

COUNCIL/ADMINISTRATIVE POLICY

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Section 1: PURPOSE

It is the purpose of this Resolution to promote full communications between the City of Brentwood ("City") and its employee organizations by providing a method for resolving disputes between it and employee organizations regarding wages, hours, and other terms and conditions of employment.

It is also the purpose of this Resolution to promote the improvement of personnel management and employer-employee relations by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and to be represented by such organizations in their employment relationships with the City.

Nothing contained in this Resolution shall be deemed to supersede the provisions of existing state law and the ordinances and Rules and Regulations of the City which establish and regulate a personnel program or which provide for other methods of administering employer-employee relationships.

This Resolution is intended, instead, to strengthen merit and other methods of administering employer-employee relationships through the establishment of uniform and orderly methods of communication between employees and the City.

A. Management Rights.

- (1) The rights of the City derive from the constitution of the State of California and the Government Code and not from Memoranda of Understanding (MOU's).
- (2) The exercise of the express and implied powers, rights, duties and responsibilities by the City, such as, the adoption of Policies, Rules, Regulations and Practices, and the use of judgment and discretion in connection therewith shall be limited only by law and the specific and express terms of existing, valid MOU's.
- (3) The City has and will continue to retain, whether exercised or not, the unilateral and exclusive right to operate, administer and manage its municipal services, and work

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force performing these services, limited only by law and the specific and express terms of existing, valid MOU's. The exclusive rights of the City shall include but not be limited to, the right to determine the organization of City Government and the mission of its constituent agencies; to determine the nature, quantity and quality of service to be offered to the public and to determine the means of operations, the materials and personnel to be used, the right to introduce new or improved methods or facilities and to change or alter personnel, methods, means, materials and facilities; to exercise control and discretion over its organization and operation through its managerial employees; to establish and effect Rules and Regulations consistent with the applicable law and the specific and express provisions of existing, valid MOU's; to establish and implement standards of selecting City personnel and standards for continued employment with the City; to direct the work force by determining the work to be performed, the personnel who shall perform the work, assigning overtime and scheduling the work; to take disciplinary action; to relieve its employees from duty because of lack of work, funds or for other reasons; to determine whether goods or services shall be made, purchased or contracted for; and to otherwise act in the interest of efficient service to the Brentwood community.

- (4) The City retains its rights to take whatever actions it deems appropriate during an emergency, including the suspension of the terms of an existing MOU. The determination of whether an emergency is to be declared is solely within the discretion of the City and is expressly excluded from the provisions of any grievance procedure. When an emergency is declared, the City shall immediately notify the Bargaining Units. The City will meet and confer on the effects of such an emergency on hours, wages and other terms and conditions of employment, at the request of the Bargaining Units, as soon thereafter as practicable.

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B. Maintenance of Operations – Concerted Activities.

The continued and uninterrupted provisions of service to the public are of paramount importance. Therefore, neither the Bargaining Units, nor any person acting on their behalf, nor any employee in a classification represented by a Bargaining Unit, nor any combination thereof, shall cause, authorize, engage in, encourage, or sanction a work stoppage, slow down, or picketing against the City, or the concerted failure to report for duty, or abstinence from the full and faithful performance of the duties of employment, including compliance with the request of another labor organization or bargaining unit to engage in such activity.

Section 2: DEFINITIONS

As used in this Resolution, the following terms shall have the meanings indicated:

- (A) Appropriate Unit shall mean a representational unit established pursuant to Section 9 of this Resolution.
- (B) City shall mean the City of Brentwood, a municipal corporation, and where appropriate herein, “City” refers to the City Council, the governing body of said City, or any duly authorized representative as herein defined.
- (C) City Employer Relations Officer shall mean the City Manager and his/her representatives who shall serve as the City’s principal representative in all matters of employer-employee relations including meeting and conferring in good faith on matters within the scope of representation.
- (D) City Council shall mean the City Council of the City of Brentwood.
- (E) Confidential employee shall mean any employee designated by the City Employer Relations Officer as such and who is privy to decisions of City management affecting employer-employee relations.

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- (F) Consult or consultation in good faith shall mean to communicate verbally or in writing pursuant to Section 5 for the purpose of presenting and obtaining views or advising of intended actions. Unlike “meeting and conferring in good faith,” consultation in good faith does not require an exchange of proposals or counter-proposals, shall not result in a binding contract or MOU, and is not subject to any impasse procedures.
- (G) Day shall mean calendar day, unless otherwise specified.
- (H) Employee Organization shall mean any organization that includes employees of the City and which has as one of its primary purposes representing such employees in their employment relations with the City, or any organization that seeks to represent City employees in their employment relations with the City.
- (I) Exclusively Recognized Employee Organization Representative or exclusively recognized majority representative shall mean the duly authorized representative of an employee organization that has been granted formal or exclusive recognition by the City Employer Relations Officer as exclusively representing the majority of employees in an appropriate representational unit.
- (J) Impasse shall mean a deadlock in the meeting and conferring process between a majority representative and the City over any matters concerning which they are required to meet and confer in good faith upon, or where their differences on matters to be included in a memorandum of understanding pursuant to Government Code § 3505.1 remain so substantial and prolonged that further meeting and conferring would be futile.
- (K) Majority Representative shall mean the Exclusively Recognized Employee Organization Representative.
- (L) Management Employee shall mean any employee having significant responsibilities for formulation, implementation and administration of City policies and programs.
- (M) Mediation or conciliation shall mean the efforts by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives

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of the City and the recognized employee organization or recognized employee organizations, through interpretation, suggestion and advice.

- (N) Meet and Confer in Good Faith shall mean the City, by and through its City Employee Relations Officer and his/her representatives and representatives of recognized employee organizations, shall have the mutual obligation personally to meet and confer promptly upon request by either party and continue for a reasonable period of time, in order to exchange freely information, opinions and proposals and to endeavor to reach agreement on matters within the scope of representation, prior to the City's adoption of its final budget for the ensuing year. The process shall include adequate time for the resolution of impasses.
- (O) Memorandum of Understanding shall mean an agreement reached on matters within the scope of representation between the City and formally recognized employee organizations after good faith meeting and conferring, and which has been approved by the City Council pursuant to Government Code § 3505.1.
- (P) Miscellaneous Employees shall mean all regular City employees who are referred to as "miscellaneous members" by the California Public Employees' Retirement System. (Government Code § 20383.)
- (Q) Professional Employee shall mean employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of physical, chemical, and biological scientists.
- (R) Proof of Employee Support means: 1) an authorization card recently signed and personally dated by an employee, provided that the card has not been subsequently revoked in writing by the employee; 2) a verified authorization petition or petitions recently signed and personally dated by an employee; or 3) employee dues authorizations, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that multiple dues deduction authorizations for a single employee for more than

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one employee organization shall not be considered as proof of support, except for the employee organization identified in the authorization last signed by an employee. The words “recently signed” shall mean within 90 days prior to the filing of such proof of support.

- (S) Recognized Employee Organization shall mean an employee organization which has been acknowledged by the City Employer Relations Officer as an employee organization that represents employees of the City in their employment relations with the City. The rights accompanying recognition are either:
 - (1) Formal recognition or “exclusive recognition,” which is the right to meet and confer in good faith as the majority representative in the appropriate unit; or
 - (2) “Informal recognition” which is the right to consult in good faith by all recognized employee organizations.
- (T) Scope of Representation shall mean all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment. City or management rights, as set forth at Section 4 below, are excluded from the scope of representation.
- (U) Supervisory Employee shall mean an employee having authority, in the interest of the City, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or having responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment. Supervisory employees will be designated by the City Employer Relations Officer.
- (V) Sworn Police Officers shall mean regular employees of the Brentwood Police Department who are referred to as “Police Officers” by the California Public Employees’ Retirement System.

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Section 3: EMPLOYEE RIGHTS

Employees of the City shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations including but not limited to wages, hours and other terms and conditions of employment, subject to all applicable limitations under state law and to the limitations of the unit designation, recognition, modification, decertification and all other provisions of this Resolution. Employees of the City also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City, as provided by the Meyers-Milias-Brown Act and case law interpreting same. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by any employee organization because of his/her exercise of these rights.

Section 4: MEET AND CONFER IN GOOD FAITH – SCOPE

The City Employer Relations Officer and the Exclusively Recognized Employee Organization Representative may meet and confer in good faith, and execute a written memorandum of understanding on any matter of employer-employee relations, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

Section 5: CONSULTATION IN GOOD FAITH – SCOPE

- (A) Nothing herein prevents the City and recognized employee organizations from mutually agreeing to consult in good faith over employer employee relations matters outside the scope of meeting and conferring.
- (B) Consultation in good faith does not require an exchange of proposals or counter-proposals, does not require the reaching of an agreement, shall not result in a binding contract or memorandum of understanding, and is not subject to any impasse procedure.

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Section 6: ADVANCE NOTICE

Reasonable advance written notice shall be given to each exclusively recognized employee organization affected by any ordinance, rule, resolution or regulation proposed to be adopted by the City Council or by any board or commission of the City in respect to matters within the scope of representation, in order to allow such organization an opportunity to request to meet and confer prior to adoption.

In cases of emergency when the City, or any board or commission of the City, determines that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, the City, or the board or commission of the City, shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution or regulation.

Section 7: PETITION FOR RECOGNITION

An employee organization that seeks recognition for purposes of meeting and conferring in good faith as the exclusively recognized Employee Organization Representative in an appropriate unit shall file a petition with the City Employer Relations Officer containing the following information and documentation:

- (A) Name and address of the employee organization.
- (B) Names and title of its officers.
- (C) Names of employee organization representatives who are authorized to speak on behalf of its members.
- (D) A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the City.
- (E) A statement whether the employee organization is a chapter or local of, or affiliated directly or indirectly in any manner with, a regional or state, or national or international organization and, if so, the name and addresses of each such regional, state or international organization.

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- (F) Certified copies of the employee organization's constitution and by-laws. The copies are to be certified by either the president or secretary of the employee organization.
- (G) A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
- (H) A statement that the employee organization has no restriction on membership based on race, color, creed, age, sex, or national origin or other prohibited basis pursuant to state or local law.
- (I) The job classification or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- (J) A statement that the employee organization has in its possession written proof of employee support, dated within one year of the date upon which the petition is filed, to establish that at least 30% of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City.
- (K) A request that the City Employer Relations Officer exclusively recognize the employee organization as the majority representative of the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith on all matters within the scope of representation.

The petition, including all accompanying documents, shall be verified, under oath, by the executive officer or secretary of the organization that the statements are true. All changes in such information shall be filed forthwith in a like manner.

Section 8: ACTION BY CITY EMPLOYER

- (A) Upon receipt of the written petition, the City Employer Relations Officer shall determine whether:

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- (1) there has been compliance with the requirements of Section 7; and
- (2) the proposed unit is appropriate pursuant to Section 9.

Provided that these two criteria have been met and the eligible employees are not currently represented by an exclusive or majority representative, the City Employer Relations Officer shall give written notice of such request for recognition to the employees in the (proposed) unit and submit the petition and proof of employee support to State Mediation and Conciliation Services, or to any other mutually agreed-upon neutral third-party. That third-party shall determine whether the petitioning organization has demonstrated proof of employee support of at least 30% of the employees in the unit found to be appropriate. If the petition does not comply with the requirements of Section 7, the City Employer Relations Officer shall inform the petitioning organization of the reasons therefore in writing.

- (B) Within fourteen (14) calendar days of the date of the above-notice any other employee organization, hereinafter referred to as the "challenging organization," may seek recognition in an overlapping unit by filing a petition for recognition; provided, however, such challenging organization must submit written proof of employee support that at least 30% of the unit claimed to be appropriate designated the employee organization to represent them in their employment relations with the City, and the challenging organization's petition otherwise complies with the provisions of Section 7. The City Employer Relations Officer shall hold a noticed hearing on such overlapping petitions, at which time all petitioning employee organizations shall be heard. Thereafter, the municipal employee relations officer will determine the appropriate unit or units in accordance with the criteria set forth in Section 9.
- (C) Where the neutral third-party has determined that written proof of employee support of an employee organization submitted pursuant to Section 7, establishes that the employee organization represents more than 50% of the employees in a unit found to be appropriate under Section 9, and if all or part of that unit has never before been represented by an exclusively recognized employee organization,

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the City Employer Relations Officer shall grant formal recognition to such employee organization without a secret ballot election; provided, however, that in the event that at least two employee organizations who have complied with Section 7 are vying for majority representation and have submitted proof of employee support of at least 30% of the employees in a unit found to be appropriate, a secret ballot election shall be conducted by State Mediation and Conciliation Service.

Section 9: APPROPRIATE UNIT

- (A) The City Employer Relations Officer, after reviewing the petition filed pursuant to Section 7 by an employee organization seeking exclusive recognition as majority representative, shall determine whether the proposed unit is an appropriate unit. The principal criterion in making this determination is whether there is a community of interest among such employees. The following factors among others are to be considered in making such determination:
- (1) Which unit will assure employees the fullest freedom in the exercise of rights set forth under this Resolution.
 - (2) The number of employees and the classification in the petitioned-for unit.
 - (3) The history of employee relations: (a) in the unit; (b) among the employees of the City; and (c) in similar public employment.
 - (4) The effect of the unit on the efficient operation of the City and sound employer-employee relations.
 - (5) The extent to which employees have common skills, working conditions, job duties, lines of supervision, integration with work functions of other employees, interchanges with other employees, or similar educational requirements.
 - (6) The effect on the existing classification structure of dividing a single classification among two or more units.

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- (7) The number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.

Provided, however, no unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized.

- (B) In the establishment of appropriate units, the following limitations shall apply:
- 1) No class of position and no employee shall be included in more than one appropriate unit.
 - 2) The confidential, supervisory or management status of a group of employees is crucial for purposes of City operations and, accordingly, is a highly relevant factor in the assessment of community of interest factors. Managerial, supervisory and confidential employees as designated by the City Employer Relations Officer shall not be included in an appropriate unit including other types of employees.
 - 3) Full-time peace officers may form, join, participate in, and be represented by employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations as provided by this Resolution, provided such employee organizations:
 - i. Are composed solely of such peace officers;
 - ii. Concern themselves solely and exclusively with the wages, hours, working conditions, welfare programs, and advancement of the academic and vocational training in furtherance of the police profession; and
 - iii. Are not subordinate to any other organization.

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Section 10: RECOGNITION ELECTION

- (A) When an employee organization who has satisfied Section 7 does not qualify for or has not been granted recognition pursuant to Section 8, the City Employer Relations Officer may, or at the request of the petitioning organization or organizations shall, arrange for an election by secret ballot to be conducted by the City or the PERB Board, at the City's discretion, or a mutually agreed upon third-party. All challenging organizations who have submitted written proof of employee support that they represent at least ten percent of the employees in the unit or units found to be appropriate, and which have submitted a petition for recognition otherwise in accordance with Section 7, shall be included on the ballot. The choice of "no organization" shall also be included on the ballot. Persons entitled to vote in such election shall be those persons classified as employees for the purpose of recognition who were employed within the unit or units during the pay period immediately prior to the election, including those who did not work during such period because of disability, vacation or authorized leaves of absence, and who are employed by the City in the same unit or units on the date of the election. No person outside the classified municipal service is entitled to vote in such an election. Written notice of any such election shall be posted on employee bulletin boards in each facility where qualified voters are employed, and shall remain posted through the final day for casting ballots in any election.
- (B) The City Employer Relations Officer shall certify the results of the election, and where an employee organization receives a majority of the votes cast, the City Employer Relations Officer shall certify that employee organization as the exclusively recognized employee organization for the specified unit for the purpose of meeting and conferring. If a majority of votes cast are in favor of no organization, then no employee organization shall be certified. If no choice receives a majority of votes then a run-off election shall be conducted within 15 days between the two choices receiving the largest number of valid votes cast. The rules governing an initial election shall also apply to a run-off election.

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- (C) Within five (5) days after the election, or run-off election if one is held, allegations that the election was improperly conducted may be filed with the City Clerk by an interested party. If the City Council after a public hearing determines that such allegations are justified, it shall order a new election within thirty (30) days after such determination.
- (D) There shall be no more than one valid election in a 12-month period within the same appropriate unit.

Section 11: EXCLUSIVELY RECOGNIZED EMPLOYEE ORGANIZATIONS

The employee organization determined to represent a majority of the employees in an appropriate unit shall be granted exclusive recognition and is the only employee organization entitled to meet and confer in good faith on matters within the scope of representation for employees in such unit.

It shall be responsible for representing the interest of such employees without discrimination. This shall not preclude the right of employees within the unit to represent themselves.

Section 12: EXISTING BARGAINING UNITS

The following bargaining units constitute appropriate bargaining units for purposes of meeting and conferring:

- Sworn Police Officers;
- Sworn Police Lieutenants;
- General Employees, including Miscellaneous and Public Works Divisions;
- Managers and Confidential Employees' Association;
- Professionals and Supervisors Employees' Association.

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Section 13: DECERTIFICATION

- (A) A decertification petition alleging that an existing exclusively recognized employee organization no longer represents a majority of the employees in an established appropriate unit may be filed with the City Employer Relations Officer only during the month of March of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. If such Memorandum has been in effect three years or more, there shall be no restrictions as to time of filing the petition. A decertification petition may be filed by two or more employees within the unit or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:
- (1) The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
 - (2) The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.
 - (3) An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
 - (4) Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the current Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the City Employer Relations Officer or to a mutually agreed upon disinterested third-party within the time limits specified in the first paragraph of this Section.

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- (B) During the open period specified in Section 13(A), the City Employer Relations Officer may initiate the decertification process based on a good faith belief, supported by objective evidence, that the incumbent exclusively recognized employee organization no longer represents a majority of unit employees. The City Employer Relations Officer shall then give written notice of the initiation of the decertification process and secret ballot election to that employee organization and to all unit employees.

- (C) The City Employer Relations Officer shall determine whether the petition has been filed in compliance with the applicable provisions of Section 13(A). If his/her determination is in the negative, he/she shall offer to meet with the representative(s) of such petitioning employees or employee organization to discuss his/her reasons and, if the determination thereafter remains unchanged, shall return the petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 16. If the City Employer Relations Officer finds the petition in compliance, or if his/her negative determination is reversed on appeal, he/she shall give written notice of such decertification or recognition petition to the current Recognized Employee Organization and to unit employees.

- (D) The City Employer Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a recognition petition was duly filed hereunder, the question of representation. Such election shall be conducted by the State Mediation and Conciliation Service unless the parties otherwise agree.

- (E) If pursuant to this Section 13, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

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Section 14: MODIFICATION OF ESTABLISHED APPROPRIATE UNIT

Employee organizations may submit a request to be considered by the City Employer Relations Officer for modification of established appropriate units only during the periods specified in Section 13. Modification requests shall be submitted in the form of a petition for recognition under Section 7 and shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 9. If the petition requests the addition of classifications or positions to an established unit, the City Employer Relations Officer may require proof of majority support of employees employed in the classifications or positions to be added. The City Employer Relations Officer shall process such petitions as other recognition petitions under Section 7.

The City Employer Relations Officer may by his/her own motion propose modification of an established unit during the periods specified in Section 13. The City Employer Relations Officer shall give written notice of the proposed modification to any affected employee organization and shall hold a meeting concerning the proposed modification, at which time all affected employee organizations shall be heard. Following the hearing, the City Employer Relations Officer shall determine whether the proposed unit, or units is, or are, more appropriate than the existing unit taking into account the criteria of Section 9, and shall give written notice of such determination to the affected employee organizations. The City Employer Relations Officer's determination may be appealed as provided in Section 16. If a unit is modified pursuant to the motion of the City Employer Relations Officer, employee organizations may thereafter file, within 15 days of such notice, recognition petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit pursuant to Section 7.

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Section 15: RESOLUTION OF IMPASSES

Impasse procedures may be invoked only after the possibility of settlement by direct discussion has been exhausted.

(A) Impasse Declaration

Either party, or both, may initiate the impasse procedure by filing with the other affected party (or parties) a written request for an impasse meeting together with a statement of its position on all disputed issues. In the event that the impasse declaration is disputed, the City Employer Relations Officer or designee will evaluate the declaration of impasse and determine whether, in fact, the parties have reached a bona fide impasse in negotiations. The City Employer Relations Officer or designee shall issue his or her determination within five working days after receipt of the declaration of impasse. If the existence of impasse is not disputed or if the City Employer Relations Officer or designee concludes that an impasse exists, an impasse meeting shall occur. If the City Employer Relations Officer or designee determines that an impasse does not exist, the parties shall continue meeting and conferring upon the request of either party.

(B) Impasse Meeting

Upon a determination of impasse, an impasse meeting shall then be scheduled by the City Employer Relations Officer or designee forthwith, and held not later than the fifteenth day, after the date of filing of the impasse declaration, with written notice to all parties affected; provided, that the initial meeting may be postponed upon mutual consent of the parties, or the City Employer Relations Officer or designee may continue the initial meeting to a future session or sessions when necessary or desirable in his or her judgment.

The purpose of such impasse meeting is twofold:

- (1) To permit a review of the position of all parties in a final effort to reach agreement on the disputed issues, and

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- (2) If agreement is not concluded, to mutually select the specific impasse procedure(s), if any, to which the dispute shall be submitted, e.g., mediation or some alternative process.

(C) Voluntary Mediation

As soon after conclusion of the impasse meeting as possible, the parties may participate in mediation on a voluntary basis with a mutually agreed upon mediator or, absent mutual agreement as to a particular mediator, a mediator assigned by the State Mediation and Conciliation Service. Nothing herein precludes the parties from mutually agreeing upon a different mediator.

All voluntary mediation proceedings shall be private. The mediator shall make no public recommendations nor take any public position concerning the issues. Voluntary mediation shall be concluded no later than thirty (30) days after the first scheduled mediation meeting, unless the parties mutually agree to extend the mediation time period.

The cost for the services of a mediator, and other mutually incurred costs of mediation, shall be borne equally by the City and the Exclusively Recognized Employee Organization, unless otherwise provided by applicable law or regulation.

(D) Advisory Factfinding

If the parties agree to submit the dispute to mediation, and if the parties fail to resolve the dispute within 30 days after the mediator's appointment, either party may request, in writing, no later than 37 days after the mediator's appointment, that the parties' differences be submitted to a factfinding panel. The factfinding panel shall be selected, comprised, be paid for, and follow the procedures and timelines described in the MMBA, at Government Code section 3505.4. In arriving at their findings and recommendations, the factfinders shall consider, weigh, and be guided by all of the following criteria:

(1) State and federal laws which are applicable to the City.

(2) Local rules, regulations, or ordinances.

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- (3) Stipulations of the parties.
- (4) The interests and welfare of the public and the financial ability of the City.
- (5) Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.
- (6) The consumer price index for goods and services, commonly known as the cost of living.
- (7) The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- (8) Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations. Those other facts include, but are not limited to: maintaining compensation relationships between all job classifications and positions within the City; Other legislatively determined and projected demands on City resources, i.e., budgetary priorities that the City Council has established; Allowance for equitable compensation increases for other employees and employee groups for the corresponding fiscal period(s); Revenue projections not to exceed currently authorized tax and rates for the relevant fiscal year(s); Assurance of sufficient and sound budgetary reserves; and constitutional, statutory (and Municipal Code) limitations on the level and use of revenues and expenditures.

The cost for the services of a factfinder or chairperson of a factfinding panel utilized by the parties, and other mutually incurred costs of a factfinding panel, shall be borne equally by the City and the Exclusively Recognized Employee Organization, unless otherwise provided by applicable law or regulation. Except that, the

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costs for a factfinding panel member selected by each party, and other separately-incurred costs, shall be borne by such party.

(E) City Council Determination

If the parties cannot reach agreement on any specific impasse resolution procedure, or if the parties mutually agreed to mediation as the dispute resolution procedure and mediation does not result in agreement, and if advisory factfinding procedures, if any, have been exhausted, but no earlier than 10 days after the advisory factfinders' written findings of fact and recommended terms of settlement, if any, have been submitted to the parties, the City Council shall make the final determination, after conducting an open session hearing on the merits of the dispute, unless otherwise provided under state law.

Section 16: APPEAL PROCEDURES

An employee organization or employee aggrieved by a determination of the City Employer Relations Officer under Sections 9(A), 13(B) or 13(C), or 14 of this Resolution may, within ten (10) days of notice of the City Employer Relations Officer's final decision, request to submit the matter to mediation by the State Mediation and Conciliation Service, or may, in lieu thereof or thereafter, appeal such determination to the City Council for final decision within fifteen (15) days of notice of the City Employee Relations Officer's determination or the termination of mediation proceedings, whichever is later.

Appeals to the City Council shall be filed in writing with the City Clerk, with a copy also served on the City Employer Relations Officer. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to an advisory third-party hearing process. Any decision of the City Council on the use of such procedure, and/or any decision of the City Council determining the substance of the dispute, shall be final and binding.

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Section 17: MEMORANDUM OF UNDERSTANDING

When the meeting and conferring process is concluded between the City and an exclusively recognized employee organization representing a majority of the employees in an appropriate unit, all agreed-upon matters shall be incorporated in a written memorandum of understanding, which shall not be binding, and presented to the City Council for its determination.

Because effective and orderly operations of government are essential to the public, it is declared to be in the public interest that in the course of meeting and conferring, the City and the recognized employee organization shall make every reasonable effort to conclude negotiations, and include provisions for an effective date, a reopening date, and an expiration date, at a time to coincide as nearly as possible with the period during which the City Council may act on the operating budget of the City.

Section 18: NO DISCRIMINATION

- (A) There shall be no discrimination by any employee organization on the basis of race, color, religion, marital status, sex, gender, gender expression, age, political affiliation, sexual orientation, genetic information or characteristic, medical condition, physical or mental disability or any other basis prohibited by state or federal law.
- (B) Neither the City, nor any employee organization, shall interfere with, intimidate, restrain, coerce, or discriminate against any employee because of the exercise of rights to engage or not to engage in lawful employee organization activities.

Section 19: EMPLOYEE ORGANIZATION ACCESS

- (A) The City shall allow a reasonable number of employee representatives of an exclusively recognized employee organization reasonable time off without loss of compensation or other benefits when formally meeting and conferring with the City Employer Relations Officer or his/her representatives regarding matters within the scope of representation, or for the purpose of consultation in good faith.

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- (B) The City shall provide reasonable space on bulletin boards at places of work for the use of recognized employee organizations to inform employees about organizational activities and affairs.
- (C) Agents of an exclusively recognized employee organization shall have the right of access to City facilities and work locations subject to reasonable rules and regulations as set forth herein.

An agent shall not disrupt the activity of City employees on City work time, unless use of City work time has been expressly approved by the City Employer Relations Officer or his/her designee.

- (D) The City shall allow an exclusively recognized employee organization to conduct meetings of its membership in publicly used City facilities provided:
 - (1) The use of the facility or meeting does not interfere with the normal course of City business;
 - (2) The meeting is on the employees' off-time;
 - (3) The meeting or use of the facility does not adversely affect the need or the right of employees who are not members of the employee organization, or not a member of the bargaining unit or who do not wish to participate in such meetings, to make use of the facilities in question;
 - (4) Prior permission is obtained;
 - (5) The employee organization may be charged for the use of facilities. Such charges shall be made known to the employee organization prior to the actual use of the facilities. Charges for facilities used shall be paid forthwith by the employee organization upon receipt of billing from the City.
- (E) Access to City work locations and the use of City facilities, equipment and other resources by employee organizations and those representing them, shall be limited to lawful activities consistent with the provisions of this Resolution, and shall pertain directly to the employer-employee relationship and not such internal

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employee organization business as soliciting membership, campaigning for office, and organizational meetings and elections, and shall not interfere with the efficiency, safety, or security of City operations.

Section 20: CONSTRUCTION

- (A) Nothing in this Resolution shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by federal or state law.
- (B) This Resolution shall be interpreted so as to carry out its purpose as set forth in Section 1.

Section 21: SAVING CLAUSE

If any provision of this Resolution, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Resolution, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.