

# AGENDA ITEM SUMMARY

## FORT COLLINS CITY COUNCIL

ITEM NUMBER: 27

DATE: March 18, 2008

STAFF: Darin Atteberry

### SUBJECT

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Resolution No. 2008-034 Expressing the City Council's Opposition to a Proposed Charter Amendment Pertaining to Collective Bargaining and Binding Arbitration.

### RECOMMENDATION

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Staff recommends adoption of the Resolution.

The logo for "FACE THE STATE" is displayed in white text on a dark blue rectangular background. The word "FACE" is on the left, "STATE" is on the right, and "THE" is centered between them. The letter "I" in "THE" is replaced by a stylized graphic of three horizontal lines of varying lengths, resembling a mountain range or a bridge.

### EXECUTIVE SUMMARY

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A special election has been called for June 10, 2008 for the purpose of submitting to the electors of the City a proposed amendment to the City Charter which would grant certain City employees the right to organize and bargain collectively with the City and require impasses on contract issues to be resolved by a third party arbitrator. The arbitrator would not share the same responsibilities as the City's elected and appointed officials for balancing the needs of City employees with all other important financial needs of the City. The amendment also contains numerous ambiguities that will likely need to be resolved at considerable expense to the taxpayers.

For these and other reasons stated below, City staff recommends that Council adopt this Resolution expressing its opposition to the proposed Charter amendment and urge the electors to vote against the amendment.

### BACKGROUND

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An initiative petition proposing an amendment to the City Charter pertaining to collective bargaining and binding arbitration has been submitted to the City Clerk and has been determined to be sufficient for placing the proposed measure on the ballot at a special election to be held June 10, 2008. Chapter 2, Article VIII, Division 7 of the City Code already contains a collective bargaining process for police employees. The new collective bargaining system that would be established pursuant to the proposed Charter amendment would substantially increase the number of employees who could collectively bargain with the City so as to include over 800 employees in every department of the City. It would also require the City and the "employee organization" to submit unresolved contract issues to binding arbitration if an impasse was reached between the City and the bargaining unit with regard to the terms and conditions of a collective bargaining agreement.

Added concerns are discussed below.

**1. It is not clear which employees of the City may organize into bargaining units.**

Why this provision is a problem: The Charter amendment is inconsistent and contradictory and will have to be arbitrated or litigated to clarify which employees may organize.

The Petition Summary states that "all classified, Fair Labor Standards Act (FLSA) non-exempt employees" will have the right to organize. The Statement of Policy (Section 1.1 of the Charter amendment) says that "all classified non-exempt employees and non-supervisory employees of any department are hereby accorded the right to organize..." The Definitions section (Section 1.2 of the Charter amendment) states that "all non-exempt employees employed within a particular department" may be in bargaining units. Each of these three provisions sets forth a significantly different set of eligible employees. These and other inconsistencies will likely lead to immediate, costly arbitration and litigation.

**2. Under the proposed Charter amendment current contract benefits and any additional benefits offered to bargaining unit employees outside the contract could never be reduced, no matter what the financial condition of the City or the citizens' willingness to pay, unless members of the bargaining unit agreed to the reduction. Not even an arbitrator could rule that lower benefits were appropriate. This "floor" means that benefits could only be increased but never decreased.<sup>1</sup>**

Why this provision is a problem: Any conditions in place that are part of an existing contract become the baseline or "floor" for future negotiations under this Charter amendment. Pay range reductions, reductions in leave accruals, reductions in insurance coverage, reductions in insurance premiums could not be reduced unless agreed to by members of the bargaining unit. In essence, reductions and tradeoffs to the existing contract are off limits in the negotiations. This one-sided provision would make it very difficult for the City to maintain the cost of employee benefits at an appropriate level in comparison to the market and could unnecessarily increase the cost of those benefits to the taxpayer. In difficult economic times, sometimes employees must pay higher insurance co-pays and deductibles as a trade off for rising salaries. Without the ability to balance increases with decreases, it becomes very difficult to contain costs while maintaining, if not improving, services for citizens.

**3. Under the proposed Charter amendment, if the City and bargaining unit employees were unable to agree on an issue such as rate of pay, medical benefits, hours of work, and working conditions, the City would be required to go through binding arbitration.**

Why this provision is a problem: Binding arbitration means that an unelected third party not accountable to the taxpayers would make the final decision as to how City tax revenues should be spent. Arbitration is costly. While the City would pick the pool of arbitrators, for all practical purposes, the minimum qualifications for the arbitrators set forth by the Charter amendment would limit the pool to attorneys who specialize in labor issues. The daily rates for preparing for the hearing, conducting the hearing, and writing a decision range from \$750 to \$2,100 per day plus costs and expenses and from \$100 to \$300 per hour for partial days. The taxpayers would pay half of

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<sup>1</sup> Section 1.18 of the Charter Amendment.

these costs. Depending on the number of issues reaching impasse, the arbitrator hearings could be lengthy. The staff time dedicated to arbitration hearings would be substantial and with the financial stakes associated with a two-year contract being so high, it is likely that both the City and the bargaining unit would incur the costs of expert witnesses.

Not only is binding arbitration expensive and time consuming but, more importantly, it removes the City Manager and the taxpayers' elected representatives (Mayor and City Councilmembers) from the process of deciding where limited City financial resources are to be spent.

Staff believes that it is not in the best interests of the taxpayers to have critical financial issues decided by an attorney from a different city or state who probably has no idea about the local issues that are facing Fort Collins and who is not in touch with community values.

**4. The Charter amendment would require the use of national salary and benefit data to establish local compensation and benefits for bargaining unit employees.**

Why this provision is a problem: Requiring comparison with similar "national" communities could be problematic, since the market and cost of living in other areas of the country may differ substantially from Fort Collins. Also, while the compensation for bargaining unit employees would have to be established by a national comparison. The City is in the process of determining for each job category in the City organization which market is appropriate for comparison. The system of establishing compensation and benefits required under the Charter Amendment would thwart this effort and would likely result in significant disparities between the compensation and benefits of employees who were in bargaining units and those who were not. The methods for setting salary ranges would be inconsistent between bargaining unit and non-bargaining unit employees and potentially result in different pay schedules for similar job classes.

**5. The Charter amendment goes beyond the collective bargaining rights granted to State employees by Governor Ritter.**

Why this provision is a problem: Governor Ritter's action was intended to implement a collective bargaining system involving a partnership between state management and line employees. The Governor was very specific in stating that the grant of collective bargaining to state workers did not include or promote mandatory binding arbitration. The Charter amendment would impose mandatory binding arbitration in the event of impasse between the union and the City's management and elected officials. Again, binding arbitration means that an unelected third party, not accountable to the taxpayers, would make the final decision as to how City tax revenues should be spent.

**6. The Charter amendment contains important terms, such as "benefits," "working conditions," and "terms and conditions of employment" that are not defined within the document.**

Why this is a problem: In order to determine the rights and obligations of the members of the bargaining units and those of the City, it is crucial to know the meaning of the key words and phrases in the Charter amendment. The likelihood of disagreement is increased when those words and phrases are not defined, leading to expensive arbitration and litigation.

**SUMMARY**

City employees, whether in Police Services, Utilities, Transportation or other service areas of the City, are valued and appreciated. They are competitively compensated, with due consideration given to the financial condition and needs of the City. In the limited circumstances where this has not been the case, City management has worked diligently to resolve those discrepancies. The Charter amendment, with its binding arbitration and prohibition against reducing pay, benefits, or any other working conditions without the consent of the employee organization will skew the job market concept of employment, drive up the cost of government, and severely limit local control of City finances, all to the taxpayers' detriment.

If the Charter amendment is approved, disagreements over compensation, benefits and working conditions would have to be settled through binding arbitration. Compensation rates would have to be set by comparison with other cities across the nation even if such compensation was not appropriate for a particular job category. Any reductions or changes in compensation and working conditions from one contract to another would not be allowed without support of members of the bargaining unit.

For all of the reasons cited, the proposed Charter amendment is contrary to the interests and values of the City government and its mission.

RESOLUTION 2008-034  
OF THE COUNCIL OF THE CITY OF FORT COLLINS  
EXPRESSING THE CITY COUNCIL'S OPPOSITION TO A PROPOSED  
CHARTER AMENDMENT PERTAINING TO COLLECTIVE  
BARGAINING AND BINDING ARBITRATION

WHEREAS, on March 11, 2008, through the adoption of Resolution 2008-026, the City Council has submitted to the registered electors of the City at a special municipal election to be held on Tuesday, June 10, 2008, a proposed citizen-initiated amendment to the City Charter that would grant certain City employees the right to organize and bargain collectively with the City through a certified "employee organization" (the "Charter Amendment"); and

WHEREAS, Chapter 2, Article VIII, Division 7 of the City Code already contains a system of collective bargaining for police employees; and

WHEREAS, there are significant differences between the existing system of collective bargaining contained in the City Code and the system of collective bargaining and binding arbitration that would be established by the Charter Amendment; and

WHEREAS, most notably, the Charter Amendment would give a third party arbitrator, who is not answerable to the citizens of Fort Collins, the responsibility and the authority to make final and binding decisions on compensation, benefits and working conditions for the bargaining unit employees of the City; and

WHEREAS, the Charter Amendment contains provisions that are inconsistent and ambiguous and likely to lead to immediate arbitration or litigation, as illustrated in the following examples:

- a. It is not clear which employees of the City may organize into bargaining units. The Petition Summary states that "all classified, Fair Labor Standards Act (FLSA) non-exempt employees" will have the right to organize. The Statement of Policy (Section 1.1 of the Charter Amendment) states that "all classified non-exempt employees and non-supervisory employees" are accorded the right to organize. The Definitions section (Section 1.2 of the Charter Amendment) states that "all non-exempt employees employed within a particular department" may be in bargaining units. Each of these three provisions sets forth a significantly different universe of eligible employees.
- b. The terms "benefits," "working conditions," and "terms and conditions of employment" are not defined, but are crucial in determining the rights and obligations of the parties.

- c. Section 1.5(c) of the Charter Amendment prohibits the City from expending any City funds or resources on any "question" related to union representation or selection, yet the term "question" is not defined and could conceivably be interpreted to prevent the questioning of any issue related to union activities; and

WHEREAS, the Charter Amendment would not allow for any reduction or other change in compensation, benefits, hours, working conditions and other terms and conditions of employment currently extended to the members of a bargaining unit unless agreed to by the employee organization; consequently, the City would be unable to effectively manage the most basic of work conditions or contain the escalating costs of employee benefits by making changes as may be necessary for a particular group of employees or for all City employees; and

WHEREAS, under the Charter Amendment, the salaries and benefits of comparable cities around the nation would have to be used for establishing the compensation and benefits of members of the bargaining units; and

WHEREAS, this system of comparison would be inconsistent with the City's efforts to determine, for each job category, the appropriate market for comparing compensation and benefits and would likely result in significant disparities between the compensation and benefits of employees who were members of bargaining units and those who were not; and

WHEREAS, the Charter Amendment would divert limited taxpayer funds and City resources to supporting a collective bargaining system that will not be responsive to the needs of the community, will be cumbersome and expensive to administer, and will not foster a cooperative relationship between management and employees; and

WHEREAS, the Charter Amendment goes far beyond the rights recently granted to state employees by Governor Ritter in that, as mentioned above, it would impose mandatory, binding arbitration in the event of impasse between the union and the City's management and elected officials with regard to contract terms and conditions; and

WHEREAS, for the foregoing reasons City Council strongly believes that the Charter Amendment is contrary to the interests of the City.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF FORT COLLINS, that the Council hereby expresses its strong opposition to the Charter Amendment and encourages the voters of the City to vote against this ballot measure.

Passed and adopted at a regular meeting of the Council of the City of Fort Collins this 18th day of March A.D. 2008.

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Mayor

ATTEST:

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City Clerk