

AS ADOPTED JANUARY 17, 1989 BY RESOLUTION NO.: 89-333

**ORDERLY PROCEDURES FOR THE ADMINISTRATION OF
EMPLOYER-EMPLOYEE RELATIONS BETWEEN THE CITY
AND ITS EMPLOYEE ORGANIZATIONS.**

EMPLOYER-EMPLOYEE RELATIONS RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF DALY CITY

Article I -- General Provisions

Section 1. Statement of Purpose.

This Resolution implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.) captioned "Local Public Employee Organizations," by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. It is the purpose of this Resolution to promote full communication between the City and its employees by providing procedures for meeting and conferring in good faith with recognized employee organizations regarding wages, hours, and other terms and conditions of employment, and to promote the improvement of personnel management and employer-employee relations by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with the City. However, nothing contained herein shall be deemed to supersede the provisions of State law, City (Charter), ordinances, resolutions and rules which establish and regulate the merit and civil service system, or which provide for other methods of administering employer-employee relations. This Resolution 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.

Section 2. Definitions.

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

a. "Appropriate Unit" means a unit of employee classes or positions established for representation purposes pursuant to Article II hereof.

b. "City" means the City of Daly City, and, where appropriate herein, refers to the City Council or any duly authorized City representative as herein defined.

c. "Confidential Employee" means an employee who, in the course of his or her duties, has access to information, or is privy to decisions of City management 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; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counterproposals in an endeavor to reach agreement, nor is it subject to Article IV hereof.

e. "Day" means a calendar day unless expressly stated otherwise.

f. "Employee" means any person employed by the City on a permanent or probationary basis, excluding persons elected by popular vote or appointed to serve on boards or commissions by the City Council.

g. "Employee Organization" means any organization which includes employees of the City and which has as one of its primary purposes representing those employees in their relations with the City.

1. "Recognized Employee Organization" means an employee organization which has been acknowledged by the City as an employee organization that represents employees of the City.

2. "Exclusively Recognized Employee Organization" means an employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate representation unit pursuant to Article II hereof, and thereby assuming the corresponding duty of fairly representing such employees.

h. "Employee Relations Officer" means the City Manager, or his or her duly authorized representative.

i. "Impasse" means the inability of the City and a recognized employee organization to reach, after negotiations and exchange of proposals, agreement on the terms of a memorandum of understanding or other items pertaining to the meet and confer process.

j. "Management Employee" means a corporate officer, or any employee having responsibility for formulating, administering or managing the implementation of City policies and programs.

k. "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization in current effect. The words "recently signed" shall mean within one hundred eighty (180) days prior to the filing of a petition.

1. "Supervisory Employee" means any employee, regardless of job description, having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to assign work to and direct them, or to adjust their grievances, or effectively recommend such action, if, in connection with the foregoing functions, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

ARTICLE II -- REPRESENTATION PROCEEDINGS

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, divisions, commissions, boards and agencies;

b. To set standards of services offered to the public;

c. To establish levels of staffing required to deliver services to the public.

d. To determine the procedures and standards of selection for employment and promotion;

e. To direct its employees, to 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;

f. To maintain the efficiency of governmental operations, determine the methods, means and personnel by which City operations are to be conducted, or City services provided;

g. 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.

Section 5. Scope of Representation.

The scope of representation shall include 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, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

b. Notwithstanding any provision of this Resolution to the contrary, the City shall not be required to meet and confer on any subject preempted by Federal, State or local law.

Section 6. Scope of Consultation.

Matters affecting employer-employee relations, including those that are not subject to meeting and conferring, are subject to consultation. Upon request, 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 7. 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 8. Filing of Exclusive Recognition Petition by Employee Organization.

An employee organization that seeks to be formally acknowledged as the Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer. Such petition shall contain or be accompanied by the following information and documentation:

- a. Name and address of the employee organization.
- b. Names and titles of its officers.
- c. Names of employee organization representatives who are authorized to speak on behalf of the organization.
- d. A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the City.
- e. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.
- f. Certified copies of the employee organization's constitution and by-laws, or, if none exist, of any writing adopted by the organization setting forth its internal rules, regulations, or procedures.
- g. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
- h. A statement that the employee organization has no restriction on membership based on race, color, creed, sex, national origin, age, sexual orientation, or physical or mental disability.
- i. The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- j. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.

k. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

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

Section 9. City Response to Recognition Petition.

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

a. There has been compliance with the requirements of the Recognition Petition, and

b. The proposed representation unit is an appropriate unit in accordance with Section 13 of this Article II.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, he shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefor in writing. The petitioning employee organization may appeal such determination in accordance with Section 17 of this Resolution.

Section 10. Open Period for Filing Intervening Petition.

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

accordance with the standards in Section 13 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 17 of this Article II.

Section 11. Election Procedure.

The Employee Relations Officer shall arrange for a secret ballot election to be conducted by the Employee Relations Officer. All employee organizations who have duly submitted petitions which have been determined to be in conformance with this Article II shall be included on the ballot. The ballot shall also reserve to employees the choice of selecting no employee organization to represent them in their employment relations with the City. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

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

In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the State Mediation and Conciliation Service.

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

Any Petitioning employee organization may withdraw its petition upon five (5) days prior notice. In the event that any other employee organization has qualified for the ballot pursuant to Section 10, the intervenor shall have the option to proceed with the election as if it were the petitioner. Withdrawal of a petition under this provision shall result in a six (6) month bar against the filing of a new petition against the withdrawing employee organization.

Section 12. Procedure for Decertification of Exclusively Recognized Employee Organization.

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only after the completion of one full year of recognition, or during the thirty (30) day period commencing ninety (90) days prior to the termination date of a Memorandum of Understanding then in effect, providing that such MOU has a term of no more than three (3) years, including any extension thereof, whichever occurs later. Such petition shall contain or be accompanied by the following information and documentation:

- a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- b. The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as the representative of that unit.
- c. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
- d. Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this section.

An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent and otherwise conforms to the requirements of Section 8 of this Article.

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If his determination is in the negative, he shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefor in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 17 of this Article II. If the determination of the Employee Relations Officer is in the affirmative, or if

his negative determination is reversed on appeal, he shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.

In the event that the Decertification Petition complies with the request set forth herein, the Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Sec 6 of this Article II.

During the "open period" specified in the first paragraph of this Section 12, the Employee Relations Officer may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent exclusively recognized employee organization, give notice to that organization and all unit employees that he/she will arrange for an election to determine that issue. The notice to the exclusively recognized employee organization shall contain a statement of the facts upon which the Employee Relations Officer bases his/her belief that the organization no longer enjoys majority status. In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this Section 12, which the Employee Relations Officer shall act on in accordance with this Section 12.

If, pursuant to this Section 12, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term, provided that such MOU contains a term of no more than three (3) years.

Section 13. Policy and Standards for Determination of Appropriate Units.

The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the City and its compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered shall be:

a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.

b. History of representation in the City and similar employment; except, however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.

c. Consistency with the organizational patterns of the City.

d. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.

e. Effect on the classification structure an impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

f. Civil Service status.

g. Supervisory responsibilities.

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

Notwithstanding the foregoing provisions of this section, managerial and confidential responsibilities, as defined in Section 2 of this Resolution, are determining factors in establishing appropriate units hereunder, and therefore such managerial and confidential employees may only be included in units that do not include non-managerial and non-confidential employees. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees.

Section 14. Procedure for Modification of Established Appropriate Units.

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Section 12 of this Article II. Such requests shall be submitted in the form of a Recognition Petition, and, in addition to the requirements set forth in Section 8 of this Article, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 13 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Employee Relations Officer may on his/her own motion propose during the period specified in Section 12 of this Article that an established unit be modified. The Employee Relations Officer

shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 13 of this Article II, and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 17 of this Article.

Section 15. Newly Established Job Classifications.
Representation Units.

Each newly established job classification shall be assigned to an appropriate representation unit by the Employee Relations Officer, after providing notice and opportunity to consult to recognized employee organizations, if he finds that there is an appropriate unit to which such job classification may be assigned.

Section 16. Designation of Confidential and Management
Employees. Representation Units.

The Employee Relations Officer is authorized to designate, from time to time, confidential employees, and after providing notice and an opportunity to consult to recognized employee organizations, to designate from time to time management and supervisory employees, as defined in Section 2 of this Resolution, and may at any time revoke such designations. Upon such designation being made the Employee Relations Officer shall assign such employee to an appropriate representation unit. Upon revocation of such designation as a confidential supervisorial or management employee, the Employee Relations Officer shall assign the affected employee to an appropriate representation unit.

Section 17. Appeals.

An employee organization aggrieved by a determination of appropriate unit, or appropriate unit assignment, may appeal such determination to the Council for final decision within fifteen (15) days of notice of the Employee Relations Officer's determination.

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

Appeals to the Council shall be filed in writing with the City Clerk, and a copy thereof served on the Employee Relations Officer. The Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The Council may, in its discretion, refer the dispute to a third party hearing process.

Any decision of the Council on the use of such procedure, and/or any decision of the Council determining the substance of the dispute shall be final and binding.

Article III -- Administration

Section 18. Submission of Current Information by Recognized Employee Organizations.

All changes in the information filed with the City by an exclusively recognized employee organization under items (a) through (h) of its recognition petition under Section 8 of this Resolution shall be submitted in writing to the Employee Relations Officer within thirty (30) days of such change.

Section 19. Payroll Deductions on Behalf of Employee Organizations.

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

Section 20. Employee Organization Activities--Use of City Resources.

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

Section 21. Administrative Rules and Procedures.

The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after affording notice and opportunity to consult to affected employee organizations.

Article IV -- Impasse Procedures

Section 22. Initiation of Impasse Procedures.

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

a. To review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding;

b. If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

Section 23. Impasse Procedures.

a. The general impasse procedures are as follows:

i. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.

ii. If the parties did not agree on mediation or the selection of a mediator or having so agreed, the impasse has not been resolved, the City Council may take such action regarding the impasse as it, in its discretion, deems appropriate as in the public interest. Any legislative action by the City Council on the impasse shall be final and binding.

b. The impasse procedures for resolution between the City and an exclusively recognized employee organization over matters within the scope of representation are as follows:

i. If the impasse is not resolved at the impasse meeting, either party may request the appointment of a mediator by written notice to the other. If no mediator is mutually agreed upon within 10-days of that notice, the City shall request that the State Mediation and Conciliation supply a list of five (5) mediators from which one (1) will be selected by alternate striking, requesting party striking first. The mediator shall meet forthwith with the parties or their representatives, either jointly or separately, and shall take such other steps as he/she may deem appropriate in order to persuade the parties to resolve their differences and effect a mutually acceptable agreement. The services of the mediator, including any per diem fees, and actual and necessary travel and subsistence expenses, shall be borne equally by the parties.

ii. If the mediator is unable to effect settlement of the controversy within fifteen (15) days after his appointment, or after twenty (20) hours of mediation sessions, the City Council may take such action regarding the impasse as it, in its discretion, deems appropriate as in the public interest. Any legislative action by the City Council on the impasse shall be final and binding.

Article V -- Miscellaneous Provisions

Section 24. Construction.

This Resolution shall be administered and construed as follows:

a. Nothing in this Resolution shall be construed to deny to any person, employee, organization, the City or any authorized officer, body or other representative of the City, the rights, powers and authority granted by Federal or State law, or City ordinance.

b. This Resolution shall be interpreted so as to carry out its purposes as set forth in Article I.

c. Nothing in this Resolution shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of 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.

Section 25. Severability.

If any provision of this Resolution, or the application of such provision to any persons 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.