



CITY OF PINOLE

EMPLOYER - EMPLOYEE RELATIONS RESOLUTION

Adopted by the City Council

March 20, 2007

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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.), as amended, captioned "Local Public Employee Organizations," by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. This Resolution updates and improves the City's rules and regulations governing labor relations and supersedes all previous employer-employee resolutions. However, nothing contained herein shall be deemed to supersede the provisions of State law, City ordinances, Memoranda of Understanding (MOUs), resolutions and rules which establish and regulate the merit and civil service system, or which provide for other methods of administering employer-employee relations.

Section 2. City Management Rights

Unless specifically in conflict with any MOU, all management rights shall remain vested exclusively with the City. City management rights include but are not limited to:

- a. The right to determine the mission of the City, including without limitation, the City's agencies, departments, divisions, institutions, boards and commissions;
- b. The right of full and exclusive control of the management of the City; supervision of all operations; determinations of methods, means, location and assignments of performing all work; and the composition, assignment, direction, location and determination of the size and mission of the work force;
- c. The right to determine the work to be done by employees, including establishment of service levels, appropriate staffing and the allocation of funds for any position(s) within the City;
- d. The right to review and inspect, without notice, all City-owned facilities, including without limitation desktop computers, work areas and desks, email, computer storage drives, voicemail systems and filing cabinets and systems;
- e. The right to change or introduce different, new or improved operations, technologies, methods or means regarding any City work, and to contract out for work;
- f. The right to establish and modify qualifications for employment, including the content of any job classification, job description or job announcement, and to determine whether minimum qualifications are met;

- g. The right to maintain and modify the City's classification and pay plan;
- h. The right to establish and enforce employee performance standards;
- i. The right to schedule and assign work, make reassignments and assign overtime work;
- j. The right to hire, fire, promote, reassign, transfer, release, discipline, layoff, terminate, demote, suspend or reduce in step or grade, all employees;
- k. The right to establish and modify bargaining units, and to assign new or amended job classifications to particular bargaining units;
- l. The right to inquire and investigate regarding complaints or concerns about employee performance deficiencies or misconduct of any sort, including the right to require employees to appear, respond truthfully and cooperate in good faith regarding any City investigation; and
- m. The right to maintain orderly, effective and efficient operations.

Section 3. Definitions

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

- a. "Appropriate Unit" and "Bargaining Unit" means a unit of employee classifications and/or positions, established by the City pursuant to Article II hereof.
- b. "City" means the City of Pinole, and, where appropriate, the City Council or any duly authorized City representative.
- c. "Confidential Employee" means an employee who, in the course of his or her duties, has access to confidential 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; 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 with an exclusively recognized employee organization in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to the procedures set forth in Article IV, Sections 1 and 2 of this Resolution.
- e. "Day" means calendar day unless expressly stated otherwise.

- f. "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, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees. The City is under no obligation to meet with any employee organization, unless it has been certified as an exclusively recognized employee organization.
- g. "Impasse" means that the representatives of the City and a Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.
- h. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of City policies and programs.
- i. "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder 'shall be the authorization last signed by an employee. The words "recently signed" shall mean within ninety (90) calendar days prior to the filing of a petition.
- j. "Supervisory Employee" means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Article II - Representation Proceedings

Section 1. Filing of 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 Personnel Manager containing the following information and documentation:

- a. Name and street address of the employee organization.
- b. Names, titles, mailing addresses, and telephone numbers of its officers.
- c. Names, addresses and telephone numbers 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, the responsibility of 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. 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.
- g. A statement that the employee organization has no restriction on membership based on race, color, creed, sex, national origin, age, religion, disability, sexual orientation or political affiliation.
- h. Copies of the employee organization's constitution and by-laws.
- i. The job classifications or position 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 Personnel Manager or to a mutually agreed upon disinterested third party.

- k. A request that the City Council certify by Resolution the petitioner as the Exclusively Recognized Employee Organization for those employees in the bargaining unit(s) at issue, following an election as outlined in Article II, Section 4.

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 2. City Response to Recognition Petition

Upon receipt of the Petition, the Personnel Manager 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 Article II, Section 6.

If an affirmative determination is made by the Personnel Manager on the foregoing two matters, he/she shall so inform the petitioning employee organization, all other exclusively recognized employee organizations, and all employees that are covered by the petition, through a written notice of such request for recognition and shall take no action on said request for thirty (30) calendar days thereafter.

If either of the foregoing matters are not affirmatively determined, the Personnel Manager 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 Article II, Section 9 of this Resolution.

Section 3. Open Period for Filing Challenging Petition

Within twenty-one (21) calendar 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 Article II, Section 1.

If such challenging petition seeks establishment of an overlapping unit, the Personnel Manager 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 Personnel Manager shall determine the appropriate unit or units in accordance with the standards in Article II, Section 6.

If the petitioning organization does not agree with the decision rendered by the Personnel Manager, the petitioning employee organization(s) shall have fifteen (15) calendar days from the date of when the notice of such unit determination was communicated to them (by the Personnel Manager) to amend their petitions to conform to such determination or to appeal such determination pursuant to Article II, Section 9.

Section 4. Election Procedure

The Personnel Manager shall arrange for a secret ballot election to be conducted by a party agreed to by the Personnel Manager and the concerned employee organization(s), in accordance with the provisions of this resolution. All employee organizations that 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 the right of employees the choice of representing themselves individually in their employment relations with the City.

Employees entitled to vote in such election shall be those persons employed in regular positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) calendar 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 shall also apply 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 Conciliation Service. Costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

Section 5. Procedure for Decertification of an 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 Personnel Manager only during:

- a. the month of March of any year following the first full year of recognition; or
- b. during the thirty (30) calendar day period commencing one hundred twenty (120) calendar days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later.

A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

- a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information;
- b. The name of the established appropriate unit and of the incumbent 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; and
- 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 Personnel Manager 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 that includes the allegation and information required under decertification and as outlined in paragraph (c) of Article II, Section 5, and otherwise conforms to the requirements of Article II, Section 1.

The Personnel Manager shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If his/her determination is in the negative, he/she 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 Article II, Section 9. If the determination of the Personnel Manager is that

the petition is in compliance with the applicable provisions of this Article, or if the negative determination is reversed following an appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.

The Personnel Manager shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) calendar 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 Article II, Section 4.

If, pursuant to Article II, Section 5, 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.

Section 6. Appropriate Bargaining Units

The Personnel Manager shall maintain a description (list) of all current bargaining units in the City. The Personnel Manager shall have the management discretion to form and define reasonable bargaining units, and to modify bargaining units, based on the procedures specified in this Resolution. Relevant criteria in determining appropriate bargaining units include, but are not limited to:

- a. Community of interest among employees: for instance, similar types of duties, levels of responsibilities, and required qualifications such as education, as well as avoiding actual or potential conflicts of interest within the bargaining unit;
- b. Broadest appropriate grouping of classifications;
- c. Employee preferences regarding composition of bargaining units and representation;
- d. Historical relationships including the organizational structure and collective bargaining;
- e. The effective delivery of services;
- f. The application and consistency of wage, hour and benefit packages (including retirement benefits) within the bargaining unit;
- g. Specific legal requirements, such as the rights of public safety and professional employees to form their own bargaining units;
- h. The confidential status of any employee.

The City may adopt reasonable rules to restrict managerial, supervisory and confidential employees from representing and participating in any employee organization which represents employees who are non-managerial, non-supervisors or non-confidential.

The Personnel Manager 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.

Section 7. Procedure for Modification of Established Appropriate Units by Employee Organizations

Requests by employee organizations for modifications of established appropriate units may be considered by the Personnel Manager only during the period specified in Article II, Section 5.

Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Article II, Section 1, 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 Article II, Section 6 hereof. The Personnel Manager shall process such petitions as other Recognition Petitions under Article II.

Section 8. Procedure for Modification of Established Appropriate Units by Personnel Manager

The Personnel Manager may on his/her own motion propose that an established unit be modified. Such a proposed modification or reallocation may be initiated no sooner than twelve (12) months following the effective date of a memorandum of understanding with a term greater than one year which covers the classifications proposed to be reallocated or moved from the bargaining unit.

In the case of a memorandum of understanding of one year or less, the Personnel Manager may not initiate a unit modification or reallocation sooner than three (3) months prior to the expiration date of the memorandum of understanding. This section shall not apply to allocation of employees not covered by a memorandum of understanding.

The Personnel Manager 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 Personnel Manager shall determine the composition of the appropriate unit or units in accordance with Article II, Section 6, and shall give written notice of such determination to the affected employee organizations.

The Personnel Manager's determination may be appealed as provided in Section 9 of this Article. If a unit is modified pursuant to the motion of the Personnel Manager hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the

Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Article II, Section 1 hereof.

Section 9. Appeal Procedure for the Employer-Employee Relations Resolution

Within statutory parameters, a party must initiate and exhaust the appeal procedure specified in this resolution as a condition precedent to initiating a legal or other administrative challenge involving any aspect of this resolution.

- a. The appeal must be initiated within thirty (30) calendar days of the facts giving rise to the appeal, and must be submitted to the City Manager's office;
- b. Appeals must be in writing and allege the following: (1) the City has violated a specific provision of this resolution; or (2) the resolution has been applied in a manner that violates an applicable law. Appeals must contain the specific facts upon which they are based.
- c. The City Manager will review the appeal and shall serve notice of a written response within thirty (30) calendar days of receipt of the appeal.
- d. No other City grievance procedure may be used for matters within the scope of this resolution.
- e. Appeals filed with the City Manager will be copied to the City Council as an informational, non-action item.

Article III - Administration

Section 1. 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 (i) of its Recognition Petition under Article II, Section 1 of this Resolution shall be submitted in writing to the Personnel Manager within fourteen (14) days of such change.

Section 2. Payroll Deductions on Behalf of Employee Organizations

Upon formal acknowledgment by 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 therefor 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 3. Adoption of Memorandum of Understanding

If a tentative agreement on an MOU is reached, the parties shall jointly prepare a written MOU and present it to the City Council. If the Council adopts the written MOU, it shall become binding on the parties.

Section 4. 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 5. 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 consultation with affected employee organizations.

Article IV - Impasse Procedures

Section 1. Meeting Prior to Initiating Impasse

Prior to declaring formal impasse in connection with negotiations concerning a memorandum of understanding, a party intending to declare impasse must give notice of such intent to the other party. The notice must be in writing and contain the following: (a) a list of those issues which are subject to tentative agreement, if any; and (b) a list of those issues which are the subject of disagreement.

The parties shall promptly hold a "pre-impasse" meeting in an effort to resolve their differences.

Section 2. Impasse Resolution Procedures

- a. If impasse is reached during negotiations concerning a memorandum of understanding, either party may formally declare an impasse. Upon and after impasse, either party may request that the dispute be submitted to mediation. Either party can refuse to mediate. Mediation shall be conducted by a mutually agreed upon mediator, or mediator supplied by the State Mediation and Conciliation Service. Mediation shall be confidential. The mediator shall not make public recommendations or issue any decision concerning the issues.

- b. If the parties fail to agree to submit the dispute to mediation or fail to agree on the selection of a mediator, or fail to resolve the dispute through mediation within thirty (30) days after the mediator commenced meeting with the parties, the parties may agree to submit the impasse to fact-finding. Either party can refuse fact-finding.
- c. If the parties agree on fact-finding, they may agree on the appointment of a fact-finder. If they are unable to agree upon a fact-finder, they shall select by agreement from a list of seven (7) names of individuals having fact-finding experience in the municipal sector to be provided by the State Conciliation Service. If the parties are unable to agree on a fact-finder, one will be designated by alternately striking names from the list of seven (7) names until one name remains on the list. The first party to strike a name shall be determined by a coin toss. The winner of the coin toss shall have the option of striking first or second.

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

- (1) The fact-finder shall consider and be guided by applicable Federal and State laws.
- (2) Subject to the stipulations of the parties, the fact-finder shall determine and apply the following measures and criteria in arriving at his/her findings and recommendations:
 - (a) First, as relevant to the issues in dispute, the fact-finder shall compare the total compensation, hours and conditions of employment of the employees involved in the fact-finding proceeding with the total compensation, hours and conditions of employment of other employees performing similar services in public employment in the same and comparable communities. "Total compensation" shall mean all wage compensation, including but not limited to premium, incentive, minimum, standby, out-of-class and deferred pay; all paid leave time; all allowances, including but not limited to educational and uniform benefits; and employer payments for all health, welfare and pension benefits.
 - (b) The fact-finder shall then adjust the results of the above comparisons based on the following factors:
 - (i) The compensation necessary to recruit and retain qualified personnel.
 - (ii) Maintaining compensation relationships between job classifications and positions within the City.

- (iii) The pattern of change that has occurred in the total compensation of the employees in the unit at impasse as compared to the pattern of change in the average "consumer price index" for goods and services, and the pattern of change in wages and compensation of other wage earners.
- (c) The fact-finder) shall then determine preliminary recommendations based on the comparisons as adjusted above which, however, shall be reduced as appropriate based on the financial resources of the City to implement them. In assessing the City's financial resources, the fact-finder shall be bound by the following:
 - (i) Other legislatively determined and projected demands on agency resources, i.e., budgetary priorities as established by the governing body; and
 - (ii) Allowance for equitable compensation increases for other employees and employee groups for the corresponding fiscal period(s); and
 - (iii) Revenue projections not to exceed currently authorized tax and fee rates for the relevant fiscal year(s); and
 - (iv) Assurance of sufficient and sound budgetary reserves; and
 - (v) Constitutional, statutory limitations on the level and use of revenues and expenditures.
- (3) The fact-finder shall make written findings of fact and recommendations for the resolution of the issues in dispute, which shall be presented in terms of the criteria, adjustments, and limitations specified above. The fact-finder shall serve such findings and recommendations on the Personnel Manager and the designated representative of the Exclusively Recognized Employee Organization. If the parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, the fact-finder shall submit the findings and recommendations for consideration by the City Council in connection with the Council's legislative consideration of the impasse.

If the parties did not agree on mediation or the selection of a mediator and did not agree on fact-finding, 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.

Section 3. Costs of Impasse Procedures

The costs for the services of a mediator and/or fact-finder utilized by the parties, and other mutually incurred costs of mediation and/or fact-finding, shall be borne equally by the City and Exclusively Recognized Employee Organization.

Article V - Miscellaneous Provisions

Section 1. Construction

- (a) This Resolution is intended to comport with all applicable state and federal laws, and it should be interpreted and applied to harmonize with such laws, reserving the broadest legal measure of authority to the City.
- (b) 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, sick-out or other total or partial stoppage or slowdown of work. To the fullest extent permissible under the law, any such actions by City employees are prohibited and may subject employees to discipline up to and including termination as well as permanent replacement.
- (c) This Resolution should be interpreted based on its plain meaning and intent of the City Council as expressed herein. No legislative intent may be implied or inferred based upon changes, if any, to draft resolutions during the meet and consult process with affected employee organizations.

Section 2. 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. Upon request by the City, a recognized bargaining representative will meet and consult with the City promptly in an effort to resolve any amendments that are necessary or advisable in light of changes to existing law, or interpretations of the law that impact this Resolution.