

RESOLUTION NO. 86-05

EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS RESOLUTION

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF EMERYVILLE

ARTICLE I - GENERAL PROVISIONS

Sec. 1. Statement of Purpose.

This Resolution implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500 et seq.) Captioned "Local Public Employee Organizations", by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of State Law, City ordinances, resolutions and rules which establish and regulate the civil service and merit system, or which provide for other methods of administering employer-employee relations. The Resolution is intended, instead, to strengthen civil service, merit and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the City.

It is the purpose of this Resolution to provide procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that are not preempted by Federal or State law. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy which include among others: The exclusive rights to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work, subject to applicable laws and existing Memorandum of Understanding.

Sec.2. Definitions.

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

- a. "Appropriate Unit" means a unit of employee classes or positions, established pursuant to Article II hereof.
- b. "City" means the City of Emeryville and, where appropriate herein, refers to the City Council or any duly authorized City representative as herein defined.
- c. "Confidential Employee: means an employee, who, in the course of his or her duties, has access to information relating to the City's administration of employer-employee relations.
- d. "Consult/Consultation in Good Faith" means to communicate orally or in writing for the purpose of presenting and obtaining view or advising of intended actions; and as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counterproposals in

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- the endeavor to reach agreement, nor is it subject to Article IV hereof.
- e. "Day" means calendar day unless expressly stated otherwise.
 - f. "Employee Relations Officer" means the City Manager or his duly authorized representative.
 - g. "Impasse" means that the representatives of the City and a Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.
 - h. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of City policies or programs.
 - i. "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be in the authorization last signed by an employee. The words "recently signed" shall mean within one hundred eighty (180) days prior to the filing of a petition.
 - j. "Recognized Employee Organization" means an employee organization which has been formally acknowledged by the City as the employee organization that represents the employees in an appropriate representation unit pursuant to Article II hereof.
 - k. "Supervisory Employee" means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or 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.

ARTICLE II—REPRESENTATION PROCEEDINGS

Sec. 3. Filing of Recognition Petition

By Employee Organization

An employee organization that seeks to be formally acknowledged as the Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer containing the following information documentation:

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- a. Name and address of the employee organization.
- b. Names and titles of its officers.
- c. Names of employee organization representatives who are authorized to speak on behalf of the organization.
- d. A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relation with the City.
- e. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.
- f. Certified copies of the employee organization's constitution and by-laws.
- 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, sex or national origin.
- i. The job classifications or titles of employees in the unit claim to appropriate and the approximate number of member employees therein.
- j. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority 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. Such written proof shall be submitted for confirmation to the Employee Relation Officer or to a mutually agreed upon disinterested third party.
- k. A request that the Employee Relations Officer formally acknowledge the petitioner as the Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

The Petition, including the proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

Sec. 4. City Response to Recognition Petition.

Upon receipt of the Petition, the Employee Relations Officer shall determine whether:

- a. There has been compliance with the requirements of the Recognition Petition, and
- b. The proposed representation unit is an appropriate unit in accordance with Sec. 8 of this Article II.

If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization, and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefor in writing. The petitioning employee organization may appeal such determination in accordance

with Sec. 10 of this Resolution.

**Sec. 5. Open Period for Filing
Challenging Petition.**

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth Sec. 3 of this Article II. If such challenging petition seeks establishment of an overlapping unit, the Employee Relation Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Sec. 8 of this Article II.

Sec. 6. Election Procedure.

The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned employee organization(s), (normally the City Clerk) in accordance with its rules and procedures subject to the provisions of this Resolution. All employee organizations who have duly submitted petitions which have been determined to be in conformance with this Article II shall be included on the ballot.. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receive a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

There shall be no more than one valid election under this Resolution pursuant to any petition in a 12- month period affecting the same unit.

In the event that the parties are unable to agree on the City Clerk to conduct an election, the election shall be conducted by the American Arbitration Association.

Costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

**Sec. 7. Procedure for Decertification of
Recognized Employee Organization.**

A Decertification Petition alleging that the incumbent Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the month of January of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred eighty (180) days

prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, which ever occurs later. A Decertification Petition may be filed by two or more employees 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:

- a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- b. The name of the established appropriate unit and of the incumbent Recognized Employee Organization sought to be decertified as the representative of that unit.
- c. An allegation that the incumbent Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
- d. 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 incumbent Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section.

An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this section in this form of a Recognition Petition that evidences this section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent and otherwise conforms to the requirements of Section 3 of this Article.

The Employee Relation Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If his determination is in the negative, he shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization, and, if such determination thereafter remains unchanged, shall return such 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 Sec.10 of this Article II. If the determination of the Employee Relations Officer is in the affirmative, or if his negative determination is reversed on appeal, he shall give written notice of such Decertification or Recognition Petition to the incumbent Recognized Employee Organization and to unit employees.

The Employee Relations Officer shall thereupon arrange for a secret ballot election by the City Clerk to be held on or about 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 in conformance with Sec. 6 of this Article II.

**Sec. 8. Policy and Standards for Determination
of Appropriate Units.**

The Policy objective in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the City and its compatibility with the primary

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responsibility of the City and its employees to effectively and economically serve the public, and (2) providing employee with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered shall be:

- a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- b. History of representation in the City and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
- c. Consistency with the organizational matters of the City.
- d. Number of employee and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
- e. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

Management, confidential and professional employees shall not be denied the right to be represented in a separate unit.

The Employee Relations Officer shall, after notice to and consultation with affect employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this section.

Sec. 9. Procedure for Modification of Established Appropriate Units.

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Sec. 7 of this Article II.

Such request shall be submitted in the form of a Recognition Petition, and, in addition to the requirements set forth in Sec. 3 of this article, 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 Sec. 8 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Employee Relations Officer may on his own motion propose during the period specified in Sec. 7 of this Article, that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s) at which time all affected employee organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Sec. 8 of this Article II, and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 10 of this article. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Recognized Employee

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Organization for such new appropriate unit or units pursuant to Sec. 3 hereof.

Sec. 10. Appeals.

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer under this Article II may, within ten (10) days of notice thereof, request the intervention of the California State Conciliation Service pursuant to Government Code Sections 3507.1 and 3507.3, or may, in lieu thereof or thereafter appeal such determination to the City Council for final decision within fifteen (15) days of this notice of the Employee Relations Officer's determination or the termination of proceedings pursuant to Government Code Sections 3507.1 or 3507.3, whichever is later.

An employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Sec 3): Challenging or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Sec. 7), has not been filed in compliance with the applicable provisions of this Article, may, within fifteen (15) days of notice of such determination, appeal the determination to the City Council for final decision.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the Employee 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 a third party hearing process. Any decision of the City Council determining the substance of the dispute shall be final and binding.

ARTICLE III-ADMINISTRATION

Sec. 11. Submission of Current Information by Recognized Employee Organizations.

All changes in the information filed with the City by a Recognized Employee Organization under items a. through h. of its Recognition Petition under Sec. e of this Resolution shall be submitted in writing to the Employee Relations Officer within thirty (30) days of such change.

Sec. 12. Payroll Deductions on Behalf of Employee Organizations.

Upon formal acknowledgment by the City of a Recognized Employee Organization under this Resolution, only such Recognized Employee Organization may be provided payroll deductions of membership dues and insurance premiums for plans sponsored by such organization upon the written authorization on forms provided therefore by the City. The providing of such service to the Recognized Employee Organization by the City shall be contingent upon and in accordance with the provisions of Memoranda of Understanding and/or applicable administrative procedures.

Sec. 13. Employee Organization Activities - Use of City Resources.

Access to City work locations and the use of City paid time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in Memoranda of Understanding and/or applicable law or administrative procedures, shall be limited to activities pertaining directly to the employer-employee relationship and not such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

Sec. 14. Administrative Rules and Procedures.

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The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after consultation in good faith with affected employee organizations.

ARTICLE IV-IMPASSE PROCEDURES

Sec. 15. Initiation of Impasse Procedures.

If the meet and confer process has reached impasse as defined in the Resolution, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all disputed issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such impasse meeting shall be:

- a. To identify and specify in writing the issue or issues that remain in dispute.
- b. To review the position of the parties in a final effort to resolve such disputed issue or issues; and
- c. If the dispute is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

Sec. 16. Impasse Procedures

Impasse procedures are as follows:

- a. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceeding shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.
- b. If the parties failed to agree to submit the dispute to mediation or failed to agree on the selection of a mediator, or failed to resolve the dispute through mediation within fifteen (15) days after the mediator commenced meeting with the parties, the parties may agree to submit the impasse to fact-finding.
- c. If the parties agree to fact-finding, they may agree on the appointment of one or more fact-finders. If they fail to so agree on one or more fact finders, a fact -finding panel of three (3) shall be appointed by the Recognized Employee Organization, and those two shall name a third , who shall be the chairman. If they are unable to agree upon a third, they shall select by agreement the third member from one or more lists of names to be provided by the American Arbitration Association.

The following constitute the jurisdictional and procedural requirements for fact-finding:

- (1) The fact-finders shall consider and be guided by applicable Federal and State laws.

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- (2) Subject to the stipulations of the parties, the fact-finder s hall determine and apply the following measures and criteria in arriving at their findings and recommendations:
 - (a) As relevant to the issues in dispute, the fact-finders hall compare the total compensation, hours and conditions of employment of the employees involved in the fact-finding proceeding with the total compensation, hours and conditions of employment of other employees performing similar services in public and private employment in the same and comparable communities. "Total compensation" shall mean all wage compensation, minimum, standby, out-of-class and deferred pay; all paid leave time; all allowances, including but not limited to educational and uniform benefits; medical and hospitalization benefits; and insurance, pension and welfare benefits.
 - (b) The fact-finders shall then adjust the results of the above comparisons based on the following factors:
 - (i) Equitable employment benefit relationships between job classifications and positions within the City.
 - (ii) The pattern of change that has occurred in the total compensation of the employees in the unit at impasse as compared tot he pattern of change in the average consumer price index for goods and services, commonly known as the cost of living index.
 - (iii) The benefits of job stability and continuity of employment.
 - (iv) The difficulty, or lack thereof, of recruiting and retaining qualified personnel.
 - (c) The fact-finder(s) shall then determine recommendations based on the comparisons as adjusted above subject to the financial resources of the City to implement them, taking into account:
 - (i) Other legislatively determined and projected demands on agency resources and,
 - (ii) Assurance of sufficient and sound budgetary reserves, and Statutory limitations on tax and other revenues and expenditures
- (3) The fact-finder(s) shall make written findings of fact and recommendations for the resolution of the issues in dispute, which shall be presented in terms of the criteria, adjustments, and limitations specified above. Any member of a fact-finding panel shall be accorded the right to file dissenting written findings of fact and recommendations. The fact-finder or chairman of the fact-finding panel shall serve such

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findings and recommendations on the Employee Relations Officer and the designated representative of the Recognized Employee Organization. If these parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, the fact-finder or the chairman of the fact-finding panel shall make them public by submitting them to the City Clerk for consideration by the City Council in connection with the Council's legislative consideration of the issues at impasse.

- (d) If the parties agreed to submit the impasse directly to the City Council, or if the parties did not agree on mediation or the selection of a mediator and did not agree on fact-finding, or having agreed, the impasse has not been resolved through mediation and/or fact-finding, the City Council shall take such action regarding the impasse as it in its discretion deems appropriate as in the public interest.

Any legislation action by the City Council on the impasse shall be final and binding.

Sec. 17. Cost of Impasse Procedures.

The costs of the services of a mediator and fact-finder or chairman of a fact-finding panel utilized by the parties, and other mutually incurred costs of mediation and fact-finding, shall be borne equally by the City and the Recognized Employee Organization. The cost for a fact-finding panel member selected by each party, and other separately incurred costs shall be borne by such party.

Sec. 18. Construction.

This Resolution shall be administered and construed as follows:

- (a) Nothing in this Resolution shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representatives 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 purposes as set forth in Article I.
- (c) Nothing in this Resolution shall be construed as making the provisions of California Labor Code Section 923 applicable to City employee or employee organizations the right to participate in, directly or indirectly, any illegal or unlawful strike, sickout or other total or partial stoppage or slowdown of work. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination and may be deemed to have abandoned their employment; and employee organizations may thereby forfeit all rights accorded them under this Resolution and other City law for a period up to one (1) year from commencement of such activity.
- (d) All duly recognized employee organizations in existence and operation on the effective date of this Resolution shall be deemed an "Incumbent Recognized

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Employee Organization" as said term is used herein.

Sec. 19. Severability.

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 effected thereby.

Sec. 20. Repealer.

Resolution No 81-183 titled "Establishing Employer-Employee Labor Relations in the Police Department" is hereby repealed.

ADOPTED by the City Council of the City of Emeryville at a regular meeting held Tuesday, January 21, 1986.

