

EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS

SEC. 101 STATEMENT OF PURPOSE

It is the purpose of the City to implement Chapter 10, Division 4; Title I 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 ordinances, resolutions, and rules which establish and regulate the personnel system, or which provide for other methods of administering employer-employee relations. The purpose is intended, instead, to strengthen the personnel system 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 the City to provide procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly affect and primarily involve the wages, hours, and other terms and conditions of employment of employees in appropriate units, which are not preempted by Federal or State law. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or management policy, which includes, 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; effect a reduction in authorized positions when, for lack of work or other reasons, the positions are no longer needed; ; 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; determine the City budget, organization, and the merits, necessity, and level of any activity or service provided to the public; and exercise complete control and discretion over its organization and the technology of performing its work.

SEC. 102 DEFINITIONS

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

- A. "Appropriate Unit" means a unit of employee classes or positions, established pursuant to SECTION 1203-1206 hereof.
- B. "City" means the City of Kingsburg, 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/her or her duties, has access to information relating to the City's administration of employer-employee relations.

D. "Consult/Consultation in Good Faith" means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions; 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 counter-proposals in an endeavor to reach agreement, nor is it subject to SEC. 1215, 1216, and 1217 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 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 or 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 or 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 one hundred eighty (180) 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 SEC. 1203 through 1210 hereof.

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 with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

I. Terms not defined herein shall have the meanings as set forth in the MMBA.

SEC. 103 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, as one of its primary purposes, represents employees in their employment relations with the City.
- E. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.
- F. Certified copies of the employee organization's constitution and bylaws.
- 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, or national origin.
- I. The job classification or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- J. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.
- K. A request that the Employee Relations Officer formally acknowledge the petitioner as the 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 City documents, shall be declared true, correct, and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

SEC. 104 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 SEC. 1208 of this Chapter.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit, and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization, and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing. The petitioning employee organization may appeal such determination in accordance with SEC. 1210 of this Chapter.

SEC. 105 OPEN PERIOD FOR FILING CHALLENGING PETITION

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the 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 percent (30%) and otherwise in the same form and manner as set forth in SEC. 1203 of this Chapter.

If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in SEC. 1208 of this Chapter. 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 SEC. 1210 of this Chapter.

Granting Recognition Without an Election:

If the Petition is in order, and the proof of support shows that a majority of the employees in the appropriate unit have designated the petitioning employee organization to represent them, and if no other employee organization filed a challenging petition, the petitioning employee organization and the Employee Relations Officer shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy and propriety of the proof of support. If the neutral third party makes an affirmative determination, the Employee Relations Officer shall formally acknowledge the petitioning employee organization as the Exclusive Recognized Employee Organization for the designated unit.

SEC. 106 ELECTION PROCEDURE

Where recognition is not granted without an election, the Employee Relations Officer shall arrange for a secret ballot election to be conducted by the City Clerk in accordance with its rules and procedures subject to the provisions of this Chapter. All employee organizations who have duly submitted petitions which have been determined to be in conformance with this Chapter shall be included on the ballot. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or 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. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

There shall be not more than one valid election under this Chapter 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 American Arbitration Association.

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

SEC. 107 PROCEDURE FOR DE-CERTIFICATION OF RECOGNIZED EMPLOYEE ORGANIZATION

A De-Certification 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 during the month of July of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred eighty (180) 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 De-Certification Petition may be filed by two or more employees or their representative, or any 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 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 at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section.

The De-Certification Petition may be accompanied by a Recognition Petition for that established appropriate unit. Such a City Recognition Petition shall comply with SEC. 1203 of this Chapter.

The Employee Relations Officer shall initially determine whether the De-certification Petition and a City Recognition Petition, if any, have been filed in compliance with the applicable provisions of this Chapter. 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(s) to the employees or employee organization with a statement of the reasons therefore in writing.

The petitioning employees or employee organization may appeal such determination in accordance with SEC. 1210 of this Chapter. If the determination of the Employee Relations Officer is in the affirmative, or if his/her negative determination is reversed on appeal, he shall give written notice of such De-Certification Petition and any City 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 de-certification, and, if a City Recognition Petition was duly filed, and, in the event de-certification of the incumbent Recognized Employee Organization is voted, the question of representation. Such election shall be conducted in conformance with SEC. 1206 of this Chapter.

During the "open period" specified in the first paragraph of this Sec. 8, the Employee Relations Officer may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all unit employees that he/she will arrange for an election to determine that issue. In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this Sec. 8, which the Employee Relations Officer shall act on in accordance with this Sec. 8.

If, pursuant to this Sec. 8, 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.

SEC. 108 POLICY AND STANDARDS FOR DETERMINATION OF APPROPRIATE UNITS

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

- A. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- B. History of representation in the City and similar employment; except, however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
- C. Consistency with the organizational patterns of the City.
- D. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
- E. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related

classification among two or more units.

Notwithstanding the foregoing provisions of this Section, management and Confidential Employees shall not be included in any unit.

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.

Peace Officers have the right to be represented in separate units composed solely of such peace officers. Also under the MMBA, professional employees have the right to be represented separately from non-professional employees. 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. The decision of the Employee Relations Officer shall be final.

SEC. 109 PROCEDURE FOR MODIFICATION OF ESTABLISHED APPROPRIATE UNITS

Requests by employee organizations for modification of established appropriate units may be considered by the Employee Relations Officer only during the period specified in SEC. 1207 of this Chapter. Such requests shall be submitted in the form of a Recognition Petition, and, in addition to the requirements set forth in Sec 1203 of this Chapter, 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 SEC.1208 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Chapter.

The Employee Relations Officer may, on his/her own motion, propose during the period specified in SEC. 1207 of this Chapter that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modifications to any affected employee organization and shall hold a meeting concerning the proposed modifications, 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 SEC. 1208 of this Chapter, 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 SEC. 1210 of this Chapter. 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 SEC. 1203 hereof.

Procedure for Processing Severance Requests:

An employee organization may file a request to become the recognized employee organization of a unit alleged to be appropriate that consists of a group of employees who are already a part of a

larger established unit represented by another recognized employee organization. The timing, form and processing of such request shall be as specified in Sec. 10 for modification requests.

SEC. 110 APPEALS

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer under this Chapter may, within ten (10) days of notice thereof, request the intervention of the California State 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 decision within fifteen (15) days of notice of the Employee Relations Officer's determination or 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 (SEC. 1203); Challenging Petition (SEC. 1205) or De-certification Petition (SEC. 1207)-- or employees aggrieved by a determination of the Employee Relations Officer that a De-certification Petition (SEC. 1207)--has not been filed in compliance with the applicable provisions of this Chapter, 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 and its decision shall be final and binding.

SEC. 111 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 SEC. 1203 of this Chapter shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

SEC. 112 PAYROLL DEDUCTIONS ON BEHALF OF EMPLOYEE ORGANIZATIONS

Upon formal acknowledgment by the City of a Recognized Employee Organization under this Chapter, 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 Recognized Employee Organization on forms provided 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.

SEC. 113 EMPLOYEE ORGANIZATION ACTIVITIES-USE OF CITY RESOURCES

Agents of a formally recognized Employee Organization shall be allowed access to City

facilities to meet with Employees in units represented by that organization provided:

- A. The Agent obtains permission from the designated City representative as to the time and place of the proposed visit;
- B. The Agent confines his/her visits to Public non-work areas of City facilities;
- C. The Agent does not interfere with the work of any Employee or department.
- D. The City shall allow the Employee Organization to conduct meetings of its Membership in City facilities provided:
- E. The meeting or use of the facility does not substantially interfere with the normal course of City business;
- F. The meeting occurs on the Employees' off-time, except in situations where shift work prevents this from occurring;
- G. The meeting or use of the facility does not adversely affect or inconvenience employees not a member of the bargaining unit, or not wishing to participate in such meetings;
- H. Prior permission is obtained from the designated City Representative;
- I. Any costs to the City resulting directly or indirectly from the use of City facilities by the recognized employee organization shall be paid forthwith by the organization upon receipt of billing from the City.

SEC. 114 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 Chapter after consultation with affected employee organizations.

SEC. 115 INITIATION OF IMPASSE PROCEDURES

If the meet and confer process has reached impasse as defined in this Chapter, 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.

SEC. 116 IMPASSE PROCEDURES

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 recommendation, nor take any public position at any time concerning the issues.

B. Otherwise, the parties can utilize any other impasse procedures provided in accordance with the Meyers-Milias-Brown Act.

C. After any applicable impasse procedures have been exhausted, the City Council may hold a public hearing regarding the impasse, and take such action regarding the impasse as it in its discretion deems appropriate as in the public interest, including implementation of the City's last, best and final offer. Any legislative action by the City Council on the impasse shall be final and binding.

SEC. 117 COST OF IMPASSE PROCEDURES

The costs for the services of a mediator utilized by the parties, and other mutually incurred costs of mediation, shall be borne equally by the City and the Recognized Employee Organization. The cost for other separately incurred services or costs shall be borne separately by each party.

SEC. 118 CONSTRUCTION

This Chapter shall be administered and construed as follows:

A. Nothing in this Chapter shall be construed to deny to any person, employee, organization, the City, or any authorized officer, powers, rights, and/or authority granted by Federal or State law.

B. This Chapter shall be interpreted so as to carry out its purposes as set forth in Section 1.

C. Nothing in this Chapter 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 subject themselves to discipline up to and including termination and may be deemed to have abandoned their employment; and employee organizations may thereby forfeit all rights accorded them under this Chapter and other City law for a period up to one (1) year from

commencement of such activity.

SEC. 119 MANAGEMENT RIGHTS AND RESTRICTIONS

The scope of representation, including the procedures identified in Chapter 12 herein, do not include managerial rights to make unconstrained decisions when fundamental management or policy choices are involved. Further, the scope of representation shall not include consideration of the merits, necessity or organization of any service or activity provided by law or executive order. (Govt. Code Sec. 3504.)

SEC. 120 SEVERABILITY

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