

CITY OF SAN DIEGO, CALIFORNIA
COUNCIL POLICY

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SUBJECT: EMPLOYEE – EMPLOYER RELATIONS
POLICY NO.: 300-06
EFFECTIVE DATE: SEPTEMBER 20, 2017

I. PURPOSE:

- A. This Policy implements Chapter 10, of Division 4, of Title 1 of the Government Code of the State of California (sections 3500-3511), entitled “Local Public Employee Organizations,” by providing orderly procedures for the administration of employer-employee relations between the City of San Diego and its employee organizations. This Chapter of the California Government Code is known and may be cited as the “Meyers-Milias-Brown Act” (MMBA).
- B. It is the purpose of this Policy to provide procedures for meeting and conferring in good faith with the City’s Exclusively 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 or the City Charter. Nothing in this Policy restricts any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others: the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees and take disciplinary action for just cause; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of government 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.
- C. Nothing contained in this Policy is intended to supersede provisions of federal or state law, the City Charter, ordinances, resolutions, and rules that establish and regulate the Civil Service system, or that provide for other methods of administering employer-employee relations. This Policy is intended, instead, to strengthen merit, civil service, 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.

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II. AUTHORITY:

- A. The stated purpose of the MMBA is, in part, to promote full communication between public employers and their employees by providing a reasonable method of resolving disputes regarding wages, hours, and other terms and conditions of employment between public employers and public employee organizations, and to provide a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by those organizations in their employment relationships with public agencies.
- B. Government Code Section 3507 authorizes a city to adopt reasonable rules and regulations after meeting and consulting in good faith with representatives of its recognized employee organizations for the administration of employer-employee relations.

III. POLICY:

- A. Except as otherwise provided or authorized by law, 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, in accordance with this Policy. Employees of the City also shall have the right to refuse to join or participate in the activities of employee organizations. Neither the City nor any employee organization shall interfere with, intimidate, restrain, coerce, or discriminate against any City employees because of their exercise of these rights.
- B. Notwithstanding section III, paragraph A, the City Council hereby designates the classification and positions in the Police Unit and the Police Management Unit as having duties consisting primarily of the enforcement of state and local laws. Employees in these classifications and positions shall be limited to forming, joining, participating, and being represented by employee organizations composed solely of such law enforcement employees, which 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 which are not subordinate to any other organization.
- C. Management and Confidential Employees as defined by this Policy may not represent any employee organization that represents other employees of the City on matters within the scope of representation.

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IV. DEFINITIONS:

As used in this Policy, the following definitions govern the construction of this Policy.

- a. **APPROPRIATE UNIT** means a unit of employee classes or positions, established pursuant to section II of this Policy.
- b. **CITY** means the City of San Diego, acting through the City Council or other City representative as stated in and authorized by this Policy.
- 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 views or advising of intended actions.
- e. **DAY** means calendar day unless expressly stated otherwise.
- f. **EXCLUSIVELY RECOGNIZED EMPLOYEE ORGANIZATION** means an employee organization that has been formally acknowledged by the City as the sole employee organization that represents the employees in an appropriate representation unit pursuant to section V.
- g. **FACTFINDING** means an Impasse resolution process mandated by Government Code section 3505.4, during which a Factfinding panel hears evidence on the negotiations issues in dispute and provides findings and recommended terms for settlement.
- h. **IMPASSE** means the point at which, following good faith negotiations, the City or an Exclusively Recognized Employee Organization has determined, based on the totality of the circumstances, that agreement on matters within the scope of representation cannot be reached and further discussions would be futile.
- i. **MANAGEMENT EMPLOYEE** means an employee having responsibility for formulating, administering, or managing the implementation of City policies or programs. Management employees are designated by the Mayor or independent City department director.
- j. **MAYOR** means the Mayor or authorized designee.

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- k. MEET AND CONFER means the mutual obligation of the City and an Exclusively Recognized Employee Organization, acting through its designated representatives, 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. The process should include adequate time for the resolution of Impasse procedures set forth in this Policy.

- l. MEMORANDUM OF UNDERSTANDING (MOU) means a written agreement prepared jointly by the representatives of the City and an Exclusively Recognized Employee Organization, following completion of the Meet and Confer process, which concerns wages, hours, and other terms and conditions of employment for employees represented by an Exclusively Recognized Employee Organization, and which must be approved by the City Council to bind the City.

- m. PARTIES means the City and any of its Exclusively Recognized Employee Organizations, collectively engaged in the processes set forth in this Policy. Party means either the City or any of its Exclusively Recognized Employee Organizations.

- n. PERB means the California Public Employment Relations Board.

- o. PROOF OF EMPLOYEE SUPPORT means documentation that clearly demonstrates that employees desire to be represented by a petitioning employee organization for the purpose of meeting and conferring on wages, hours, and other terms and conditions of employment, or no longer desire to be represented by an Exclusively Recognized Employee Organization, consisting of one or a combination of the following:
 - 1. Current dues deduction authorization forms;
 - 2. An authorization card or petition signed and dated by employees, with the purpose of the card or petition clearly stated on each page; or
 - 3. A notarized membership list, provided it is accompanied by the date of each member's signature on an enrollment form, membership application, or designation card or cards, supported by a declaration under penalty of perjury that the employee organization has on file the aforementioned documents indicating the employee's desire to be represented by the employee organization. A sample of the signed forms must accompany the list.

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Proof of Employee Support must indicate each employee's printed name, signature, job title or classification, and the date on which each individual signature was obtained. An undated signature or a signature dated more than 60 calendar days prior to the filing of a petition requiring employee support is invalid for the purpose of calculating Proof of Employee Support. Any signature meeting these requirements must be considered valid even though the signatory has executed authorizations for more than one employee organization.

- p. 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; except, however, the scope of representation does not include consideration of the merits, necessity, or organization of any service or activity provided by law, executive order, by the Charter, or by City Council order.
- q. SUPERVISORY EMPLOYEE means any employee having authority, in the interest of the City, to hire, transfer, suspend, layoff, 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. Supervisory Employees are designated by the Mayor or independent City department director.

V. REPRESENTATION PROCEEDINGS:

- A. Filing of Recognition Petition by Employee Organization. An employee organization must file a petition for recognition as the Exclusively Recognized Employee Organization representing the employees in an appropriate unit, with the Mayor, containing the following information and documentation:
 - 1. Name, address, and telephone number of the employee organization, and the name, address, and telephone number of the agent to be contacted.
 - 2. A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the City.
 - 3. A statement regarding 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 that organization.

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4. Certified copies of the employee organization's constitution and by-laws, including the constitution and by-laws of any affiliated organization as defined in subparagraph 3 above.
5. A designation of a person and his or her address, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
6. A statement that the employee organization has no restriction on membership based on race, color, religious creed, national origin, ancestry, age, physical disability mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, age, sexual orientation, or military and veteran status, or any other characteristic protected by federal, state, or local law.
7. The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of employees therein.
8. Proof of Employee Support of at least a majority of the employees in the unit claimed to be appropriate. If the petition has support from less than a majority of the employees in the unit claimed to be appropriate, but at least 40 percent of the employees, and all other requirements are satisfied, then the process set forth in section V, paragraph D applies.
9. A request that the Mayor formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in an appropriate unit for the purpose of meeting and conferring in good faith.

The petition, including Proof of Employee Support and all accompanying documentation, must be declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete.

- B. City Response to Recognition Petition. Upon receipt of a recognition petition, the Mayor must determine whether:
1. There has been compliance with the requirements of this Policy, and
 2. The proposed representation unit is an appropriate unit in accordance with section V, paragraph F.

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If the Mayor determines that the recognition petition meets the requirements of this Policy, he or she must inform the petitioning employee organization, give written notice of the request for recognition to the employees in the unit and any employee organization previously recognized or having previously petitioned for recognition for any classification of employees included in the petition, and take no further action on the request for 30 days thereafter, to allow for the process set forth in section V, paragraph C. If the Mayor determines that the recognition petition fails to meet the requirements of this Policy, he or she must offer to consult with the petitioning employee organization, in an effort to correct the deficiencies. Following consultation, if the Mayor's determination remains unchanged, he or she must inform the employee organization of the reasons in writing. The petitioning employee organization may appeal the Mayor's determination in accordance with section V, paragraph H.

- C. Open Period for Filing Challenge to Petition. Within 30 days of the date written notice is given to affected employees and employee organizations that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing recognition petition to be formally acknowledged as the Exclusively Recognized Employee Organization for the employees in the same or in an overlapping unit. The competing recognition petition must include Proof of Employee Support in the unit claimed to be appropriate of at least 40 percent of the employees and must be in the same form and manner as required by section V, paragraph A. If the challenging petition seeks establishment of an overlapping unit, the Mayor must call for a hearing for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations must be heard. Thereafter, the Mayor must determine the appropriate unit or units in accordance with the standards in section V, paragraph F. The petitioning employee organizations have 15 days from the date notice of the unit determination is communicated to them by the Mayor to amend their petitions to conform to the Mayor's determination or to appeal the determination in accordance with section V, paragraph H. If there is no challenge to a recognition petition filed in accordance with section V, paragraph A and the recognition petition satisfies all requirements set forth in section V, paragraph A, including Proof of Employee Support of at least a majority of the employees in an appropriate unit, then the Mayor, on behalf of the City, must grant recognition to petitioning employee organization as the exclusive representative.

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- D. Election Procedure. If there is a challenge to a recognition petition under the provisions set forth in section V, paragraph C, or if the Proof of Employee Support set forth in the petition is less than a majority of the employees in the unit claimed to be appropriate, but at least 40 percent of the employees, then the Mayor must arrange for a secret ballot election to be conducted by a neutral party agreed to by the Mayor and the concerned employee organizations. In the event that the City and the concerned employee organizations are unable to agree on a third party to conduct an election, the election must be conducted by the State Mediation and Conciliation Service.

All employee organizations that have submitted petitions, determined to be in conformance with this Policy, must be included on the ballot. The choice of “no organization” must also be included on the ballot. Employees entitled to vote are those employed within the designated appropriate unit as of the cutoff date for voter eligibility, defined as the last day of the pay period immediately preceding the date of the election, and still employed on the date they cast their ballots in the election. Employees who are ill, on vacation, or on an authorized leave of absence and who otherwise meet the eligibility criteria may vote. A majority of the valid votes cast will determine the outcome of the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a runoff election must be conducted between the two choices receiving the largest number of valid votes cast. The rules governing an initial election apply to a runoff election.

There may only be one election under this Policy that affects the same unit in any 12-month period.

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

- E. Procedure for Decertification of Exclusively Recognized Employee Organization. A petition for an election to decertify an existing Exclusively Recognized Employee Organization may be filed by employees within an established unit or an employee organization following the first full year of recognition of the Exclusively Recognized Employee Organization. The time for filing a decertification petition is limited to the later of two periods: the month of January of any year or during the 30-day period that starts 180 days prior to the expiration of an MOU. A petition may be filed by employees or their representative, or an employee organization, and a decertification petition must contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete:

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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 of the incumbent Exclusively Recognized Employee Organization sought to be decertified as the 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.
4. Proof of Employee Support that at least 40 percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization.

To satisfy the requirements of this paragraph, an employee organization may file a recognition petition that evidences Proof of Employee Support of at least 40 percent and otherwise conforms to the requirements of section V, paragraph A.

The Mayor must initially determine whether the petition has been filed in compliance with the applicable provisions of this Policy. If the Mayor determines that the petition does not conform to the requirements, he or she must consult with the representatives of the petitioning employees or employee organization. If the Mayor's determination remains unchanged after consulting with the petitioning employees or employee organization, the Mayor must return the petition to the employees or employee organization with a written statement of the reasons for the determination. The petitioning employees or employee organization may appeal the Mayor's determination in accordance with section V, paragraph H. If the Mayor determines the petition conforms to the requirements of this Policy, or if his or her negative determination is reversed on appeal, the Mayor must give written notice of the decertification or recognition petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.

The Mayor must then arrange for a secret ballot election to be held on the question of decertification, or, if a recognition petition is filed, the question of representation. The election must be conducted in conformance with section V, paragraph D.

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- F. Policy and Standards for Determination of Appropriate Units. The Mayor will base his or her determination of appropriate units upon (1) the efficient operations of the City and a proposed unit's compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (2) the effective representation of employees based on recognized community of interest considerations, as the term "community of interest" is used by PERB. Appropriate units must be the broadest feasible grouping of positions that share a community of interest, meaning employees within the unit share substantial mutual interests in matters subject to the Meet and Confer process. In determining whether a community of interest exists among employees within a unit, the following factors are to be considered:
1. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
 2. History of representation in the City and similar employment; except, however, that no unit will be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
 3. Consistency with the organizational patterns of the City.
 4. Number of employees and classifications, and the effect on the administration of employee-employer relations created by the fragmentation of classifications and the proliferation of bargaining units.
 5. Effect on the classification structure and impact on the stability of the employee-employer relationship of dividing a single or related classification among two or more units.
 6. Professional employees must not be denied the right to be represented separately from nonprofessional employees.
 7. The exercise of appropriate supervisory responsibilities over other City employees.

Notwithstanding the foregoing provisions, managerial and confidential responsibilities, as defined in section IV of this Policy, are determining factors in establishing appropriate units, and Management and Confidential Employees may be limited to a unit or units composed solely of these employees. Management and Confidential Employees may not represent any employee organization that represents other employees of the City on matters within the Scope of Representation.

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After notice to and consultation with affected employee organizations, the Mayor is responsible for allocating new classifications or positions, deleting eliminated classifications or positions, and retaining, reallocating, or deleting modified classifications or positions from units, in accordance with this Policy.

- G. Procedure for Modification of Established Appropriate Units. The procedure for modification of established appropriate units includes severance petitions and modification petitions, as specified in this paragraph. An Exclusively Recognized Employee Organization may file a petition to modify an existing unit by: (1) becoming the exclusive representative of an appropriate unit consisting of a group of employees who are already members of a larger established unit represented by an incumbent exclusive representative; (2) adding to the unit formerly unrepresented classifications or positions; (3) dividing an existing unit into two or more appropriate units; (4) consolidating two or more of its established units into one appropriate unit; (5) deleting classifications or positions because changed circumstances make the classifications or positions no longer appropriate to be in the unit; (6) making technical changes to clarify or update the unit description; or (7) designating new classifications or positions. A petition to modify an established unit may be considered by the Mayor only during the period specified in section V, paragraph E.

A request to modify an established unit must be submitted in the form of a recognition petition, in accordance with section V, paragraph A. In addition to the requirements set forth in section V, paragraph A, the petition must contain a complete statement of all relevant facts and citations in support of the proposed modified unit, in accordance with the policies and standards set forth in section V, paragraph F. The petition must include a description of the proposed appropriate unit, including the classifications and positions to be included and excluded. The petition must also include the approximate number of employees in the proposed appropriate unit; the name, address, and telephone number of the exclusive representative of the established unit and the name, address, and telephone number of the agent to be contacted; and the date on which the exclusive representative was recognized or certified. The Mayor must process a petition to modify an existing unit as any other recognition petition under this Policy.

The Mayor may, at his or her discretion, propose that an established unit be modified. However, the Mayor must give written notice of a proposed modification, and give all affected employee organizations the opportunity to be heard. The Mayor must determine the composition of the appropriate unit or units in accordance with section V, paragraph F, and give written notice of the

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determination to the affected employee organizations. The Mayor's determination may be appealed as provided in section V, paragraph H. If the Mayor exercises his or her discretion to create a new unit or units, an employee organization may file a recognition petition seeking to become the Exclusively Recognized Employee Organization for the new appropriate unit or units during the 30 days immediately following the creation of the unit or units, by complying with the provisions of section V, paragraph A.

- H. Appeals. An employee organization aggrieved by an appropriate unit determination of the Mayor under this Policy may appeal the determination to the City Council for final decision within 15 days of notice of the Mayor's determination.

An employee organization aggrieved by a determination of the Mayor that a recognition petition (section V, paragraph A), challenging petition (section V, paragraph F), or decertification petition (section V, paragraph F) has not been filed in compliance with this Policy, may, within 15 days of notice of the determination, appeal to the City Council for final decision.

Appeals to the City Council must be filed in writing with the City Clerk and a copy served on the Mayor. The City Council must hear the appeal within 30 days of its filing unless the aggrieved organization and the City, represented by the Human Resources Department Director, mutually agree to a later date. Any decision of the City Council determining the substance of the dispute is final and binding.

VI. ADMINISTRATION:

- A. Submission of Current Information by Exclusively Recognized Employee Organizations. All changes in the information filed with the City by an Exclusively Recognized Employee Organization under items 1 through 9 of its recognition petition, in accordance with section V, paragraph A of this Policy, must be submitted in writing to the Mayor within 14 days following the change.

B. Payroll Deductions on Behalf of Employee Organizations.

1. The City will make payroll deductions for membership dues and for agency fees when those fees have been authorized by election or agreement in accordance with the MMBA. Such dues and fees must be authorized by employees on forms provided by the City. The City will only provide this service to an Exclusively Recognized Employee Organization in accordance with the provisions of an unexpired MOU.

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2. The City will make payroll deductions from City employees for insurance premiums associated with health benefit plans sponsored by Exclusively Recognized Employee Organizations based on the employees' selections made during the annual open enrollment process.
- C. 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 will be authorized only to the extent provided for in an unexpired MOU or administrative procedures, and will be limited to activities pertaining directly to the employee-employer relationship and not internal employee organization business, such as soliciting membership, campaigning for office, or organization meetings and elections. Permitted use of City resources must not interfere with the efficiency, safety, and security of City operations.
- D. Administration Rules and Procedures. The Mayor is authorized to establish rules and procedures as appropriate to implement and administer the provisions of this Policy after consultation with the impacted employee organizations.
- E. Notice of Proposed Ordinance, Rule, Resolution, or Administrative Regulation Directly Relating to Matters Within the Scope of Representation. Except in cases of emergency as defined by the MMBA, case law and applicable PERB decisions, the City must give reasonable, written notice to each Exclusively Recognized Employee Organization affected by any ordinance, rule, resolution, or administrative regulation directly relating to matters within the Scope of Representation proposed to be adopted by the City Council, the Mayor or designee, or the Civil Service Commission, and must give each Exclusively Recognized Employee Organization the opportunity to meet and confer with the City. If the Exclusively Recognized Employee Organization fails to request to meet and confer, the City may adopt the proposed ordinance, rule, resolution, or regulation.

In cases of emergency when the City determines that an ordinance, rule, resolution, or administrative regulation must be adopted immediately without prior notice or meeting with an Exclusively Recognized Employee Organization, the City must provide notice and opportunity to meet and confer on matters within the Scope of Representation at the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation.

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VII. MEET AND CONFER, IMPASSE AND FACTFINDING PROCEDURES:

- A. Bargaining Timelines. The City Charter mandates that no later than April 15 of each year, the City Council must introduce a Salary Ordinance fixing the salaries of all officers and employees of the City. The Salary Ordinance must be proposed by the Mayor for City Council introduction in a form consistent with any MOU or otherwise in conformance with procedures governed by the MMBA or any other legal requirements governing labor relations that are binding on the City, including this Policy. The Salary Ordinance is a controlling document for preparation of the City's budget and the Annual Appropriation Ordinance for the ensuing fiscal year. To endeavor to reach agreement on matters within the Scope of Representation prior to the City Council's adoption of its Salary Ordinance, budget, and Annual Appropriation Ordinance for the ensuing fiscal year, the City and each Exclusively Recognized Employee Organization must begin the meet and confer process no later than January 5 of the year in which the Parties' MOU expires, unless the Parties mutually agree, prior to January 5, to a different date.
- B. Declaration of Impasse and Initiation of Impasse Procedures. If the Parties are unable to reach an agreement following good faith negotiations for a successor MOU, the City or the Exclusively Recognized Employee Organization must declare Impasse before April 1, if possible, to allow sufficient time for City Council consideration of the Salary Ordinance and for exhausting the Impasse process before the expiration of the MOU and the beginning of the ensuing fiscal year.

The City or the Exclusively Recognized Employee Organization may initiate the Impasse procedures by filing with the Mayor, with a copy to the City Council President and to the other Party's designated representative, a written declaration of Impasse, with a request for an Impasse meeting and a statement of its position on all disputed issues. Both Parties must prepare and exchange detailed written statements of their respective positions on each disputed issue.

Upon receipt of a declaration of Impasse, the Mayor must schedule an Impasse meeting between the designated representatives of the City and the Exclusively Recognized Employee Organization. The purpose of the meeting is:

1. To identify and specify in writing the issue or issues that remain in dispute;
2. To review the position of the Parties in a final effort to resolve the disputed issue or issues; and

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3. If the dispute is not resolved, to discuss arrangements for the use of the Impasse procedures set forth in this Policy.

If the Parties are unable to reach agreement and resolve remaining disputes during the Impasse meeting, they may mutually agree to submit their disputes to a mediator, to serve as a neutral third party to review the disputed issues and provide advice. Mediation is solely advisory and not binding on the Mayor or City Council. Costs of the mediation must be shared equally between the City and the Exclusively Recognized Employee Organization.

C. Impasse Procedures.

1. Factfinding Request. In accordance with the MMBA, an Exclusively Recognized Employee Organization may request that the Parties' differences be submitted to a Factfinding panel not later than 30 days following the date that either the City or the Exclusively Recognized Employee Organization provided the other with a written notice of a declaration of Impasse. If the Parties mutually agree to mediation, then an Exclusively Recognized Employee Organization may request Factfinding not sooner than 30 days, but not more than 45 days, following the appointment or selection of a mediator.
2. If the Exclusively Recognized Employee Organization requests Factfinding, the organization must file an official request with the PERB pursuant to PERB Regulation 32802. If the request is determined to be sufficient by PERB, the Parties will follow the Factfinding procedures set forth in paragraph 3 below, and will also comply with any other applicable PERB regulations on Factfinding.
3. Factfinding Hearing Procedures:

Factfinding hearing procedures will be conducted in accordance with California Government Code sections 3505.4 through 3505.7 and applicable PERB regulations.

- a. Selection of Factfinding Panel.
 - i. Selection of Panel Members. If the request for Factfinding is determined to be sufficient, PERB will request that each Party provide notification of the name and contact information of its panel member within five working days.

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- ii. Selection of Panel Chairperson. If the request for Factfinding is determined to be sufficient, PERB will, within five working days, submit to the Parties the names of seven persons, drawn from the list of neutral factfinders. PERB will thereafter designate one of the seven persons to serve as chairperson unless notified by the Parties within five working days that they have mutually agreed upon a person to chair the panel in lieu of a chairperson selected by PERB. In selecting a panel chairperson, the Parties must use the alternate strike method to select a factfinder from the list of neutral factfinders provided by PERB.
- b. No later than five days before the scheduled Factfinding hearing, the Parties will exchange at least the following information in writing:
 - i. A list of disputed issues to be submitted to the Factfinding panel and the Party's position on each disputed issue;
 - ii. If the Parties have not mutually agreed on a list of comparable agencies to be used by the Factfinding panel, each Party will submit its list of comparable agencies, its rationale for asserting that the listed agencies are comparable to the City, and its data from these agencies on total compensation and on all individual disputed compensation terms; and
 - iii. The identity of each Party's presenters and witnesses at the Factfinding hearing.
- c. In arriving at their findings and recommendations, the Factfinding panel must consider, weigh, and be guided by all of the following criteria:
 - i. State and federal laws that are applicable to the City;
 - ii. Local rules, regulations, or ordinances;
 - iii. Stipulations of the Parties;
 - iv. The interests and welfare of the public and the financial ability of the City;

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- v. 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;
 - vi. The consumer price index for goods and services, commonly known as the cost of living;
 - vii. 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; and
 - viii. Any other facts, not confined to those specified above, which are normally or traditionally taken into consideration in making the findings and recommendations.
- d. The hearing will be conducted in accordance with California Government Code section 3505.4(c).
 - e. The order of presentations and questions regarding the presentations shall be directed at the discretion of the Factfinding panel chairperson, however:
 - i. Each Party must first be provided with the opportunity to review their documents and arguments in support of their respective positions on the unresolved issues; and
 - ii. Post-hearing briefs will be allowed only if provided to the panel within 10 days of the conclusion of the hearing.
 - f. If the dispute is not settled within 30 days after the appointment of the Factfinding panel, or unless an extension is agreed on by both Parties, the panel must submit a written report including findings of fact and recommended terms of settlement, which shall be advisory only, to the Parties. The Parties must maintain the confidentiality of the Factfinders' report for a period of 10 days. If the Parties have not reached agreement within that time, the City must make the report available to the public.

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- g. The costs for the services of the mediator, panel chairperson, facilities, court reporters, or similar costs must be shared equally by the Parties. Each Party must bear its own costs for mediation and Factfinding, including the costs of their advocates.
4. Public Hearing Regarding Impasse.
- a. After any applicable mediation and Factfinding procedures have been exhausted, but no earlier than 10 days after the Factfinders' written findings of fact and recommended terms of settlement have been submitted to the Parties, the City Council may hold a public hearing on the Impasse and implement the terms of the City's last, best, and final offer, but may not implement an MOU.
 - b. The public hearing must be conducted in accordance with the rules of the City Council.
 - c. If the Exclusively Recognized Employee Organization does not request Factfinding, and no agreement is reached at an Impasse meeting or mediation, Impasses must then be resolved by a determination by the Civil Service Commission or the City Council after a hearing on the merits of the dispute. Determination of which of the above bodies must resolve a particular Impasse depends upon:
 - i. The subject matter of the Impasse, and
 - ii. The applicable provisions of the City Charter and Municipal Code as interpreted by the City Attorney.

VIII. IMPLEMENTATION OF MEMORANDUM OF UNDERSTANDING:

A. Memorandum of Understanding.

When the City and an Exclusively Recognized Employee Organization conclude the Meet and Confer process with agreement reached on matters within the Scope of Representation, all agreed upon matters must be incorporated into a written agreement and submitted to the City Council for a determination. The City Council must vote to accept or reject a tentative agreement reached in the Meet and Confer process within 30 days of the date the City Council first considers the agreement at a noticed public meeting. If the City Council adopts the tentative agreement, the Parties must jointly prepare a written MOU for presentation to and determination by the City Council.

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- B. As to those matters within the authority of the Civil Service Commission, the tentative agreement or MOU must be submitted to the Civil Service Commission for determination, or preliminary approval, if such matters must be then carried for final approval to the City Council.
- C. On those matters that fall within the authority of the Civil Service Commission or City Council, no tentative agreement or MOU signed by the Management Team is binding upon the Civil Service Commission or the City Council, unless and until it is ratified by the Civil Service Commission or City Council, as required.

IX. MISCELLANEOUS PROVISIONS:

A. Construction.

This Policy shall be administered and construed as follows:

- 1. Nothing in this Policy shall be construed to deny 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 or City Charter provisions.
- 2. This Policy shall be interpreted so as to carry out its purposes as set forth in section I.
- 3. Nothing in this Policy shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or as giving employees or employee organizations the right to participate in, support, cooperate, or encourage, directly or indirectly, any strike, sickout, or other total or partial stoppage or slowdown of work.

B. Severability.

- 1. If any part or provision of this Policy conflicts with the City Charter, the San Diego Municipal Code, or controlling state or federal law, as it may be amended or as it may be interpreted by a court of competent jurisdiction in any legal action, the City Charter or controlling state or federal law will guide the interpretation of this Policy. Further, if any section, subsection, sentence, clause, phrase, portion, or provision of this Policy is for any reason held to be invalid or unconstitutional by the

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decision of any court of competent jurisdiction, such decision will not affect the validity of the remaining portions of this Policy. The City Council declares that it would have adopted this Policy and each section, subsection, sentence, clause, phrase, portion or provision thereof, irrespective of the fact that any one or more sections, subsections, clauses, phrases, portions, or provisions be declared invalid or unconstitutional.

2. If a triggering event under paragraph 1 occurs, the parties will meet and consult regarding modifications to this Policy, if any. The scope of this meet and consult obligation will be as defined by Government Code section 3507 and by those cases and PERB decisions interpreting and applying it.

X. MANDATORY DISCUSSION OF PENSION SYSTEM UNFUNDED LIABILITY:

- A. No City officer, employee, or negotiator may engage in a Meet and Confer Process with an Exclusively Recognized Employee Organization regarding proposed defined benefit pension enhancements until the City Council has been notified of and had an opportunity to discuss the cost and impact that the proposed benefit enhancements will have on any unfunded accrued actuarial liability of the City Employees' Retirement System.
- B. The Prohibition set forth in section X, paragraph A is renewed each time that a different benefit enhancement is proposed for purposes of the Meet and Confer process.

HISTORY:

Adopted by Resolution R-204097 - 10/26/1971
Amended by Resolution R-254002 - 04/13/1981
Amended by Resolution R-255602 - 01/04/1982
Amended by Resolution R-261025 - 06/25/1984
Amended by Resolution R-281060 - 11/16/1992
Amended by Resolution R-301042 - 11/14/2005
Amended by Resolution R-311313 - 09/20/2017