

Employer-Employee Relations Resolution

Resolution #39367

2.1.1

RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE IMPLEMENTING CHAPTER 10, DIVISION 2, TITLE 1 OF THE GOVERNMENT CODE OF THE STATE OF CALIFORNIA RELATIVE TO EMPLOYEE-EMPLOYER RELATIONS, AND REPEALING RESOLUTIONS NOS. 35578, 35616, 35732 AND 37394.

BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE:

Section 1. Statement of Purpose. The purpose of this Resolution is to implement Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.) captioned "Public Employee Organizations", to promote full communication between the City and its employees by providing orderly procedures for the administration of employer-employee relations between the City Management and its employee organizations and for resolving disputes 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 City employees to join organizations of their own choice and be represented by such organizations in their employment relationships with the City. Nothing contained herein shall be deemed to supersede the provisions of existing state laws or the provisions of the City Charter or the Rules of the Civil Service Commission.

Section 2. Definitions. As used in this Resolution, the following terms shall have the meanings indicated:

- (a) Appropriate Unit or Representation Unit or Unit - means a unit for purposes of employee representation established pursuant to Section 16 of this Resolution.
- (b) City - means the City of San Jose, a municipal corporation, and where appropriate herein, "City" refers to the City Council, the governing body of said City, or any duly authorized management employee as herein defined.
- (c) Consult or Consultation - means to communicate verbally or in writing for the purpose of presenting and obtaining views or advising of intended actions.
- (d) Employee - means any person employed by the City except those persons elected by popular vote.
- (e) Employee, Confidential - means an employee who is privy to decisions of City management affecting employer-employee relations.
- (f) Management Employee - means any employee having a significant responsibilities for formulating and administering City policies or programs

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or managing Departments, major divisions of Departments or of functions, or any employee having authority to exercise independent judgment or discretion in carrying out City policy or to hire, assign, transfer, suspend, lay-off, recall, promote, discharge, or discipline other employees, or to adjust their grievances other than at the first level, or to effectively 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.

- (g) Supervisory Employee - means any employee who while having the responsibility to give immediate direction to, and to discipline, other employees does not exercise independent judgment or discretion in the performance of, or the effective recommendation of the carrying out of City policy, or to hire, assign, transfer, suspend, lay-off, recall, promote, discharge or adjust the grievances other than at the first level, of City employees.
- (h) Professional Employee - means an employee engaged in work requiring specialized knowledge and skills attained through completion of a prolonged and recognized course of specialized instruction in an institution of higher learning or a hospital, - as distinguished from a general academic education, from an apprenticeship, or from training in the performance of routine mental, manual, or physical processes, - including, but not limited to, attorneys, physicians, architects, engineers, teachers, registered nurses, and various types of physical, chemical, and biological scientists.
- (i) Employee Organization - means an organization which includes employees of the City and which has as one of its primary purposes representing such employees in their employment relations with the City.
- (j) Employer-Employee Relations - means the relationship between the City and its employees and their employee organizations, or when used in a general sense, the relationship between City management and employees or employee organizations.
- (k) Grievance - as this term is defined in Section 20(a).
- (l) Impasse - means (1) a deadlock in the discussions between a majority representative and the City over any matters concerning which they are required to meet and confer in good faith, or over the scope of such subject matter; or (2) any unresolved complaint by an affected employee organization, advanced in good faith, concerning a decision of the Municipal Employee Relations Officer made pursuant to Sections 15 through 22 of this Resolution.

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- (m) Majority Representative - means an employee organization, or its duly authorized representative, that has been granted formal recognition by the Municipal Employee Relations Officer as representing the majority of employees in an appropriate unit.
- (n) Mediation or Conciliation - means the efforts of an impartial third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution of an impasse, through interpretation, suggestion and advice. Mediation and conciliation are interchangeable terms.
- (o) Meet and Confer (sometimes referred to herein as “meeting and conferring”) - means performance by duly authorized City representatives and duly authorized representatives of an employee organization recognized as the majority representative of their mutual obligation to meet at reasonable times and to confer in good faith regarding matters within the scope of representation, including wages, hours, and other terms and conditions of employment, in an effort to: (1) reach agreement on those matters within the authority of such representatives and (2) reach agreement on what will be recommended to the City Council on those matters within the decision making authority of the City Council. This does not require either party to agree to a proposal or to make a concession.
- (p) Municipal Employee Relations Officer - means the City’s principal representative in matters of employer-employee relations designated pursuant to Section 21, or duly authorized representative.
- (q) Peace Officer - as this term is defined in Section 830.1, California Penal Code.
- (r) Recognized Employee Organization - means an organization which has been certified by the Municipal Employee Relations Officer as an employee organization that represents employees of the City. Such recognition shall be either:
 - (1) Formal Recognition - which shall convey the right to meet and confer in good faith as the majority representative of an appropriate unit; or
 - (2) Informal Recognition - which conveys the right to consultation in good faith on employee problems.
- (s) Scope of Representation - means all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment. The scope of representation shall not include consideration of the merits, necessity,

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or organization of any service or activity provided by law or the City Charter.

- (t) Fact Finding - means identification of the issues in a particular dispute, review of the positions of the parties, identification of factual differences by one or more impartial fact-finders, and the making of recommendations for settlement if mutually requested.
- (u) Days - means “calendar days” unless otherwise stated.
- (v) Memorandum of Understanding - means a written document jointly prepared by management and a formally recognized employee organization or organizations enumerating any agreement reached as the result of meeting and conferring on matters within the scope of representation, and the same signed by the parties involved.
- (w) Arbitration - as used in this Resolution, means the advice and recommendation to the City Council of an Arbitration Panel as constituted under Section 23 (b) (2) below for the resolution of issues properly submitted to it in accordance with the provisions of this resolution. Such advice and recommendations are not binding or effective unless and until adopted by the City Council.

Section 3. Employee Rights. Subject to the requirements of the law City employees shall:

- (a) 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.
- (b) Have the right to refuse to join or participate in the activities of employee organizations.
- (c) Have the right to represent themselves individually in their employment relations with the City.
- (d) Have the right to be free from intimidation, restraint, coercion, interference, discrimination or reprisal because of their exercise of any of the rights herein enumerated or granted by law.

Section 4. City Rights. Subject to the requirements of the Government Code, the City retains its rights:

- (a) To determine the mission of each of its constituent departments, commissions, boards and agencies;
- (b) To set standards of services offered to the public;

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- (c) To determine the procedures and standards of selection for employment and promotion;
- (d) To direct its employees, take disciplinary action for proper cause and to determine the content of job classifications, and to relieve its employees from duty because of lack of work or for other legitimate reasons;
- (e) To maintain the efficiency of governmental operations, determine the methods, means and personnel by which City operations are to be conducted;
- (f) To take all necessary actions to carry out its mission in emergencies and to exercise complete control and discretion over its organization and the technology of performing its work.
- (g) The exercise of such City rights by the City shall not preclude employees or their representatives from the exercise of their rights under the Government Code or under this resolution.

Section 5. Representation Limitations. Confidential, Management, and Supervisory Employees:

- (a) Management employees who are members of an employee organization which represents employees of the City who are not management employees shall not serve as representatives of such employee organization before City management.

Confidential employees may serve only as representatives of confidential employees before City management in meetings or matters within the scope of representation.
- (b) In grievance matters, supervisory employees may represent employees who are in the same unit as they are but they shall not represent aggrieved employees subordinate to themselves.

Section 6. Scope of Meetings and Conferences

- (a) The City, through its representatives, shall meet and confer in good faith with representatives of formally recognized employee organizations with majority representation rights regarding matters within the scope of representation including wages, hours and other terms and conditions of employment for employees within the appropriate unit.
- (b) Notwithstanding any provision of this Resolution to the contrary, the City shall not be required to meet and confer on any subject pre-empted by Federal or State law, by the City Charter, nor on Employee or City Rights

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as defined in Section 3 and 4 nor on proposed amendments to this Resolution.

Section 7. Scope of Consultation. Matters affecting employer-employee relations, including those that are not subject to meeting and conferring, are subject to consultation. The City, through its representatives, shall consult in good faith with representatives of all recognized employee organizations on employer-employee relations matters which affect them.

Section 8. Advance Notice.

- (a) Except in cases of emergency, reasonable advance written notice shall be given to each recognized employee organization whose members may be affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council or by any board or commission of the City, and each shall be given the opportunity to meet with such body prior to adoption.
- (b) In cases of emergency when the City Council or the City Manager determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with a recognized employee organization, City management shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation.

Section 9. Reasonable Time Off to Meet and Confer. A formally recognized employee organization may select a reasonable number, not to exceed three (3) City employees as representatives of such employee organization to attend scheduled meetings with the Municipal Employee Relations Officers or other management officials authorized by her/him on subjects within the scope of representation during regular work hours without loss of compensation or other benefits. Where in her/his opinion circumstances so warrant, the Municipal Employee Relations Officer may approve the attendance at such meetings of additional employee representatives with or without loss of compensation or other benefits. The employee organization shall, whenever practicable, submit the names of all such employee representatives to the Municipal Employee Relations Officer at least two working days in advance of such meetings. Provided further that any such meeting is subject to scheduling by City management in a manner consistent with operating needs and work schedules.

Nothing provided herein, however, shall limit or restrict City management from scheduling such meetings before or after regular work hours under appropriate circumstances.

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Section 10. Access to Work Locations. Reasonable access to employee work locations shall be granted officers of recognized employee organizations and their officially designated representatives, for the purpose of processing grievances or contacting members of the organization concerning business within the scope of representation. Such officers or representatives shall not enter any work location without the prior approval of the Municipal Employee Relations Officer and notice to the Department Head or his designated representative. Access shall be restricted so as not to interfere with the normal operations of the department or with established safety or security requirements.

Section 11. Use of Bulletin Boards. Recognized employee organizations may use designated portions of City bulletin boards in departments which have employees in the representation unit for which the organization is recognized.

Provided further that:

- (1) Any material, except notices of meetings, social events, elections and appointments, which the Municipal Employee Relations Officer finds to be objectionable may be ordered removed by him, providing that materials which the Municipal Employee Relations Officer has removed and which the employee organization still desires to post shall be subject to discussion with the appropriate employee organization for possible revision of the material.
- (2) Copies of all materials and notices must be filed with the Municipal Employees Relations Officer. All materials must be dated and must identify the organization that published them and the recognized employee organization representative responsible for its issuance.
- (3) Unless special arrangements are made, materials posted will be removed 31 days after the publication date.
- (4) The City reserves the right to determine where bulletin boards shall be placed and what portion of them are to be allocated to employee organizations' materials.
- (5) An employee organization that does not abide by these rules will forfeit its right to have materials posted on City bulletin boards for such period as shall be determined by the Municipal Employee Relations Officer.

Section 12. Use of City Facilities. Employee organizations may, with the prior approval of the Municipal Employee Relations Officer, be granted the use of City facilities during non-work hours for meetings of City employees provided space is available. The City reserves the right to assess reasonable established charges for the use of such facilities.

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The use of City equipment other than items normally used in the conduct of business meetings, is strictly prohibited, without prior approval of the Municipal Employee Relations Officer the presence of such equipment in approved City facilities notwithstanding.

Section 13. Availability of Data. The City will make available to employee organizations non-confidential information pertaining to employment relations as is contained in the records of the City, subject to the limitations and conditions set forth in this Section and in Government Code Sections 6250-6260.

Such information shall be made available during regular office hours in accordance with the City's rules and procedures for making records available and after payment of established reasonable costs, where applicable.

Information which shall be made available to employee organizations includes regularly published data covering subjects under discussion. Data collected on a promise to keep its source confidential may be made available in statistical summaries, but shall not be made available in such form as to disclose the source.

Nothing in this Section shall be construed to require disclosure of:

- (1) Personnel, medical and similar records, the disclosure of which would constitute an unwarranted invasion of personal privacy or be contrary to merit system principles;
- (2) Working papers or memorandum which are not retained in the ordinary course of business, pre-publication budget documents, or any records where the public interest served by not making the record available clearly outweighs the public interest served by disclosure of the record;
- (3) Records pertaining to pending litigation to which the City is a party, or to claim or appeals which have not been settled;
- (4) Nothing in this Section shall be construed as requiring the City to do research for an inquirer or to do programming or assemble data in a manner other than usually done by the City.

Section 14. Payroll Deductions.

- (a) Eligibility. Payroll deductions for membership dues and other allowable purposes may be granted by the Municipal Employee Relations Officer but only to formally recognize employee organizations as defined in this Resolution, except that payroll deductions heretofore granted to any employee organization may be continued in the discretion of the Municipal Employee Relations Officer.

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- (b) Allowable Purposes. Payroll deductions shall be allowed for regular membership dues in an eligible employee organization. The deductions for premiums for participation in employee benefit programs sponsored in whole or part by an eligible employee organization may also be approved by the Municipal Employee Relations Officer.
- (c) Procedures. Subject to such additional rules and regulations as may be adopted by the Municipal Employee Relations Officer, the following procedures shall be observed in the withholding of employee earnings:
- (1) Payroll deductions shall be either (i) in an exact amount or amounts specified by the employee upon his voluntary written authorization filed with the Director of Finance, or (ii) in such amount (including changes, additions, modifications, increases and decreases) as certified to the Director of Finance by an eligible employee organization from time to time, but only if the affected employee shall have filed with the Director of Finance written authorization specifically granting to the Director of Finance full authority to deduct from his earnings and to pay to a named employee organization such amounts (including changes, additions, modifications, increases and decreases) as may from time to time be so certified by the employee organization. Such written authorization shall by its terms expressly release and relieve the Director of Finance, the City, its officers and employees, from any liability or claim such employee might have by reason of any deduction or payment made because of any improper, incorrect, or unauthorized certification made by such employee organization to the Director of Finance.
 - (2) Authorization, cancellation, or modification of payroll deduction shall be made upon forms provided or approved by the Director of Finance. The voluntary payroll deduction authorization shall be for periods of one year, and may be renewed for successive periods of one year by verified notification of the employee or the recognized employee organization representing him or payroll deduction authorization may be canceled or modified by the employee upon 30 days advance written notice to the Director of Finance.
 - (3) The Director of Finance may combine in one deduction the amounts for different allowable purposes, and shall specify the frequency with which deductions shall be taken. Amounts deducted and withheld by the City shall be transmitted to the officer designated in writing by the eligible employee organization as the person authorized to receive such funds, at the address specified. The employee organization shall be responsible for

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segregating any combined deductions so remitted, and the City shall assume no responsibility for this function.

- (4) No employee shall be allowed to authorize payroll deduction for membership in more than two eligible employee organizations at any one time.
- (5) The employee's earnings must be sufficient after all other required deductions are made to cover the amount of the deductions herein authorized. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover that pay period from future earnings nor will the employee deposit the amount with the City which would have been withheld if the employee had been in a pay status during that period. In the case of an employee who is in a non-pay status during a part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection all other required deductions have priority over employee organization deductions.
- (6) All employee organizations who receive deductions shall file with the Municipal Employee Relations Officer an indemnity statement wherein the employee organization shall indemnify, defend, and hold the City of San Jose, its officers, and employees harmless against any claim made and against any suit initiated against the City of San Jose or its officers and employees on account of check-off of employee organization dues or premiums for benefits. In addition, all such employee organizations shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

Section 15. Petition for Recognition. There are two levels of employee organization recognition - formal and informal. The recognition requirements of each are set forth below.

- (a) Formal Recognition - The Right to Meet and Confer as Majority Representative: An employee organization that seeks formal recognition for purposes of meeting and conferring in good faith as the majority representative of employees in an appropriate unit shall file a petition with the Municipal Employee Relations Officer containing the following information and documentation:
 - (1) Name and address of the employee organization.
 - (2) Names and titles of its officers and their mailing addresses.
 - (3) Names of employee organization representatives who are authorized to speak on behalf of its members.

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- (4) A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the City.
 - (5) A statement whether the employee organization is a chapter or local of, or affiliated directly or indirectly in any manner with, a regional, state, national or international organization, and, if so, the name and address of each such regional, state, national or international organization.
 - (6) Certified copies of the employee organization's constitution and by-laws.
 - (7) A designation of at least one but not more than two persons and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee for any purpose.
 - (8) A statement that the employee organization recognizes that the provisions of Section 923 of the Labor Code are not applicable to City employees.
 - (9) A statement that the employee organization has no restriction on membership based on age, sex, race, color, creed, or national origin.
 - (10) The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
 - (11) A statement that the employee organization has in its possession written proof, dated within six months of the date upon which the petition is filed, to establish that 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 Municipal Employee Relations Officer or to a mutually agreed upon disinterested third party.
 - (12) A request that the Municipal Employee Relations Officer 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.
- (b) Informal Recognition - The Right to Consult: An employee organization that seeks recognition for purposes of consultation in good faith shall file

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a petition with the Municipal Employee Relations Officer containing the following information and documentation:

- (1) All of the information enumerated in subsection (a) (1) through (9) of this Section inclusive.
 - (2) A statement that the employee organization has in its possession written proof, dated within six months of the date upon which the petition is filed, to establish that employees 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 Municipal Employee Relations Officer or to a mutually agreed upon disinterested third party.
 - (3) A request that the Municipal Employee Relations Officer recognize the employee organization for the purpose of consultation in good faith.
- (c) The petition, including all accompanying documents, shall be verified, under oath, by the Executive Officer and Secretary of the organization that the statements are true. All changes in such information shall be filed forthwith in like manner.
- (d) The Municipal Employee Relations Officer shall grant recognition in writing, to all employee organizations who have complied with Section 15 (a) or (b) and (c) for purposes of consultation in good faith for its members. Employee organizations seeking formal recognition as majority representative must, in addition, satisfy the requirements of Section 17(a) (1) below. No employee may be represented by more than one recognized employee organization for the purposes of this Resolution.

Section 16. Appropriate Unit.

- (a) The Municipal Employee Relations Officer, after reviewing the petition filed by an employee organization seeking formal recognition as majority representative, shall determine whether the proposed unit is an appropriate unit. The principal criterion in making this determination is to establish the minimum number of units with a community of interest among the employees consistent with good employee relations. 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.

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- (2) The history of employee relations: (i) in the unit; (ii) among other employees of the City; and (iii) in similar public employment.
- (3) The effect of the unit on the efficient operation of the City and on sound employer-employee relations.
- (4) The extent to which employees have common skills, working conditions, job duties or similar educational requirements.
- (5) The effect on the existing classification structure of dividing a single classification among two or more 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 (1) professional employees shall not be denied the right to be represented separately from non-professional employees by a professional employee organization consisting of such professional employees; (2) management employees shall not be included in the same unit with non-management employees; and (3) confidential employees shall not be included in the same unit with non-confidential employees.

Section 17. Recognition of Employee Organizations as Majority Representative - Formal Recognition:

- (a) The Municipal Employee Relations Officer shall:
 - (1) Determine the majority representative of City employee in an appropriate unit by arranging for a secret ballot election or by any other reasonable method which is based upon written proof, and is designated to ascertain the free choice of a majority of such employees except that, in the absence of a petition requesting a change of majority representative from members of a unit represented by an employee organization as majority representative at the time of the adoption of this resolution, such organization may be recognized under this resolution without a secret ballot election.

The employee organization found to represent a majority of the employees in an appropriate unit shall be granted formal recognition as the only employee organization entitled to meet and confer on matters within the scope of representation for employees in such unit. This shall not preclude other employee organizations granted informal recognition or individual

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employees, from consulting with management representatives on employer-employee relations matters of concern to them.

- (2) Revoke the recognition rights of a majority representative which has been found by secret ballot election no longer to be the majority representative.
- (b) The recognition rights of the majority representative designated in accordance with this Section shall not be subject to challenge for a period of twelve months following the date of such recognition.

Section 18. Representation Proceedings.**(a) Formal Recognition as the Majority Representative in an Appropriate Unit:**

- (1) An employee organization that seeks formal recognition as the majority representative in an appropriate unit shall file a Petition for Recognition with the Municipal Employee Relations Officer containing all of the information set forth in Section 15 (a) of this Resolution, accompanied by written proof 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; provided, however, the employee organization may request that such written proof be submitted to a mutually agreed upon disinterested third party. Upon receipt of the Petition for Recognition, the Municipal Employee Relations Officer shall within fourteen calendar days determine whether:
 - (i) there has been compliance with the requirements of the Petition for Recognition, and
 - (ii) the proposed unit is an appropriate unit.

If an affirmative determination is made by the Municipal Employee Relations Officer on the foregoing two matters, he shall within fourteen calendar days give notice of such request for formal recognition to the employees in the proposed unit and to all recognized employee organizations and shall take no further action on said request for 30 days thereafter; if either of the foregoing matters are not affirmatively determined, the Municipal Employee Relations Officer shall within fourteen calendar days give notice to the petitioning employee organization and to any other affected employee organization of the reasons in writing. The petitioner shall have the right within seven calendar days after said notice to invoke the impasse procedures and any other affected employee organization shall be entitled to participate in said proceedings and inform the petitioning employee organization of the reasons therefore in writing.

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- (2) Within 30 days of the date of notice of filing is given, any other employee organization (hereinafter referred to as the "challenging organization") may file a written challenge of the appropriateness of the proposed unit or seek formal recognition in the proposed unit or an overlapping unit by filing a Petition for Recognition, provided, however, such challenging organization must submit written proof that it represents at least 10% or more of the employees in the proposed unit. Any challenge shall state the grounds for the challenge and if appropriateness of the proposed unit is challenged, the challenge shall describe in detail an alternative representation unit. The Municipal Employee Relations Officer shall hold a formal hearing with notice being sent to all parties who may be interested therein and which will be conducted in accordance with rules of procedure which will provide a fair and open hearing on such overlapping Petitions, or challenges at which time all affected employee organizations shall be given the opportunity to be heard. Thereafter, the Municipal Employee Relations Officer shall determine the challenges and the appropriate unit or units as between such proposed overlapping units in accordance with the criteria set forth in Section 16 of this Resolution or shall dismiss the petition.
 - (3) If the written proof submitted by the employee organization in the unit found to be appropriate establishes that it represents more than 50% of the employees in such unit, the Municipal Employee Relations Officer may, in his discretion, grant and certify formal recognition to such employee organization without a secret ballot election.
 - (4) When an employee organization in the unit found to be appropriate submits written proof that it represents at least 30% of the employees in such unit, and it does not qualify for or has not been granted recognition pursuant to subsection 3 above, the Municipal Employee Relations Officer shall arrange for a secret ballot election to be conducted as provided in Section 18 (e) of this Resolution. There shall be placed on the ballot (1) the name of the petitioning employee organization that has established proof of support by 30% or more of the employees in the representation unit determined to be appropriate and (2) the names of any challenging organizations who have submitted written proof that they represent at least 10% of the employees in the unit found to be appropriate, and have submitted a Petition for Recognition as required by Section 15 of this Resolution. The choice of "no organization" shall also be included on the ballot.
- (b) Duration of Formal Recognition.
- (1) When an employee organization has been formally recognized, such recognition shall remain in effect for one year from the date thereof and thereafter until such time as the Municipal Employee Relations Officer

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shall determine, on the basis of a secret ballot election conducted in accordance with the rules stated in this Resolution that the formally recognized employee organization no longer represents a majority of the employees in the appropriate unit or until such time as the unit may be modified as provided in Subsection 18 (d).

- (2) Following the determination by the Municipal Employee Relations Officer of an appropriate representation unit and certification of a recognized employee organization of such unit pursuant to Section 18 of this Resolution, no petition for certification as a recognized employee organization of such unit, or portion thereof, or petition for decertification with respect to such unit, or portion thereof, shall be filed with or received by the Municipal Employee Relations Officer except during the month of September after the expiration of not less than 12 months from the date of such certification.

(c) De-certification of Established Unit.

- (1) A petition for De-certification alleging that an employee organization granted formal recognition is no longer the majority representative of the employees in an appropriate unit may be filed with the Municipal Employee Relations Officer only during the month of September after the expiration of not less than 12 months from the date of the certification of formal recognition. The petition for De-certification may be filed by an employee, a group of employees or their representative, or an employee organization. The Petition, including all accompanying documents, shall be verified, under oath, by the person signing it, that its contents are true. It may be accompanied by a Petition for Recognition by a challenging organization. The Petition for De-certification shall contain the following information:
 - (i) the name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information;
 - (ii) the name of the formally recognized employee organization;
 - (iii) an allegation that the formally recognized employee organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts;
 - (iv) written proof that at least 30% of the employees in the unit do not desire to be represented by the formally recognized employee organization. Such written proof shall be dated within six months of the date upon which the petition is filed and shall be submitted for confirmation to the Municipal Employee Relations Officer or to a mutually agreed upon disinterested third party.

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- (2) The Municipal Employee Relations Officer shall arrange for a secret ballot election to be conducted as provided in Section 18 (e) of this Resolution. There shall be placed on the ballot (1) the name of the existing certified formally recognized employee organization and (2) the name of the petitioning employee organization that has established proof of support by 30% or more of the employees in the representation unit. The choice of “no organization” shall also be included on the ballot.
 - (3) There shall be no more than one valid de-certification election in the same unit in any 12-month period.
- (d) Modification of Established Unit.
- A Petition for Modification of an established unit may be filed by an employee organization with the Municipal Employee Relations Officer during the period for filing a Petition for De-certification. The Petition for Modification shall contain all of the information set forth in Section 15 (a) of this Resolution, along with a statement of all relevant facts in support of the proposed modified unit. The Petition shall be accompanied by written proof that at least 30% of the employees within the proposed modified unit have designated the employee organization to represent them in their employment relations with the City; provided, however, the employee organization may request that such written proof be submitted to a mutually agreed upon disinterested third party. The Municipal Employee Relations Officer shall hold a hearing on the Petition for Modification, at which time affected employee organizations may be heard. Thereafter, the Municipal Employee Relations Officer shall determine the appropriate unit or units as between the existing unit and the proposed modified unit. If the Municipal Employee Relations Officer determines that the proposed modification unit is the appropriate unit, then he shall follow the procedures set forth in Section 18 (a) for determining formal recognition rights in such unit.
- (e)(1) Whenever an election is required pursuant to this Resolution, the Municipal Employee Relations Officer shall request the State of California Conciliation Service to call and conduct a secret ballot election in accordance with its own procedures and regulations consistent with the provisions of this Resolution.
 - (2) Eligible voters shall be those employees in the representation unit whose names appear on the payroll immediately prior to the election as employees in the representation unit, including those employees who did not work during such payroll period because of illness, vacation or authorized leaves of absence and who are employed by the City in the same unit on the date of the election.
- (f) The Municipal Employee Relations Officer may adopt reasonable rules for the conduct of elections in those cases where the State of California Conciliation Service declines to conduct the election. Such rules may provide for the conduct

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of an election in whole or part by mail ballot if, in the Municipal Employee Relation Officer's discretion, the mail ballot procedure is deemed appropriate. If an election by mail ballot is ordered, the Municipal Employee Regulations Officer will at that time establish rules and procedures to guard against fraud, mistake, ineligible voting, and the like.

- (g)(1) The Municipal Employee Relations Officer shall declare the results of the election and when a majority of those employees eligible to vote, voted at the election he shall:
- (i) certify as the recognized employee organization of the representation unit the employee organization receiving a majority of the votes cast;
 - (ii) declare that no organization is the recognized employee organization of the unit if the choice "no organization" received a majority of the votes cast; or
 - (iii) following a de-certification election, decertify the incumbent employee organization if the choice "no organization" received a majority of the votes cast.
- (2) If the ballot included three or more choices and none of the choices received a majority vote, a run-off election shall be held between the two choices receiving the largest number of votes. If less than a majority of those employees eligible to vote, voted at the election, the election shall be declared void and no further election shall be held based on the petition pursuant to that on which the election was held.
- (h) Except upon order of the Municipal Employee Relations Officer after a showing of good cause, no election shall be conducted in any representation unit within which in the preceding twelve-month period either:
- (1) a valid election shall have been held in which no employee organization received a majority of the votes cast; or
 - (2) an election shall have been held at which less than a majority of the eligible voters voted.
 - (i) Any costs incurred in conducting an election shall be divided equally among the employee organizations appearing on the ballot and the City.

Section 19. Newly Established Job Classifications. Representation Units.

Each newly established job classification shall be assigned to an appropriate representation unit by the Municipal Employee Relations Officer, after consultation with recognized employee organizations, if he finds that there is an

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appropriate unit to which such job classifications may be assigned. An employee organization may appeal from such assignment to the Municipal Employee Relations Officer.

The appeal shall be in writing and shall be filed with Municipal Employee Relations Officer within thirty (30) days after the assignment is made. If such an appeal is denied, such employee organization may invoke the impasse procedures prescribed by this resolution, provided that the request for impasse procedure must be filed in writing with the Municipal Employee Relations Officer within seven (7) days after such organization has been notified of the Municipal Employee Relations Officer's denial of the appeal, by certified mail delivered to said organization. Failure to appeal or invoke the impasse procedure within the time provided shall be an abandonment of the organization's right to question the action of the Municipal Employee Relations Officer. The appeal shall be in writing and shall be filed with the Municipal Employee Relations Officer within thirty (30) days after the assignment is made.

Section 20. Designation of Confidential and Management Employees. Representation Units.

- (a) The Municipal Employee Relations Officer is authorized to designate, from time to time, confidential employees and after consultation with recognized employee organization, to designate from time to time management employees, as defined in Section 2 of this Resolution, and may at any time revoke such designations. Upon such designation being made the Municipal Employee Relations Officer shall assign such management employee to an appropriate management representation unit and such confidential employees to an appropriate confidential employee unit. Upon revocation of such designation as a confidential or management employee, the Manager shall assign the affected employee to an appropriate representation unit.
- b) The Municipal Employee Relations Officer may, from time to time, combine, alter or modify confidential employee representation units, and after consultation with recognized employee organizations concerned, combine, alter or modify management employee representation units.
- (c) Any employee organization directly affected by an action taken by the Municipal Employee Relations Officer in accordance with subdivisions (a) or (b) above may appeal to the Municipal Employee Relations Officer from such action. The appeal shall be in writing and shall be filed with the Municipal Employee Relations Officer within thirty (30) days after notice of such action is given to such directly affected organization, by certified mail delivered to such organization at its address on file with the Municipal Employee Relations Officer. If such an appeal is denied, such employee organization may invoke the impasse procedures prescribed by this Resolution, provided that the request for impasse procedure must be filed in writing with the Municipal Employee Relations Officer within seven

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(7) days after such organization has been notified of the Municipal Employee Relations Officer's denial of the appeal, by certified mail delivered to said organization. Failure to appeal or invoke the impasse procedure within the time provided shall be an abandonment of the organizations' right to question the action of the Municipal Employee Relations Officer.

- (d) No action taken by the Municipal Employee Relations Officer in accordance with subdivision (a) or (b) above shall have force and effect until expiration of the 30-day appeal period prescribed in subdivision (c) above. If an appeal from such action is filed by an employee organization within the thirty (30) day time period prescribed in subdivision (c) above, such action shall not become effective pending hearing of the appeal and completion of the impasse procedure if invoked.

Section 21. Designation of Municipal Employee Relations Officer

- (a) The City Council hereby designates the City Manager as Municipal Employee Relations Officer and as such he/she shall be the City's principal representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation including wages, hours and other terms and conditions of employment. The Municipal Employee Relations Officer so designated is authorized to delegate these duties and responsibilities to an Employee Relations Officer or other members of his/her staff.
- (b) The Municipal Employee Relations Officer or his delegate shall have the following additional responsibilities and authority to carry out the provisions of this Resolution:
- (1) To determine appropriate employee representation units;
 - (2) To arrange for representation elections and declare the results thereof;
 - (3) To certify and de-certify recognized employee organizations consistent with the terms of this Resolution;
 - (4) To hear and decide appeals with respect to the assignment of new classifications to representation units;
 - (5) To invoke impasse proceedings;
 - (6) To hear and decide appeals with respect to the designation of confidential and management employees, the revocation of such designations and the assignment of such employees to representation units and to hear and decide appeals with respect

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to the combining, alteration or modification of management and confidential employee representation units;

- (7) To cause to be prepared written memorandum of understanding with formally recognized employee organizations setting forth all agreed upon matters, and to present the same to this City Council for its determination if such falls within its authority.

Section 22. Grievances.

- (a) A grievance is any dispute concerning the interpretation or application of:
 - (1) this Resolution,
 - (2) the rules or regulations governing personnel practices or working conditions,
 - (3) a written Memorandum of Understanding between the City and an employee organization, or
 - (4) the practical consequences of the City's decision on wages, hours and other terms and conditions of employment.
- (b) Grievances arising from the interpretation or the implementation of this Resolution or from the modification or addition of any rule or regulation adopted pursuant to Section 26 of this Resolution may be processed in accordance with the impasse procedures provided in this Resolution.
- (c) Grievances arising from any Memorandum of Understanding reached pursuant to the provisions of this Resolution may be processed in the manner provided in such Memorandum of Understanding or if there be no such provision then in accordance with the impasse procedures provided in this Resolution.
- (d) All other grievances shall be processed in accordance with procedures established by the City.

Section 23. Resolution of Impasses. Impasse procedures may be invoked by either party after a bona fide effort has been made to meet and confer in good faith and such efforts fail to result in agreement.

Impasse procedures shall be as follows:

- (a) **Mediation.** All mediation proceedings shall be private. The Mediator shall make no public recommendations nor take any public position concerning the issues. All mediation procedures and sessions shall be private. Mediators shall be mutually accepted by the City and the

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employee organizations directly involved, or failing mutual acceptance, mediators shall be selected from a panel submitted by the State Conciliation Service of the State of California.

- (b) In the event mediation efforts fail to resolve the impasse, the City and the employee organization directly involved may by mutual agreement select a method to resolve the disputed or unresolved issues.

Section 24. Impasses in Representation Proceedings. Any unresolved complaint by an affected employee organization, advanced in good faith, concerning a decision of the Municipal Employee Relations Officer made pursuant to Section 18 (a), (b), (c), or (d) herein shall be processed in accordance with the procedure set forth in Section 22 of this Resolution provided, however, the request for an impasse procedure as described in Section 22, must be filed with the Municipal Employee Relations Officer within seven (7) days after the affected employee organization first has been notified by certified mail of the decision upon which its complaint is based, or its complaint will be considered closed and not subject to the impasse procedures or to any other appeal.

Section 25. Memorandum of Understanding. When the meeting and conferring process is concluded between the City and a formally 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 signed by the duly authorized City and majority representatives.

As to those matters within the authority of the City Council, the Memorandum of Understanding shall be submitted to the City Council for determination.

Any ordinance, resolution, or administrative rule, necessary to implement such written Memorandum of Understanding shall be submitted to the appropriate employee organization reasonably in advance of submission of any such ordinance or resolution to the Council or implementation of such rule.

Section 26. Rules and Regulations. The City Council may adopt such Rules and Regulations necessary or convenient to implement the provisions of this Resolution and Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500, et seq.).

Section 27. Construction.

- (a) Nothing in this Resolution shall be construed to deny any person or employee the rights granted by Federal and State laws and City Charter provisions.
- (b) The rights, powers and authority of the City Council in all matters, including the right to maintain any legal action, shall not be modified or restricted by this Resolution.

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- (c) Nothing contained in this Resolution shall abrogate any written agreement between any employee organization and the City in effect on the effective date of this Resolution. All such agreements shall continue in effect for the duration of the term specified therein unless modified or rescinded by mutual agreement of the parties thereto.
- (d) The provisions of this Resolution are not intended to conflict with the provisions of Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500, et seq.) as amended in 1968.

Section 28. Separability.

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.

Section 29. Continuation of Existing Units, Employee Organizations and Designations.

All representation units, recognized employee organizations and designations of confidential and management employees existing on the effective date of this Resolution shall continue until changed pursuant to the provisions of this Resolution or other applicable law.

Section 30. Repeal of Prior Resolutions. Resolution Nos. 35578, 35616, 35732, 37394 are hereby repealed.

Adopted this 5th day of April, 1971 by the following vote:

AYES: Councilmen – Colla, Goglio, Gross, Hays, Shaffer, and James.

NOES: Councilmen – None

ABSENT: Councilmen – Mineta

/s/
RONALD R. JAMES
MAYOR

ATTEST: FRANCIS L. GREINER

CITY CLERK

/s/
By: Richard C. McCoy, Deputy