO: Mayor and City Council Members  
Valerie Means, City Administrator

FROM: Donna K. Spickler, City Clerk

SUBJECT: Binding Interest Arbitration Draft Ordinance

DATE: June 2, 2017

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The draft ordinance for Binding Interest Arbitration is attached for your review.

Time is included on the June 6, 2017 Work Session agenda to discuss the draft ordinance.

If you have any questions, please let me know.

Thank you.



**CITY OF HAGERSTOWN, MARYLAND**

**AN ORDINANCE TO AMEND THE CODE  
OF THE CITY OF HAGERSTOWN TO ADOPT A NEW  
CHAPTER \_\_, *IMPASSE PROCEDURES FOR NON-MANAGEMENT  
EMPLOYEES OF THE POLICE AND FIRE DEPARTMENTS*  
WHICH ESTABLISHES PROCEDURES FOR IMPLEMENTING BINDING  
ARBITRATION IN THE CITY OF HAGERSTOWN**

**RECITALS**

WHEREAS, a petition was presented to the legislative body of the City of Hagerstown requesting that a proposed charter amendment be submitted to the voters for referendum in the next municipal election; and

WHEREAS, a majority of those who voted on the amendment in the municipal election on November 8, 2016 voted for the proposed charter amendment; and

WHEREAS, the charter amendment authorizes the use of binding arbitration in the event of an impasse during negotiations with either the union members of the police department or the union members of the fire department; and

WHEREAS, the charter amendment requires the City Council to adopt an ordinance delineating the procedures for appointing a neutral arbitrator, the factors that should be considered by the arbitrator, and the procedures for implementing the arbitrator's decision; and

WHEREAS, upon recommendation of City staff, the Mayor and Council find it in the best interests of the citizens to adopt Chapter \_\_, *Impasse procedures for Non-Management Employees of the Police and Fire Department*, as hereafter described;

**NOW, THEREFORE, BE IT RESOLVED, ENACTED AND ORDAINED** by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. The foregoing recitals be and are incorporated herein as if restated verbatim.
2. The Code of the City of Hagerstown is hereby amended by adding thereto a new chapter, to be Chapter \_\_, *Impasse procedures for Non-Management Employees of the Police and Fire Department*, to read as follows:

(See Attached)

3. This amendment to the Code of the City of Hagerstown shall become effective immediately upon the effective date of this Enacting Ordinance.

**BE IT FURTHER RESOLVED, ENACTED AND ORDAINED** that this Enacting Ordinance shall become effective upon the expiration of thirty (30) calendar days following its approval.

WITNESS AND ATTEST  
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE  
CITY OF HAGERSTOWN, MARYLAND

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Donna Spickler, City Clerk

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Robert E. Bruchey, II, Mayor

Date of Introduction: June 13, 2017

Date of Passage: June 20, 2017

Effective Date: July 21, 2017

PREPARED BY  
SALVATORE & MORTON, LLC,  
CITY ATTORNEY

§ \_\_\_\_\_. Impasse procedures for Non-Management Employees of the Police and Fire Departments.

A. **Applicability.** This section governs the procedure for resolving an impasse between: (i) the City and the Non-Management Employees of the Police Department or their Exclusive Representative; and (ii) the City and the Non-Management Employees of the Fire Department or their Exclusive Representative.

B. **Definitions.**

1. **Arbitration:** a process for resolving labor disputes in which a neutral third party (arbitrator), chosen according to the provisions of this chapter, renders a binding decision after permitting both parties the opportunity to be heard according to the provisions of this chapter.
  2. **Fact Finding:** a process for resolving labor disputes in which a neutral third party, chosen according to the provisions of this chapter, renders a non-binding recommendation as to what terms and conditions should be contained in a new collective bargaining agreement.
  3. **Impasse:** a point in labor negotiations at which both parties agree in writing that no further progress can be made toward reaching an agreement because neither party is willing to change its collective bargaining position with respect to wages, fringe benefits, or other terms and conditions of a proposed new collective bargaining agreement or labor dispute.
  4. **Labor dispute:** a conflict or controversy during labor negotiations regarding wages and benefits between: (i) the City and the Non-Management Employees of the Police Department or their Exclusive Representative; or (ii) the City and the Non-Management Employees of the Fire Department or their Exclusive Representative.
  5. **Mediation:** a process for resolving labor disputes in which a neutral third party (mediator), chosen according to the provisions of this chapter, assists the parties to reach an agreement. The mediator has no power to impose a decision on the parties.
  6. **Non-Management Employees of the Police and Fire Departments:** a full-time employee of: (i) the Hagerstown Police Department who is in good standing with AFSCME Local 3373; or (ii) the Hagerstown Fire Department who is a member in good standing with IAFF Local 1605.
- C. **Exclusive Representative.** Pursuant to Section 802A of the Charter of the City of Hagerstown, Non-Management Employees of the Police Department and Non-Management Employees of the Fire Department shall be entitled to designate a union to act as their Exclusive Representative and to engage in collective bargaining with the City, to include the procedures set forth in this section.
- D. **Mediation, fact finding, and arbitration.** Should an impasse occur between either: (i) the City and the Non-Management Employees of the Police Department or their Exclusive Representative; or (ii) the City and the Non-Management Employees of the Fire Department or their Exclusive Representative, the parties who have declared the impasse shall submit the issues on which they have reached impasse to mediation as

provided in subsection (E) and to fact finding as provided in subsection (G). Upon completion of mediation and fact finding without final agreement on a new collective bargaining agreement, the parties who have declared the impasse shall commence arbitration procedures in accordance with subsection (H). The existing or most recently terminated or most recently expired collective bargaining agreement between the parties who have declared the impasse shall remain in effect until a final disposition is rendered, including any motion to vacate the decision rendered by the arbitrator panel filed in accordance with subsection (Q) and any appeal thereof.

- E. **Non-binding mediation.** Mediation shall be non-binding, conducted by a neutral mediator selected by the parties who have declared the impasse, or in the event these parties are unable to agree upon a mediator, by a neutral mediator selected from a list provided by the Federal Mediation and Conciliation Service, and conducted in a manner agreed to by the parties at impasse.
- F. **Mediation statements or positions as evidence in other proceedings.** No statement made or position taken during mediation under this section may be used as evidence in any other proceeding.
- G. **Fact Finding.** If the parties who have declared the impasse do not reach voluntary agreement in mediation, each party shall submit the issues on which they have reached impasse and their positions on these issues to fact finding, in which a neutral fact finder selected by the parties at impasse or in the event the parties at impasse are unable to agree upon a fact finder, selected from a list provided by the Federal Mediation and Conciliation Service, will hear evidence presented by both parties and will make a non-binding recommendation on which terms and conditions should be contained in the new collective bargaining agreement between the parties. No statement made or position taken during fact finding under this section may be used as evidence in any other proceeding.
- H. **Arbitration.** Upon completion of mediation and fact finding without final agreement on a new collective bargaining agreement, the parties who have declared the impasse shall:
  - 1. within ten (10) days of completion of the fact finding process, reduce to writing a memorandum of agreed issues, which states all of the wages, benefits, and terms and conditions of employment upon which they agree;
  - 2. within ten (10) days of completion of the fact finding process, apply to the Federal Mediation and Conciliation Service for a list of no fewer than five (5) neutral labor arbitrators who are members of the National Academy of Arbitrators, who are familiar with and have rendered decisions in public employer impasse disputes and interest arbitration, and available to conduct a hearing and issue a final written award;
  - 3. pursuant to an application made under subsection (H)(2), instruct the Federal Mediation and Conciliation Service to provide a list of neutral arbitrators who are familiar with and have rendered decisions in public employer impasse disputes and interest arbitration, and available to conduct a hearing and issue a final written award; and



4. within fourteen (14) calendar days of receiving the list of neutral arbitrators described in subsection (H)(3), select a neutral arbitrator panel in accordance with subsection (J).
- I. **Alternative arbitrator lists.** If the Federal Mediation and Conciliation Service is unable to satisfy the requirements of subsection (I), the parties who have declared the impasse shall:
1. agree to accept fewer than five (5) arbitrators; or
  2. request from the American Arbitration Association a supplementary or alternative list of neutral labor arbitrators who are members of the National Academy of Arbitrators, who are familiar with and have rendered decisions in public employer impasse disputes and interest arbitration, and available to conduct a hearing and issue a final written award.
- J. **Selection of a neutral arbitrator.** The parties who have declared the impasse shall select the neutral arbitrator in the manner as follows.
1. The Non-Management Employees or their Exclusive Representative shall strike the first arbitrator from the list or lists provided under subsections (H) and (I).
  2. After the first strike, the City shall strike the second arbitrator from the list or lists provided under subsections (H) and (I).
  3. The Non-Management Employees or their Exclusive Representative and the City shall continue to alternate strikes until a panel of three neutral labor arbitrators remains.
  4. In the event that the list or lists provided contain(s) more than five (5) neutral labor arbitrators or fewer than five (5) neutral labor arbitrators, the parties shall alternate strikes until a panel of three neutral labor arbitrators remain, in such a manner that the City exercises the final strike of the fourth remaining neutral labor arbitrator and alternating backwards.
- K. **Alternative neutral arbitrator.** If any of the panel of three neutral arbitrators selected under subsection (J) is unwilling or unable to serve as the arbitrator, then the parties who have declared the impasse shall select the arbitrator(s) whose name(s) was/were last stricken under subsection (J).
- L. **Powers and duties of neutral arbitrator panel.** After conferring with the parties who have declared the impasse as to their selection, the panel of neutral arbitrators selected under this section shall:
1. require the parties to submit a final offer, which must consist of either a complete draft of a proposed collective bargaining agreement or a complete package proposal, as the panel directs;
  2. require the parties to submit jointly to the arbitrator panel the memorandum of agreed issues prepared according to subsection (H)(1);
  3. schedule and hold a pre-hearing conference in which procedural consideration for both the hearing and the post-hearing submission of briefs will be addressed and either agreed to by the parties or to the extent the parties cannot agree on procedures, determined by the panel of arbitrators;

4. convene and adjourn a hearing, which may be closed in accordance with law at which the parties who have declared impasse may present evidence in accordance with subsection (M);
5. administer oaths;
6. issue subpoenas duces tecum to compel the production of relevant and non-privileged documents and other tangible evidence to be produced at a time prior to a hearing or at a hearing;
7. issue subpoenas to compel the attendance and testimony or witnesses, except that no elected official of the City or of the State may be compelled to appear and testify;
8. sequester witnesses, if requested; and
9. decide whether to hear evidence offered through a proffer.

**M. Determinations of neutral arbitrator panel.** The neutral arbitrator panel selected under this section shall:

1. have full authority to hear and decide all stipulated issues in dispute including the procedures of the arbitration hearing;
2. have no authority to consider or amend matters previously agreed upon and submitted in the parties' memorandum of agreed upon issues;
3. receive and enter into the record the final offers of the City and the Exclusive Representative;
4. evaluate and give the highest priority to the ability of the City to pay for additional short-term and long-term expenditures by considering the following factors:
  - i. the limits on the City's ability to raise taxes or charge fees under State law and the City Charter,
  - ii. the added burden on City taxpayers, if any, resulting from increases in revenues needed to fund the final offer and/or decreases/reductions in services,
  - iii. the City's ability to continue to provide the current standard of all public services,
  - iv. the number of bargaining unit employees per capita,
  - v. the current assessed valuation of real estate property in the City, and
  - vi. a comparison of the assessed valuation of real estate property and tax rates of other public employers in Washington County, Maryland; Allegany County, Maryland; Franklin County, Pennsylvania; and Berkeley County, West Virginia;
5. after evaluating the ability of the City to pay under paragraph M(4), the arbitrator panel may only consider the following evidence presented by a party to the impasse at the arbitration hearing:
  - i. the interest and welfare of City taxpayers and service recipients,
  - ii. past collective bargaining agreements between the parties, including past bargaining history that led to each agreement,

- iii. a comparison of wages, hours, benefits, and conditions of employment of corresponding fire and law enforcement employees of other public employers in Washington County, Maryland; Allegany County, Maryland; Franklin County, Pennsylvania; and Berkeley County, West Virginia,
    - iv. a comparison of cost of living in Washington County, Maryland; Allegany County, Maryland; Franklin County, Pennsylvania; and Berkeley County, West Virginia,
    - v. a comparison of the number of public sector police employees or public sector fire employees both gross and on a per capita basis to the number of residents of Washington County, Maryland; Allegany County, Maryland; Franklin County, Pennsylvania; and Berkeley County, West Virginia,
    - vi. a comparison of wages and benefits of other City of Hagerstown employees; and
    - vii. such other factors that are normally or traditionally taken into consideration in the determination of wages, hours, and terms and conditions of employment, through voluntary collective bargaining, in public sector employment;
  - 6. Within 30 days of the arbitration hearing or the parties submission of post-hearing briefs, the panel will issue a final written award based solely on the evidence presented at the arbitration hearing that either 1) chooses between and sustains in its entirety either the total package final offer of the parties who have declared impasse, or 2) resolves all of the stipulated issues with a final award within the range contained between the two final offers, contains the agreed-upon issues, and that briefly states an explanation as to why the selected final offer was chosen (if a complete final offer is chosen) and why the rejected offer was not, or briefly explains why the final award was made and why the final offers were rejected; and
  - 7. have copies of a final written award delivered to the parties who have declared the impasse.
- N. **Revision of final written award by neutral arbitrator panel.** Upon a motion, notice, and after offering the parties who have declared impasse an appropriate opportunity to be heard, the neutral arbitrator panel may revise the final written award, if necessary, to correct clerical or other ministerial errors at any time within 10 days after issuing the award.
- O. **Revision of final written award by agreement of parties.** The parties who have declared impasse may agree to modify the final written award of the neutral arbitrator panel by a written agreement that is executed by the parties to the impasse, and the final written award as amended shall have full force and effect.
- P. **Final written award final and binding.** The final written award issued by the neutral arbitrator panel, or the final written award as modified in accordance with subsections (N), (O), and (R), and the memorandum of agreed issues shall be final and binding upon the parties who have declared the impasse and shall be implemented as part of the budget process for the appropriate fiscal years.

- Q. **Petition to vacate final written award.** The parties who have declared the impasse may move to vacate all or part of the final written award of the arbitrator panel by filing a petition to vacate the arbitrator panel's final written award in the Circuit Court for Washington County in accordance with and subject to the Courts and Judicial Proceedings Article, § 3-224, of the Maryland Code.
- R. **Severability of provisions.** Should any part of the final written award be vacated pursuant to a final order of the Court of competent jurisdiction, the portions of the final written award that are not vacated and the written memorandum of agreed issues shall be severable and given full force and effect.
- S. **Mediator and arbitrator costs shared.** The parties shall share equally all costs and professional fees of mediators and arbitrators engaged under this section, including the cost of any recording services, court reports, and/or transcripts.
- T. **Legal costs.** Each party to the impasse shall be separately and independently responsible for its own legal expenses and fees associated with proceedings under this section.
- U. **Location.** All mediation and arbitration proceedings shall be held within the corporate limits of the City of Hagerstown unless the parties otherwise agree in writing.
- V. **No Strike.** Nothing in this chapter shall be construed to permit either AFSCME Local 3373 or IAFF Local 1605, nor their members, to incite, encourage, or participate in any strike, sympathy strike, walkout, slowdown or other work stoppage of any nature.
- W. **Execution.** The parties must execute the award, and any provision which requires action in the City of Hagerstown budget must be included in the next Mayor and Council Approved Fiscal Year budget.