

RESOLUTION NO. 48-19

**RESOLUTION OF THE COUNCIL OF THE CITY OF RICHMOND, CALIFORNIA,
ESTABLISHING LOCAL RULES FOR THE CONDUCT OF EMPLOYER-EMPLOYEE
RELATIONS AND SUPERSEDING RESOLUTION NO. 134-96**

ARTICLE 1 - 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. 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.

It is the purpose of this Resolution to provide procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters which directly affect wages, hours and other employment conditions for employees in appropriate units which are not preempted by Federal or State law or the City Charter. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others, the exclusive right to: determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other good cause; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology and methods of performing its work.

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 pursuant to Article II hereof.
- b. "City" means the City of Richmond, 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 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 exchanging views about intended actions; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, is not subject to Article IV hereof.

- e. "Day" means calendar day unless expressly stated otherwise.
- f. "Employee Relations Officer" means the City Manager or his/her duly authorized representative.
- 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 concerning which they are required to meet and confer are so substantial and irreconcilable 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 or programs and who has been designated by the City Council and/or the city Manager as a management employee.
- 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 employees, 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 organizations. 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) days prior to the filing of a petition.
- j. "Recognized Employee Organization" means an employee organization which has been formally acknowledged by the City as the employee organization that represents the employees in an appropriate representation unit pursuant to Article II thereof.
- k. "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 of 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 3. Filing of Recognition Petition by Employee Organization

An employee organization that seeks to be formally acknowledged as the recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Employee relations Officer containing 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 names and address of each such other organization.

- f. Certified copies of the employee organization's constitution and by-laws.
- 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, sexual orientation, or national origin.
- i. The job classifications or titles of employees in the unit claimed to be appropriate and the estimated number of member employees therein.
- j. A statement that the employee organization has in its possession proof of employee support as herein defined 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 his designee.
- k. A request that the Employee Relations Officer acknowledge the petitioner as the 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 all accompanying documents, 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 4. 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 9 of this Article II.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, he/she shall inform the City Council. The City Council may, if a majority of the employees in the proposed bargaining unit have signed documents evidencing union support as indicated in Section 2.i., recognize the employee organization. Or, the City Council may require a determination election as described in Section 6.

If an election is to be held, the Employee Relations Officer will so inform the petitioning employee organization, and give written notice of such request for recognition to the employees in the unit. He/she shall take no other 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 11 of this Resolution.

Section 5. Open Period for Filing Challenging Petition

When an election is to be held, 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 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 3 of this Article II. If such challenging 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. Therefore, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 8 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 10 of this Article II.

Section 6. Election Procedure

The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a third party in accordance with its rules and procedures subject to the provisions of this Resolution. 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 choice of "no organization" shall also be included on the ballot. Employees entitled to vote in such election shall be those persons employed in City positions who have completed their probationary period, or twelve months continuous employment, whichever comes first, within the designated appropriate unit who were actively employed during the pay period ending at least fifteen (15) days prior to the date of the election, 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 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 and provided that at least fifty percent (50%) of the employees eligible to vote in such election have voted. Should less than fifty percent (50%) of the employees vote in such election, the election shall be declared invalid and subject to the 12-month rule hereinbelow stated. In an election involving three or more choices, where none of the choices receives a majority of the valid vote 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 election in any unit under this Resolution in any 12-month period.

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

Section 7. Established and Previously Recognized Organizations

All established and recognized employee organizations on the enactment date of this Resolution shall continue to be recognized and shall not be required to comply with Sections 3 through 6 hereof, subject to the provisions of Sections 8 and 10 of this Article II.

Section 8. Procedures for Decertification of Recognized Employee Organization

A Decertification Petition alleging that the incumbent 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 if none of the following circumstances apply:

a. The incumbent Recognized Employee Organization was recognized by the City Council within the 12 months immediately preceding the filing of the petition;

b. A representation election was held pursuant to this section or Section 6 of this Article II within the 12 months immediately preceding the filing of the election; or

c. There is currently in effect a memorandum of understanding between the City and the incumbent Recognized Employee Organization, except that a petition may be filed within the "window period" between 90 and 120 days prior to the expiration of such memorandum, or if such memorandum has been in effect for three years or more.

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(s) and a designated representative authorized to receive notices or requests for further information.

b. The names of the established appropriate unit and of the incumbent Recognized Employee Organization sought to be decertified as the representative of that unit.

c. An allegation that the incumbent 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 a majority of the employees in the established appropriate unit no longer desire to be represented by the incumbent Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to his designee.

An employee organization may file a Petition under this section in the form of a Recognition petition that conforms to the requirements of Section 3 of this Article in satisfaction of the Decertification Petition requirements hereunder.

The Employee Relations Officer shall initially determine whether the Decertification Petition or Recognition Petition, if any, have 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 remains unchanged, shall return such Petition(s) to the employee or employee organization not in compliance with a statement of the reasons therefor in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 10 of this Article II. If the determination of the Employee Relations Officer is in the affirmative, or if this negative determination is reversed on appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent Recognized Employee Organization and to unit employees.

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 an accompanying Recognition Petition was duly filed, and, in the event decertification of the incumbent Recognized Employee Organization is voted, the questions of representation. Such election shall be conducted in conformance with Section 6 of this Article II.

Section 9. Policy and Standards for Determination of Appropriate Units

The basic policy objections 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 work performed, qualifications required for the work, and 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 and stability of the employer-employee relationship of dividing a single or related classification among two or more units.

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.

Section 10. 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 “window period” specified in Section 8 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 3 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 9 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 “window period” specified in Section 8 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 9 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 11 of this Article. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Recognized Employee Organization for such new appropriate unit or units pursuant to Section 3 hereof.

Section 11. Appeals

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer under this Article II may, within ten (10) days of notice thereof, request the intervention of the California State Mediation and Conciliation Service pursuant to Government Code Sections 3507.1 and 3507.3, or may, in lieu thereof or thereafter, appeal such determination to the City Council for final decisions within fifteen (15) days of notice of the

Employee Relations Officer's determination of the termination of proceedings pursuant to Government Code Sections 3507.1 or 3507.3, whichever is later.

An employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Section 3); Challenging Petition (Section 5) or Decertification Petition (Section 8) — or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Section 8) — 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 City Council for final decision.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the Employee Relations Officer. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any decision of the City Council on the action of such procedure, with or without any decision of the City Council determining the substance of the dispute, shall be final and binding.

ARTICLE III - ADMINISTRATION

Section 12. Submission of Current Information by Recognized Employee Organizations

All changes in the information filed with the City by a Recognized Employee Organization under items a. through h. of its Recognition Petition under Section 3 of this Resolution shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

Section 13. Payroll Deduction on Behalf of Employee Organizations

Upon formal acknowledgment by the City of a Recognized Employee Organization under this Resolution, such Recognized Employee Organization may be provided payroll deductions of membership dues upon the written authorization of employees in the unit represented by such Recognized Employee Organization, on forms provided therefor by the City. The providing of such service to the 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. Subject to the provisions of the Memoranda of Understanding negotiated between the City and Recognized Employee Organization, and approved by the City Council, any such written authorization may be withdrawn by an employee or employees by submitting written notice to the City of such desire, upon receipt of which the City will discontinue payroll deductions with respect to such employee(s).

Section 14. 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 activities pertaining directly to the employer-employee relationship and not to conduct such internal employee organization business as soliciting membership, campaigning for office, and organizational meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

Section 15. 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 16. 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 disputed issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such impasse meeting shall be:

- a. To identify and specify in writing the issue or issues that remain in dispute;
- b. To review the position of the parties in a final effort to resolve such disputed issue or issues; and
- c. If the dispute is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

Section 17. Impasse Procedures

Impasse procedures are as follows:

- a. 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 recommendations, or take any public positions at any time concerning the issues.
- b. The employee organization may apply to submit the impasse to fact finding in the manner provided by California law.
- c. If the impasse is not submitted to fact finding and 1) the parties fail to agree to submit the dispute to mediation, 2) fail to agree on the selection of a mediator, or 3) fail to resolve the dispute through mediation within fifteen (15) days after the mediator commenced meeting with the parties, either party may submit the impasse to the City Council by letter filed with the City Clerk setting forth the issues unresolved between the parties.
- d. If the impasse is not submitted to fact finding and 1) the parties agreed to submit the impasse directly to the City Council, 2) if the parties did not agree on mediation or the selection of a mediator, or 3) having so agreed, the impasse has not been resolved through mediation, the City Council shall 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.
- e. If the impasse is submitted to fact finding, the City Council make the final decision to resolve the impasse subject to whatever procedures, if any, that are required by California law.

Section 18. Meet and Confer Time Period

In order to implement the City's obligation under the Meyers-Milias-Brown Act and to facilitate the meet and confer process between representatives of the City and representatives of Recognized Employee

Organizations, there is hereby designated a period of ninety (90) days prior to July 1 of each year or ninety (90) days prior to the expiration date of any memoranda of understanding during which time these representatives shall meet and confer, exchanging opinions, proposals and information, in a good faith endeavor to reach agreement on matters properly within the

scope of this process, and to resolve any impasse which might occur during the course of such discussion.

ARTICLE V - MISCELLANEOUS PROVISIONS

Section 19. 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 Charter provisions.
- 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. In the event employees engage in such actions, they shall be subject to discipline including termination and may be deemed to have abandoned their employment, and employee organizations may thereby forfeit all rights accorded them under this Resolution and other City law for a period up to one (1) year from commencement of such activity.
- d. This Resolution supersedes all prior enactments by the City relating to the establishment of rules for the conduct of employer-employee relations, including but not limited to Resolution No. 134-96. To the extent such prior enactments are inconsistent with this Resolution they are hereby revoked.

Section 20. Severability

If any provision of this Resolution, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Resolution, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

I certify that the foregoing resolution was passed and adopted by the Council of the City of Richmond at a regular meeting thereof held June 18, 2019, by the following vote:

AYES: Councilmembers Bates, Johnson, Martinez, Myrick, Willis,
Vice Mayor Choi, and Mayor Butt.

NOES: None.

ABSTENTIONS: None.

ABSENT: None.

PAMELA CHRISTIAN
CLERK OF THE CITY OF RICHMOND
(SEAL)

Approved:

TOM BUTT
Mayor

Approved as to form:

BRUCE GOODMILLER
City Attorney

State of California }
County of Contra Costa } : ss.
City of Richmond }

I certify that the foregoing is a true copy of **Resolution No. 48-19**, finally passed and adopted by the City Council of the City of Richmond at a regular meeting held on June 18, 2019.



Pamela Christian, Clerk of the City of Richmond