



**City of Hampton  
PERSONNEL ADMINISTRATIVE INSTRUCTION**


<b>DATE:</b> July 1, 2021	<b>CHAPTER:</b> 2	<b>PAI No.</b> 2.4
<b>REFERENCES:</b> Section VII	<b>SUBJECT:</b> Certification of Support for the Collective Bargaining Process	

I. General:

In accordance with Virginia Code §40.1-57.2 (C) and the following procedure, the City Council of the City of Hampton, Virginia shall vote to adopt or not adopt an ordinance to provide for collective bargaining within 120 days of receiving certification, as provided by the statute, from a majority of city employees in a group deemed by them to be a unit appropriate for purposes of collective bargaining.


II. Definitions:

- A. Appropriate Unit: a group of employees who, by self-determination or description, is deemed a group of employees similarly situated in such ways as to make it reasonable for a single representative to represent or negotiate on their behalf, taking into consideration a commonality of interests across the group as demonstrated by similarity of work and work duties, training and qualifications, hours of work, and working conditions, as well as other relevant factors such as the desires of the employees and administrative structure of the city and the departments and agencies involved.
- B. Council: the City Council of the City of Hampton, Virginia.
- C. Certification: a sworn petition in substantially the form attached as an appendix to this procedure stating support or the desire for the Council to enable collective bargaining and signed by a number of city employees constituting a majority of the total number of a described group of city employees deemed by them to constitute a unit appropriate for collective bargaining based on criteria set forth herein. The petition shall include the individuals' printed names, current city position/classification, hire date, signature, and a signature date. Each signature date and the date of the petition shall be within the 60 days preceding the date of filing of the certification.
- D. Collective Bargaining: means the legally assumed mutual obligation of an employer, by its management representatives, and the exclusive bargaining representative or agent of employees in an appropriate unit (as defined herein) to meet and negotiate in good faith regarding terms and conditions of employment, with the good faith intention to reach an enforceable agreement (i.e., a collective bargaining contract).

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- E. Confidential Employee: any employee who works directly for:
1. the office of the City Council;
  2. the office of the City Manager;
  3. the office of the City Attorney;
  4. the Department of Human Resources or other department or position in which the employee has authorized access to confidential city personnel files;
  5. the Budget Division; or
  6. holds any administrative or clerical position in direct support of managerial employees or any position, wherever assigned and however titles may be changed from time to time, with authorized access to confidential information pertaining to city budgetary, fiscal and other data materially relevant in collective bargaining.
- F. City Employee: any employee of the city, except:
1. a confidential employee as defined in this PAI;
  2. a managerial employee as defined in this PAI;
  3. a temporary employee as defined in this PAI;
  4. a permanent part-time employee as defined in this PAI;
  5. a when actually employed employee as defined in this PAI;
  6. an intern or volunteer;
  7. an employee in new probationary status;
  8. a member of a board or commission, or other appointee of any public body as defined by state law; or
  9. an employee of the courts or of any local constitutional officer, i.e., officers elected pursuant to Article VII, Section 4 of the Constitution of Virginia; or
  10. an attorney whose responsibilities include providing legal service to the city or performing legal research for the city as a client.
- G. Managerial Employee: any individual who:
1. has responsibility for a city department or agency or a unit or sub-unit of such city department or agency;
  2. participates in the formulation of management policy;
  3. is significantly engaged in executive or management functions or charged with the responsibility of directing the implementation of management policies, procedures or practices; or

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4. is materially involved as a decision maker in personnel decisions, including, but not limited to, staffing, reductions-in-force/layoffs, reorganizations, hiring, discipline, evaluations, pay, assignments, transfers, promotions or demotions.

H. Temporary Employee: an individual who is employed for not more than 120 days in a 12-month period and not re-employed on any regularly recurring basis.

I. Permanent Full-Time (PFT) Employee: an individual who is employed on a continuing basis and requiring a regularly scheduled work week of forty or more hours.

J. Permanent Part-Time (PPT) Employee: an individual who is employed on a continuing basis and requiring a regularly scheduled work week of twenty-five or less hours.


K. When Actually Employed (WAE): a position required on a temporary basis in which the incumbent works and is paid when actually needed and requiring a regularly scheduled work week of twenty-five or less hours.

III. Procedure:

1. Filing of Certification: Effective May 1, 2021 city employees, acting individually or as a group (whether by direct, collective action or by action of a representative purporting to speak for the group) may at any time file with the Clerk of the Council certification, as defined herein, that a majority of employees constituting an appropriate unit, as defined herein, seek a vote by the Council on an ordinance permitting collective bargaining for that unit. Any such certification shall be submitted by certified mail – return receipt requested, hand delivery with signature of receipt required, or other means by which date of actual receipt may be confirmed and documented by signature of the Clerk or a designee of the Clerk. The Clerk shall provide to the filing individual or group representative written confirmation of the date of receipt with simultaneous notice to the Council and City Manager. The 120 days prescribed by Virginia Code § 40.1-57.2(C) within which Council action is required in response to presentation of certification ("the 120-day Period") shall run from the date of receipt by the Clerk/designee as documented.

2. Determination of Sufficiency of Certification:

a. The City Manager/designee shall within no more than 30 days from date of notice from the Clerk of the receipt of a certification made under this procedure and applicable law, take reasonable steps to verify whether the certification complies in all material respects to the requirements set forth in this procedure for certification, and shall provide to the Clerk, the filing party and the Council, a statement of the findings of the verification process no later than the end of that 30-day period. Verification efforts shall extend only to verification that (1) any party purporting to file certification on behalf of the employee group (unit) has provided notice to the employee group and does so with their consent; (2) that the signatures are only those of current city employees as defined herein

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who are within the described group of employees; and (3) that the employee group described in the certification petition reasonably constitutes an appropriate unit by the group's application of the criteria set forth herein.

- b. Administratively acceptable evidence for verification of support of a certification petition for the purposes described here may include, but are not limited to, authorizations that satisfy the Uniform Electronic Transactions Act (Virginia Code § 59.1-479 et seq.) such as electronic signatures and voice authorizations.
- c. If the certification is deemed sufficient, the City Manager's statement of findings shall so provide, and the time left in the 120-day Period shall continue to run.
- d. In the event the certification is found insufficient in that it fails to conform to the substantive definition of certification set forth in this procedure in any material respect that indicates less than majority support for Council action within the unit described, the statement shall so indicate and state the reasons with particularity.

3. Effect of Insufficient Certification:

- a. A determination of insufficiency of the certification filed shall toll the 120-day Period for action initiated by the particular certification petition, and the filing party shall have 15 days from the date of issuance of the statement of findings in which to submit a written response and/or objections to the statement to the Clerk and to the City Manager. The filing party shall state the basis for any objections made to the findings with particularity. The City Manager/designee shall within 15 days of the filer's response to the statement of findings, if any, issue a re-determination of sufficiency or insufficiency of the certification. If deemed sufficient, the statutory time period for Council action on collective bargaining for the unit shall resume from the date the re-determination is issued.
- b. If the certification is again determined to be insufficient in any respect that shows less than majority support, the Council shall have no obligation, by operation of law, to vote on a collective bargaining ordinance based on the particular certification filed for the described group. The filing party or other party may file a new certification at any time thereafter, and this procedure shall apply as adopted with reference to a new 120-day Period.
- c. Failure of the filing party to timely respond to a finding of insufficiency meeting the requirements set forth in this procedure shall conclude this process and the 120-day Period arising from that filing shall end. The filing party or another party eligible under state law to do so, may file a new certification at any time thereafter on behalf of the same or similar described group of employees. The requirements of this procedure shall apply in the same manner prescribed, except that no certification identical in all material respects to one filed in the preceding 90 days and determined during that time to be insufficient shall be considered to trigger a new 120-day period under applicable law and this procedure, and the filing party shall be so notified.

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