

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2005-30

BALLOT PROPOSITION OCTOBER 2005
BY PETITION

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA REPLACING
THE CITY AND BOROUGH'S "MEET AND CONFER" SYSTEM OF LABOR
RELATIONS WITH LOCAL CONTROL OF COLLECTIVE BARGAINING

1. **CLASSIFICATION.** This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. **PURPOSE.** This ordinance aims to replace the City and Borough's current "meet and confer" system of labor relations with a system for local control of labor relations among City and Borough employees through collective bargaining.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that:

- A. Title 2, Administration, of the Sitka General Code, is hereby amended to add a new Section 2.08.125, Local control of labor relations through collective bargaining, to read as follows:

2.08.130 Local control of labor relations through collective bargaining.

- A. **Declaration of policy.** The Assembly declares that it is the policy of the City and Borough to promote harmonious and cooperative relations between government and its employees and to protect the public by ensuring orderly and effective operations of government. These policies are to be effectuated by recognizing the right of employees to organize for the purpose of collective bargaining, negotiating with and entering into written agreement with a labor organization in matters of wages, hours and other terms of employment, and maintaining merit system principles among City and Borough employees.

It is further the policy of the City and Borough to retain control over the management of its labor relations with its employees on

a local level by providing a comprehensive scheme within the City and Borough's Ordinance system.

- B. Rights of employees.** City and Borough employees may self-organize and form, join or assist an organization to bargain collectively through representatives of their own choosing, and engage in concerted activities for the purpose of collective bargaining or other mutual aid and protection.
- C. Collective bargaining units.** The Board shall determine the unit or units appropriate for the purpose of collective bargaining. Bargaining units shall be as large as is reasonable and unnecessary fragmenting shall be avoided. A determination will be based on such factors as: community of interest, wages, hours, working conditions, history of collective bargaining and the desires of the employees. The Board's decision on the appropriateness of any bargaining unit shall be appealable to the Assembly as provided by Charter and ordinance.
- D. Exemptions from collective bargaining.** The following employees shall not be included within any bargaining unit:
1. Elected officials;
 2. Exempt and partially exempt employees, including Department Heads; and
 3. Confidential employees.
- E. Representatives and elections.**
1. The Board shall investigate a petition for representation of an employee group if it is submitted in a manner prescribed by the board and is:
 - (a) By an employee or group of employees or an organization acting in their behalf alleging that 30 percent of the employees of a proposed bargaining unit which has been determined to be appropriate by the Board:
 - (1) Want to be represented for collective bargaining by an organization as the exclusive representative; or
 - (2) Assert that the organization which has been certified by the Board as bargaining representative is no longer the

representative of the majority of the employees in the bargaining unit; or

- (b) By the City and Borough Administrator alleging that one or more labor organizations have presented to it a claim to be recognized as the representative of the majority of employees in an appropriate unit.
2. Where a petition is filed the Board shall provide for an appropriate hearing. Notice of the hearing shall be given by publishing notice in a newspaper of general circulation, at least five days prior to the date set for the hearing, and by mailed notice to the City and Borough and to each organization which has presented a claim to be recognized. If the board finds that there is a question of representation, it shall direct an election by secret ballot to determine whether or by which labor organization the employees desire to be represented, and shall certify the results of this election. The Board shall determine who is eligible to vote in an election and shall establish rules governing the election. In an election in which none of the choices on the ballot receive a majority of the votes cast, a runoff election shall be conducted, the ballot providing for selection between the two choices receiving the largest number of votes cast in the election. If an organization receives a majority of the votes cast in the election, the organization shall be certified by the Board as exclusive representative of all the employees in the bargaining unit.
3. No certification or decertification election may be held in a bargaining unit if a valid election has been held within the preceding 12 months.
4. Nothing in this chapter prohibits recognition of an organization as an exclusive representative by the City and Borough by mutual consent.
5. No certification or decertification election may be directed by the Board in a bargaining unit in which there is in force and effect a valid collective bargaining agreement, except during a 90-day period preceding the expiration date of that agreement. However, no collective bargaining agreement may bar an election upon petition of persons in the bargaining unit, but not parties to the agreement, if

more than three years have elapsed since execution of the agreement or the last annual renewal, whichever was later.

F. Recognition by mutual consent.

1. The City and Borough and the labor organization may agree that the labor organization is to be the representative of the employees within a bargaining unit provided the organization presents a majority showing from the employees of the bargaining unit authorizing the union to represent them for purposes of collective bargaining. If the labor organization desires to obtain certification by the Board, the recognition agreement shall be filed with the Board 30 calendar days before its effective date. The Board shall post the recognition agreement within the established bargaining unit at least 20 calendar days before the effective date of the recognition agreement. If the recognition agreement is not filed as provided by this section, or, if within 15 calendar days of the posting of the recognition agreement, a labor organization intervenes, or ten percent of the permanent and probationary employees of the established bargaining unit object to the recognition agreement, the Board shall refuse to certify the labor organization recognized by mutual consent. The Board shall treat an intervention petition accompanied by a 30 percent showing of interest as a petition filed.
2. If no intervention or objection occurs within 15 calendar days of the posting of the agreement, the Board shall, after appropriate investigation and verification of the majority status of the labor organization, certify the labor organization recognized by the agreement as a representative of employees in the agreed-upon bargaining unit.

G. Collective negotiations.

1. The City and Borough's management representatives and representatives of an organized labor organization have a mutual obligation personally to meet and negotiate within a reasonable length of time in order to exchange freely information, opinions and proposals, and to endeavor to reach agreement on matters within the scope of representation. Requests for meetings or negotiations by recognized labor organizations on matters requiring budgetary financing shall be submitted to the City and

Borough Administrator in time for adequate discussion and consideration and action in connection with the budget deadlines.

2. The Administrator shall keep the Assembly apprised of the conditions of the negotiations from time to time during such negotiations, and shall be guided by the assembly as appropriate or necessary throughout the negotiations.

H. Mediation and fact-finding. If, after a reasonable period of negotiation over the terms of a collective bargaining agreement, a deadlock exists between the City and Borough and a labor organization, the Board may, either on its own initiative or on the request of one of the parties to the dispute, appoint a competent, impartial, disinterested person to act as mediator in any dispute; alternatively, the parties may also select a mediator to bring the parties together voluntarily under such favorable auspices as would tend to settle the dispute, but neither the mediator nor the Board has any power of compulsion in mediation proceedings. With consent of both parties, the Board may also appoint a neutral party to determine facts in the dispute and to make public recommendation.

I. Impasse submitted to an arbitrator.

1. If, upon conclusion of negotiations and after use of mediation and/or fact-finding as appropriate, no agreement is reached, all questions and disputes shall be referred to a neutral arbitrator for final decision and determination. The arbitrator shall be selected from a list of regional arbitrators provided by the American Arbitration Association upon written request of either party, or the local labor board.
2. A hearing upon the matters in controversy shall be heard promptly by the selected arbitrator. The arbitrator shall have the power to determine all relevant facts including but not limited to workload, productivity, economic feasibility, cost of living, the parties' bargaining history, relevant market comparisons in the public sector and relevant market comparisons in the private sector taking into account the cost of living in the markets compared, the employer's past practice and impact on personnel or workplace morale.

3. The arbitrator shall be limited in his authority to selection on a subject-by-subject basis from each of the parties' last best offer. On each subject, the arbitrator shall select one party's proposal in its entirety. The arbitrator shall not have the authority to select or prepare his own offer nor select or combine portions of either parties' last best offers on a given subject. In exercising his or her discretion to select between competing proposals by subject, the arbitrator shall base his or her decisions solely on the facts determined in accordance with Section 2.08.125.I.2 and applicable law.
 4. The decision of the arbitrator shall be reduced to writing and shall be final and binding upon the parties. The collective bargaining agreement, in compliance with the arbitrator's decision, shall be prepared and executed by the parties. Collective bargaining agreements awarded through binding interest arbitration may not exceed three years in duration from the date of the arbitrator's award. The City and Borough shall submit the financial aspects of the negotiated agreement or of the arbitrator's decision to the Assembly for approval and funding.
 5. Decisions of the arbitrator may be appealed to the superior court for the state only for abuse of discretion, fraud or misconduct on the part of the arbitrator. On appeal to the Superior Court, legal determinations of the employee relations board shall be reviewed de novo by the Superior Court.
- J. Strike prohibited.** Employees may not engage in strikes. Upon a finding by the City and Borough Administrator that employees are engaging or about to engage in a strike, the Assembly may authorize the City and Borough Attorney to petition the Superior Court for an injunction, restraining order or such other order as may be appropriate.
- K. Agreement.** Upon completion of negotiations between the City and Borough and the bargaining representative, the terms and conditions shall be reduced to writing in agreement form. The agreement shall be presented to the appropriate employee unit for ratification by secret ballot and to the City and Borough Assembly for ratification by resolution.
- L. Merit system and efficient delivery of services.**

1. It is the purpose of this section to reserve to management, and to exclude from the bargaining process, those decisions which permit the City and Borough to maintain the efficient delivery of uninterrupted service to the community and to take necessary actions to carry out its mission in emergencies; provided, however, that the exercise of these rights does not preclude employees or their representatives from consulting or raising grievances about the practical consequences that decisions on the above matters have on wages, hours and other terms and conditions of employment.

M. Unfair labor practices.

1. The City and Borough or its agents may not:
 - (a) Interfere, restrain or coerce an employee in the exercise of rights guaranteed by this section;
 - (b) Dominate or interfere with the formation, existence or administration of an organization;
 - (c) Discriminate in regard to hire or tenure of employment or a term or condition of employment, to encourage or discourage membership in an organization;
 - (d) Discharge or discriminate against an employee because the employee has signed or filed an affidavit, petition or complaint, or given testimony under this section;
 - (e) Refuse to bargain collectively in good faith with a labor organization which is the exclusive representative of employees in an appropriate unit, including the discussion of grievances with the exclusive representative.

2. A labor organization or its agents may not:
 - (a) Restrain or coerce:
 - (1) An employee in exercise of rights guaranteed in this section; or

- (2) The City and Borough in the selection of its representatives for the purpose of collective bargaining or the adjustment of grievances;
 - (b) Discriminate against any employee because of race, religion, creed, color, sex, national origin or ancestry, or any person with regard to the membership or terms and conditions of membership in a labor organization;
 - (c) Refuse to bargain collectively in good faith with the City and Borough if it has been designated in accordance with the provisions of this chapter as the exclusive representative of the employees in an appropriate unit;
 - (d) Refuse to meet and confer in good faith at reasonable times, places and frequency with City and Borough management representatives on matters which are properly within the scope of representation;
 - (e) Cause or attempt to cause an employer to discriminate against an employee in regard to hire or tenure of employment or a term or condition of employment, to encourage or discourage membership in an organization.
3. Nothing in this section prohibits the City and Borough from making an agreement with an organization to require as a condition of employment payment to the exclusive bargaining agent for the expense of representing the members of the bargaining unit; however, such payments shall not exceed that portion of the dues paid by a member which is retained by the organization for local use.

N. Complaint.

1. Filing and investigation of complaints. Any person claiming to be aggrieved by a practice prohibited under this section may file a verified written complaint with the Board. The Board shall investigate the complaint or accusation. If it determines after the preliminary investigation that probable cause exists in support of the

complaint or accusation, it shall try to eliminate the prohibited practice by informal methods of conference, conciliation, and persuasion.

2. Complaint and accusation. If the Board fails to eliminate the prohibited practice by conciliation and fails to obtain voluntary compliance with this section, it may serve a copy of the complaint or accusation upon the respondent. The complaint or accusation and the subsequent procedures shall be handled in accordance with procedures adopted by the Board.

3. Powers. At a minimum, the Board's powers shall include the power to conduct hearings, to investigate, to compel testimony, and to issue complaints, subpoenas and orders.

O. Enforcement by injunction. The Board may apply to the Superior Court for an order enjoining the prohibited acts specified in the order or decision of the Board.

P. Funding. The monetary impact of any agreement negotiated under this section is subject to Assembly approval and to funding through budgetary appropriations.

Q. Payroll deductions for dues and fees. Upon written authorization of an employee within a bargaining unit, the City and Borough shall deduct monthly from the payroll of the employee the amount of dues, service fees and/or other fees as certified by the executive officer of the exclusive bargaining representative and shall deliver it to the chief fiscal officer designated by the exclusive bargaining unit representative.

R. Employment Relations Board.

1. There is hereby created an employment relations board which shall have the power in the first instance to enforce this section. The Board shall be comprised of 3 members, of which a majority shall constitute a quorum at any meeting, and shall have the power to conduct hearings, compel testimony and the production of documents, and to perform all other acts necessary to effect the provisions of this section.

2. The composition of the Board shall include one person selected by the City and Borough Assembly, one person

chosen by the City and Borough employees in an election to be conducted by the City Clerk, and a third person selected by the two other Board members who have been appointed/elected. The third member selected by the other two shall become the Chairperson, and shall preside at all meetings of the Board. The term of each Board member shall be for three (3) years.

3. Each Board member shall serve without compensation, but shall be paid an appropriate *per diem* and/or reimbursed for other expenses reasonably incurred in the performance of official duties. The City and Borough Assembly shall fund the activities of the Employment Relations Board.
4. Matters to be filed with the Board shall be presented to the City and Borough Clerk, who shall promptly inform the Chairperson of any filings. The Chairperson shall then contact any parties for the purpose of scheduling meetings, hearings, or other such proceedings for the purpose of exercising jurisdiction.
5. Where appropriate, the Board may delegate its hearing responsibilities to a hearing officer who shall not be employed by the City and Borough nor have a conflict of interest by virtue of any relationship with the City and Borough, but who shall have the skills necessary to conduct a quasi-judicial administrative proceeding, and who shall know applicable principles of labor law and rules of evidence and procedure. The hearing officer shall make a recommended decision to the Board which shall then review the record and, where it so deems necessary, conduct further proceedings, take further testimony and/or receive additional evidence. The Board shall then decide whether to accept, modify, or reject the hearing officer's recommendations. The hearing officer shall be paid by the City and Borough a reasonable rate consistent with the value of the services provided.

S. Definitions. The following words, terms and phrases, when used in this section, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. *Board* means the City and Borough's Employment Relations Board.

2. *City and Borough* means the City and Borough of Sitka, Alaska, and its non-exempt and non-partially exempt regular employees, including employees of the Sitka Community Hospital, but excludes the school district and its employees.
3. *Collective bargaining* means the performance of the mutual obligation of the City and Borough or its designated representative and the representatives of the employees to meet at reasonable times, including meetings in advance of the budget-making process, and negotiate in good faith in respect to wages, hours and other terms and conditions of employment, or the negotiation of an agreement and execution of a written contract incorporating an agreement reached if requested by either party, but these obligations do not compel either party to agree to a proposal or require the making of a concession.
4. *Confidential employee* means an employee who assists and acts in a confidential capacity to a person who formulates, determines or effectuates management policies.
5. *Election* means a proceeding conducted by the Board in which the employees in a collective bargaining unit cast a secret ballot for collective bargaining representatives or for any other purpose specified in this chapter.
6. *Grievance*, under the terms of any agreement pursuant to this ordinance, means a complaint, misinterpretation or inequitable application of any of the provisions of such agreement concerning wages, hours or terms and conditions of employment.
7. *Management employee* means an employee classified as within the exempt or partially exempt service; an employee who regularly assumes, or is appointed to assume for a significant length of time, a substantial part of the duties of a department head or other partially exempt employee during such employee's absence; and any employee who is responsible for the effectuation or the supervision of the effectuation of management policies.

8. *Organization* means a labor organization in which the employees participate and which exists for the primary purpose of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment and conditions of employment.

9. *Terms and conditions of employment* means the hours of employment and the compensation and fringe benefits and the employer's personnel policies affecting the working conditions of the employees, but does not include the general policies describing the function, purpose and budget of the City and Borough, reserved by ordinance, nor matters regulated by a personnel system adopted pursuant to the Charter of the City and Borough.

B. Title 2, Administration, of the Sitka General Code is amended by repealing Section 2.08.130, Recognizing employee contributions.

C. The ballot measure shall read as follows:

Shall the City and Borough's current "Meet & Confer" law be replaced by an ordinance providing for collective bargaining which shall allow local control of labor relations among City and Borough employees?

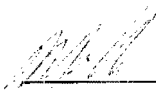
YES

NO

5. **EFFECTIVE DATE.** This ordinance shall become effective if a majority of voters vote in favor of it at a Regular Municipal Election to be held on October 4, 2005.

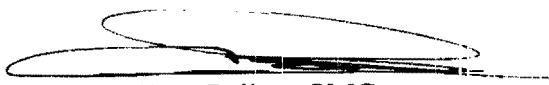
Note: This ordinance received a majority vote results follow:

Proposition No. 8	YES	1656
	NO	1545



Marko Dapceovich, Mayor

ATTEST:



Colleen Pellett, CMC
Municipal Clerk