# EMPLOYER-EMPLOYEE RELATIONS RULES AND REGULATIONS

## I. GENERAL PROVISIONS

A. Purpose: The purpose of these Rules and Regulations ("Rules") is to implement Chapter 2.48 of the Carlsbad Municipal Code and Chapter 10, Division 4, Title 1 of the California Government Code (Sections 3500, et seq.), captioned "Local Public Employee Organizations." They are intended to provide orderly procedures for the administration of employer-employee relations between the City and its recognized employee organizations, including procedures for meeting and conferring in good faith with exclusively recognized employee organizations regarding wages, hours, and other terms and conditions of employment.

B. Definitions: As used in these Rules, the following terms have the meanings indicated:

1. "Appropriate unit" means a unit established pursuant to these Rules.

2. "City" means the City of Carlsbad, California, and, where appropriate, the city council or any duly authorized management employee.

3. "City Manager" means the City Manager or a duly authorized representative.

4. "Confidential employee" means an employee who, in the course of the employee's duties, has access to confidential information relating to the City's administration of employer-employee relations.

5. "Consult or consultation in good faith" means to communicate orally or in writing with affected employee organizations for the purpose of presenting and obtaining views or advising of proposed actions in an effort to reach a consensus. It is distinguished from the meet and confer process because it 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 impasse procedures discussed in these Rules.

6. "Day" means calendar day.

7. "Employee" means any person regularly employed by the City, excluding persons elected by popular vote but including the City Clerk when performing the functions of records manager.

8. "Employee organization" means any organization which includes employees of the City and which has as one of its primary purposes representing such employees in their employment relations with the City or any organization that seeks to represent employees of a public agency in their relations with the City.

9. "Employer-employee relations" means the relationship between the City and its employees and their employee organization, or when used in a general sense, the relationship between City management and employees or employee organizations.

10. "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 unit, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees and assuming the corresponding obligation of fairly representing unit employees.

11. "Impasse" means that the representatives of the City and an exclusively 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.

12. "Management employee" means an employee who holds a position listed in the Management Salary Structure, as it may be amended from time to time by resolution of the City Council.

13. "Mediation or conciliation" means the efforts of an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between the City and a recognized employee organization through interpretation, suggestion and advice. Mediation and conciliation are interchangeable terms.

14. "Meet and confer in good faith" (sometimes referred to in these Rules as "meet and confer" or "meeting and conferring") means performance by duly authorized City representatives and duly authorized representatives of an exclusively recognized employee organization of their mutual obligation to meet at reasonable times and to confer in good faith regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment, in an effort to:

a. Reach agreement on those matters within the authority of such representatives;

b. Real agreement on what will be recommended to the City Council on those matters within the decisionmaking authority of the City Council.

This does not require either party to agree to a proposal or to make a concession.

15. "Peace officer" has the same meaning in these Rules as it does in Section 830 of the California Penal Code.

16. "Professional employee" means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including but not limited to attorneys, physicians, registered nurses, engineers, architects, teachers and the various types of physical, chemical and biological scientists.

17. "Proof of employee support" means proof sufficient to demonstrate that the employee desires to be represented by a particular employee organization for the purpose of meeting and conferring on wages, hours, and other terms and conditions of employment. For purposes of these Rules, the City will consider the following documents to be proof of employee support: (1) an authorization card or authorization petition recently signed and personally dated by an employee, provided the purpose of the authorization is clearly stated on the side of the card or page of the petition that contains the employee's signature; or (2) a current employee dues deduction authorization.

As used in this definition, the words "recently signed" means signed within ninety days prior to the filing of a petition under these Rules. The word "current" means in effect during the payroll period immediately preceding the filing of a petition under this chapter or under these Rules.

Notwithstanding the above, dues deduction authorizations provided by one employee for more than one employee organization will not be considered as proof of employee support for any employee organization. In addition, if an employee signs more than one form of authorization, the only authorization that will be considered proof of employee support will be the authorization last signed and personally dated by the employee.

18. "Recognized employee organization" means an employee organization, which has been acknowledged in writing by the City Manager as an employee organization that represents employees of the City. No employee may be recognized by more than one recognized employee organization for purposes of these Rules. The rights accompanying recognition are either:

a. "Formal recognition," which is the right to meet and confer in good faith as the exclusively recognized employee organization representing employees in an appropriate unit; or

b. "Informal recognition," which is the right to consultation in good faith by all recognized employee organizations.

19. "Scope of representation" means all matters relating to employment conditions and employer-employer relations, including but not limited to, wages, hours and other terms and conditions of employment. City rights (see section I.D.) are excluded from the scope of representation.

20. "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 the responsibility to direct them, or to adjust their grievances, or to recommend any of these actions, provided the authority is not merely routine or clerical in nature and, instead, requires the use of independent judgment.

C. Employee rights: Employees of the City 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. Employees of the City also have the right to refuse to join or participate in the activities of employee organizations and have the right to represent themselves individually in their employment relations with the City. No employee may be interfered with, intimidated, restrained, coerced or discriminated against by the City or by any employee organization because of the employee's exercise of these rights.

D. City Rights: The rights of the City include, but are not limited to, 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; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and technology of performing its work.

E. Designation of city's principal representative in employment relations: The City Manager will be the City's principal representative in all employment relations matters, with authority to meet and confer in good faith on matters within the scope of representation, including wages, hours and other terms and conditions of employment. The City Manager is authorized to delegate these duties and responsibilities.

## II. REPRESENTATION PROCEEDINGS

A. Filing Petition for Formal Recognition by Employee Organization:

"Formal recognition" means the right to meet and confer in good faith as the exclusively recognized employee organization representing the employee in an appropriate unit. An employee organization seeking to be formally acknowledged as an exclusively recognized employee organization representing the employees in an appropriate unit must file a Petition for Recognition with the City Manager containing the following information and documentation:

1. Name and address of the employee organization;

2. Names and titles of its officers;

3. Names of employee organization representatives who are authorized to speak on behalf of its members;

4. A statement that the employee organization has as one of its primary purposes representing employees in their employee relations with the City;

5. A statement whether the employee organization is a chapter or local of, or affiliated directly or indirectly in any manner with, a regional or state or national or international organization, and, if so, the name and address of each affiliated organization;

6. Certified copies of the employee organization's constitution and bylaws;

7. 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;

8. A statement that the employee organization recognizes that the provisions of Section 923 of the Labor Code are not applicable to City employees;

9. A statement that the employee organization has no restriction on membership based on race, color, age, religion, creed, sex, national origin, sexual orientation, mental or physical disability, or medical condition or any other category protected by state or federal law;

10. The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of employees in the unit;

11. A statement that the employee organization has in its possession written proof of employee support, dated within six (6) months of the date upon which the petition is filed, to establish that employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. The written proof must be submitted for confirmation to the City Manager who may elect to refuse receipt of such proof, in which case, such proof will be submitted to the California Mediation and Conciliation Service or to other mutually agreed upon disinterested third party;

12. A request that the City Manager acknowledge the employee organization 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 on all matters within the scope of representation.

B. Filing Petition for Informal Recognition by Employee Organization: "Informal recognition" means the right to consult in good faith. An employee organization that seeks recognition for purposes of consultation in good faith must file a petition with the City Manager containing the following information and documentation:

1. All of the information enumerated in subdivisions 1. through 12. of subsection A. of this section, inclusive;

2. A statement that the employee organization has in its possession written proof of employee support to establish that employees have designated the employee organization to represent them in their employment relations with the City. The written proof must be submitted for confirmations to the City Manager or to a mutually agreed upon disinterested third party;

3. A request that the City Manager recognize the employee organization for the purpose of consultation in good faith.

C. Verification: The Petition for Recognition, including all accompanying documents, must be verified, under oath, by duly authorized representatives of the organization. All changes in the information must be promptly filed in a like manner.

D. City Response to Petition for Recognition: Upon receipt of the Petition for Recognition, the City Manager will determine whether (1) there has been compliance with the requirements of the Petition for Recognition and these Rules, and (2) the proposed unit is an appropriate unit.

If the City Manager determines these two matters in the affirmative, the City Manager will give notice of the Petition to the employees in the unit and will take no further action on the Petition for thirty (30) days to allow an opportunity for any competing petitions to be filed in accordance with section E. below. If the City Manager determines either of these two matters in the negative, the City Manager will offer to consult with the petitioner about them. Should the City Manager's determination remain unchanged after the consultation, the City Manager will inform the petitioner of the reasons for the determination in writing. The petitioner may appeal the City Manager's determination in accordance with section I. below.

E. Open Period for Filing Competing Petition: Within thirty (30) days of the date written notice was given to affected employees under section D. above, any other employee organization may file a competing Petition for Recognition as the exclusively recognized employee organization representing the same or an overlapping unit of employees. The Petition must be filed in the same form and manner specified in section A. above and must be accompanied by proof of employee support, indicating that at least thirty percent (30%) of the employees in the proposed unit have designated the employee organization to represent them in their employment relations with the City. The proof must be submitted for confirmation to the City Manager or to a mutually agreed upon disinterested third party.

If the competing Petition involves an overlapping unit (i.e. one which contains some, but not all, of the classifications and positions in the unit proposed in the other Petition), the City Manager will conduct a hearing to determine the appropriate unit, at which time the petitioners will be heard. Thereafter, the City Manager will determine the appropriate unit or units in accordance with the criteria set forth in section H. below.

F. Election Procedures: The City Manager will arrange for a secret ballot election to be conducted by the City Clerk or a mutually agreed upon third party. All employee

organizations that have submitted Petitions in compliance with section A. and, where applicable, section E. above, will be included on the ballot. The ballot will also reserve to employees the choice of representing themselves individually in their employment relations with the City.

Employees entitled to vote in the election will be those persons employed in regular positions within the affected appropriate unit who: (1) were employed during the most recent pay period ending at least fifteen (15) days prior to the election, including those employees who did not work during the pay period because of illness, vacation or other authorized leave of absence; and (2) are employed by the City in the same unit on the date of the election. An employee organization will be formally acknowledged as the exclusively recognized employee organization for the affected appropriate unit following an election or run-off election if the organization received a numerical majority of all valid votes cast in the election. In an election involving three (3) or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election will be conducted between the two choices receiving the largest number of valid votes cast. The rules governing an initial election will also apply to a run-off election.

No more than one election affecting the same unit may be conducted during a twelve (12) month period.

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

G. Procedure for Decertification of Exclusively Recognized Employee Organization:

1. A Petition for Decertification alleging that an incumbent exclusively recognized employee organization no longer represents the majority of the employees in an established appropriate unit may be filed with the City Manager only during the months of October or November of any year following the first full year of formal recognition, or during

the thirty (30) day period commencing one hundred twenty (120) days prior to the expiration date of an applicable Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. The Petition for Decertification may be filed by two or more employees or their representative, or an employee organization, and must 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.

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 to this allegation.

d. Proof of employee support, indicating that at least thirty percent (30%) of the employees in the established appropriate unit no longer desire to be represented by the incumbent exclusively recognized employee organization. Proof must be submitted for confirmation to the City Manager or to a mutually agreed upon disinterested third party.

2. An employee organization may, in satisfaction of the requirements of this section, file a Petition for Recognition under section A., provided the Petition includes the allegation required by subsection 1.c. above and otherwise conforms to requirements of this section.

3. The City Manager will initially determine whether the Petition has been filed in compliance with the applicable provisions of this section. If the City Manager's determination is in the negative, the City Manager will offer to consult with the petitioner(s) and,

if the determination remains unchanged, will inform the petitioners in writing of the reasons for the determination. The petitioner(s) may appeal the determination in accordance with section I. below. If the City Manager's determination is in the affirmative, or if the City Manager's negative determination is reversed on appeal, the City Manager will give written notice of the Petition to the incumbent exclusively recognized employee organization and to the unit employees.

4. The City Manager will then arrange for a secret ballot election to be held on or about fifteen (15) days after the written notice was given to determine the wishes of unit employees as to the question of decertification and, if a Petition for Recognition was duly filed, the question of representation. The election will be held in conformance with the procedures described in section F. above.

5. During the "open period" specified in section 4. above, the City Manager may on the City Manager's own initiative, when the City Manager 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 the organization and to the unit employees that an election will be arranged to determine the issue. If this occurs, then any other employee organization may, within fifteen (15) days of the notice, file a Petition in accordance with section 2. above, which the City Manager will act on in accordance with sections 3. and 4. above.

6. If, pursuant to this section G, a different employee organization is formally acknowledged as the exclusively recognized employee organization for an established appropriate unit, the organization will be bound by all of the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

G. Appropriate Unit:

1. Procedure for Determination of Appropriate Unit: The City Manager, after reviewing the petition filed by an employee organization seeking formal recognition as the exclusively recognized employee organization, will determine whether the proposed unit is an appropriate unit. The policy objectives in determining the appropriateness of units will be: (1) the effect of the proposed unit on the efficient operations of the City and its compatibility with the primary responsibility of the City 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 be the broadest feasible grouping o positions that share an identifiable community of interest. Factors to be considered include:

a. Which unit will assure employees the fullest freedom in the exercise of rights set forth under this chapter.

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

c. 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.

d. Consistency with the organization patterns of the City.

e. Effect of differing legally mandated impasse resolution procedures.

f. Number of employees and classifications, and the effect on the administration of employment relations created by the fragmentation of the classifications and proliferation of units.

g. Effect on the classification structure and impact on the stability of employment relations of dividing a single or related classifications among two or more units.

2. In the establishment of appropriate units:

a. Professional employees will not be denied the right to be represented separately from non-professional employees; and

b. Management and confidential employees who are included in the same unit with non-management or confidential employees may not represent any employee organization which represents such employees on matters within the scope of representation.

c. The City Manager will, 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. The decision of the City Manager will be final.

I. Procedure for Modification of Established Appropriate Unit: A Petition for Modification of an established unit may be submitted by an employee organization to the City Manager during the period specified in section G.1 above. The Petition for Modification must contain all of the information specified in section A. above, along with a statement of all relevant facts in support of the proposed modified unit complies with the standards and objectives detailed in section H. above. The City Manager will process a Petition for Modification in the same manner as a Petition for Recognition.

The City Manager may, on the City Manager's own initiative, propose that an established appropriate unit be modified. The City Manager will give written notice of the proposed modification(s) to any affected employee organization and will hold a meeting concerning the proposed modification(s), at which time all affected employee organizations will be heard. Thereafter, the City Manager will determine the composition of the appropriate unit or units in accordance with the standards and objectives specified in section H.

above, and will give written notice of the determination to the affected employee organizations. The City Manager's determination may be appealed as provided in section 4 below. If a unit is modified pursuant to a proposal by the City Manager, employee organizations may thereafter file Petitions for Recognition seeking to become the exclusively recognized employee organization for the modified unit.

## III. ADMINISTRATION

A. Submission of Current Information by Recognized Employee Organizations: All changes to information filed with the City under these Rules must be submitted in writing to the City Manager within fourteen (14) days of the change.

B. Meet and Confer in Good Faith – Scope:

1. The City, through its representatives, will meet and confer in good faith with representatives of an exclusively recognized employee organization regarding matters within the scope of representation, including wages, hours and other terms and conditions of employment within the appropriate unit.

2. The City will not be required to meet and confer in good faith on any subject preempted by federal or state law, nor will it be required to meet and confer in good faith on employee or City rights as defined in Sections 2.48.040 and 2.48.050. Proposed amendments to this chapter are excluded from the scope of meeting and conferring.

C. Consultation in Good Faith – Scope: All matters affecting employer-employee relations, including those that are not subject to meeting and conferring, are subject to consultation. The City, through its representatives, will consult in good faith with representatives of all recognized employee organizations on employer-employee relation matters, which affect them. Advance notice on matters subject to consultation, but outside the scope of representation, is desirable but not mandatory.

D. Advance Notice: Reasonable written notice will be given to each recognized employee organization affected by any ordinance, resolution, rule 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 will be given the opportunity to meet with such body prior to adoption. Emergency resolutions and ordinances are excepted, but employee representatives will be notified of these resolutions and ordinances as soon as possible.

E. Meet and Confer Meeting Rules: Prior to the start of a series of meet and confer meetings, the management team will meet with the employee team of each recognized unit to determine rules, procedures, and conduct of meet and confer sessions, including, but not limited to, advance notice of meetings, agenda, place of meeting, participants, secretary, caucuses, length of meeting, rate of pay for participating employees, press releases, number of participating units, initialing procedure, amendment to agenda, spokesman and recesses.

F. Memorandum of Understanding: When the meeting and conferring process is concluded between the City and an exclusively recognized employee organization, all agreed upon matters will be incorporated in a written memorandum of understanding signed by the duly authorized representatives of the City and employee organization. The memorandum of understanding must be submitted to the City Council for determination.

G. Payroll Deductions on Behalf of Employee Organizations: The City Manager may grant an exclusively recognized employee organization permission to have membership dues, service fees, and insurance premiums for plans sponsored by the organization deducted from member or represented employees' paychecks. This permission, if granted, is contingent upon the organization's compliance with any related administrative procedures prescribed by the City Manager under section I. below, and upon the City's receipt of written authorization from

member or represented employees in accordance with Government Code section 1157.1, 1157.3 and 3508.5(a).

H. 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:

1. Will be authorized only to the extent provided for in Memoranda of Understanding and/or administrative rules and procedures established under section I. below;

2. Will be limited to lawful activities consistent with these Rules;

3. Will pertain directly to the employer-employee relationship and not internal employee organization business, such as soliciting members, campaigning for office, and organization meetings and elections; and

4. Will not interfere with the efficiency, safety, and security of City operations.

I. Administrative Rules and Procedures: The City Manager, after consulting with the City Attorney and any affected employee organizations, is authorized to establish any procedures necessary and appropriate to implement and administer the provisions of these Rules.

J. Management and Confidential Employees: Management and confidential employees are restricted from representing any employee organization which represents other employees of the City on matters within the scope of representation; serving in leadership or policy making positions in these other employee organizations, or in any way acting in a position or manner which is contrary to their designation as management or confidential employees of the City.

## IV. RESOLUTION OF IMPASSES AND/OR APPEALS

A. The procedures of this section may be invoked only after the possibility of settlement by direct discussion, by all parties concerned, has been exhausted.

B. Any party may initiate the impasse procedure by filing with the other party or parties affected a written request for an impasse meeting together with a statement of its position on all disputed issues. An impasse meeting may then be promptly scheduled by the City Manager, with written notice to all parties affected. The purpose of the impasse meeting is to review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding, and if the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided above. In the absence of agreement between the parties on the selection of an impasse procedure, the matter may be referred to the City Council.

C. The impasse procedures are as follows:

1. Mediation or conciliation as defined in section I.B. above. All mediation proceedings will be private. The mediator will make no public recommendations nor take any public position concerning the issues;

2. A determination by the City Council after a hearing on the merits of the dispute;

3. Any other dispute-resolving procedures to which the parties mutually agree or, in the absence of an agreement, which the City Council may order.

D. The fees and expenses, if any, of mediators or of any other impasse procedure will be borne in equal amounts by each party.

## V. APPEALS

An employee organization aggrieved by any determination made pursuant to these rules (II.B., II.C., II.E. and II.F.) may, within seven (7) days of the determination, file a written

complaint with the City Manager or City Clerk. If the complaint is not timely filed, it will be considered closed and not subject to these impasse procedures or to any other appeal.

## VI. MISCELLANEOUS PROVISIONS

A. Construction: These Rules will be administered and constructed as follows:

1. Nothing in these Rules will 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, state or local law.

2. The rights, powers and authority of the City Council in all matters, including the right to maintain any legal action, will not be modified or restricted by this chapter.

3. The provisions of these Rules are not intended to conflict with the provisions of Chapter 10, Division 4, Title 1 of the California Government Code (sections 3500, et seq.).

4. These Rules will be interpreted so as to carry out their purpose as set forth in section 1.1 above.

B. Severability: If any provision of these Rules, or the application of the provision to any persons or circumstances, is held invalid, the remainder of these Rules, or the application of the provision to persons or circumstances other than those as to which it is held invalid, will not be affected as a result.