

RESOLUTION NO. 12189

RESOLUTION OF THE CITY OF SAN RAFAEL ESTABLISHING:

EMPLOYER-EMPLOYEE RELATIONS
(and repealing Resolution Nos. 4027 and 4332)

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RESOLUTION NO. 12189

RESOLUTION OF THE CITY OF SAN RAFAEL ESTABLISHING:

EMPLOYER-EMPLOYEE RELATIONS

(and repealing Resolution Nos. 4027 and 4332)

WHEREAS, Chapter 10, Division 4, Title I of the Government Code of the State of California, covering employer-employee relations between public employers and their employees, has been amended from time to time in recent years; and

WHEREAS, Government Code Section 3507 empowers a City to adopt reasonable rules and regulations after consultation in good faith with representatives of its employee organizations for the administration of employer-employee relations; and

WHEREAS, the City of San Rafael desires to adopt such reasonable rules and regulations as authorized by law;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF SAN RAFAEL DOES HEREBY RESOLVE AS FOLLOWS:

ARTICLE I — GENERAL PROVISIONS

Section 1. Title of Resolution

This Resolution shall be known as the Employer-Employee Relations Resolution of the City of San Rafael.

Section 2. Statement of Purpose

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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, the City’s 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 that directly and significantly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that 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 lawful reasons; determine the content of job classifications; subcontract work; 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 of performing its work.

Section 3. Definitions

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

- A. APPROPRIATE UNIT – means a unit established pursuant to Article II of this Resolution.
- B. CITY – means the City of San Rafael, a municipal corporation, and where appropriate herein, “City” refers to the City Council, the governing body of said City, or any duly authorized management employee as herein defined.
- C. CONSULT OR CONSULTATION IN GOOD FAITH – means to communicate orally or in writing with all affected employee organizations, whether exclusively or not, for the purpose of presenting and obtaining views or advising of intended actions in a good faith effort to reach a consensus; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counterproposals with an exclusively recognized employee organization in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to Article IV hereof.
- D. EMPLOYEE – means any person regularly employed by the City except those persons elected by popular vote.
- E. EMPLOYEE, CONFIDENTIAL – means an employee who is privy to decisions of City management affecting employer-employee relations.
- F. EMPLOYEE, MANAGEMENT – means any employee having significant responsibilities for formulating and administering City

policies and programs, including but not limited to the chief executive officer and department heads and their direct assistants.

- G. EMPLOYEE, PROFESSIONAL – 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 various types of physical, chemical, and biological scientists.
- H. EMPLOYEE, SUPERVISORY - 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. 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.
- J. 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.
- K. 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.

- L. MAJORITY REPRESENTATIVE – means an employee organization, or its duly authorized representative, that has been granted formal recognition by the Municipal Employee Relations Officer as representing the majority of employees in an appropriate unit.

- M. MEDIATION AND/OR FACT FINDING – means the efforts of an impartial third person, or persons, functioning as intermediaries, to assist the parties in reaching a voluntary resolution to an impasse, through interpretation, suggestion and advice. Nothing contained herein shall preclude said mediators from making recommendations to the interested parties.

- N. MEET AND CONFER IN GOOD FAITH (sometimes referred to herein as “meet and confer” or “meeting and conferring”) – means performance by duly authorized City representatives and duly authorized representatives of an employee organization recognized as the majority representative 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: (1) reach agreement on those matters within the authority of such representatives and (2) reach agreement on what will be recommended to the City Council on those matters within the decision making authority of the City Council. This does not require

either party to agree to a proposal or to make a concession, or to continue to negotiate when either party declares an impasse.

- O. MUNICIPAL EMPLOYEE RELATIONS OFFICER – means the City’s principal representative in all matters of employer-employee relations designated pursuant to Section 12, or his/her duly authorized representative.
- P. PEACE OFFICER – as this term is defined in Section 830, California Penal Code.
- Q. PROOF OF EMPLOYEE SUPPORT - means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words “recently signed” shall mean within six (6) months prior to the filing of a petition.
- R. EXCLUSIVELY RECOGNIZED EMPLOYEE ORGANIZATION – means an employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate representation unit pursuant to Article II hereof, having the exclusive right to meet and confer in good faith concerning statutorily

required subjects pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees.

Such recognition status may not be challenged by another employee organization (1) within twelve (12) months of such recognition and (2) during a Memorandum of Understanding having a term of up to three (3) years.

- S. RESOLUTION – means, unless the context indicates otherwise, the Employer-Employee Relations Resolution of the City of San Rafael.
- T. SCOPE OF REPRESENTATION – means all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment.
- U. DAYS – means calendar days.

Section 4. Employee Rights

Employees of the City shall 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 shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by any employee organization because of his/her exercise of these rights. Nothing contained herein shall abrogate the rights of an employee organization to formulate and pass its own rules and regulations relating to membership.

ARTICLE II — REPRESENTATION PROCEEDINGS

Section 5. Petition for Recognition

An employee organization which seeks to be formally acknowledged as an Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Municipal 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 its members.
- 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 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 such regional, state or international 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.

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- H. A statement that the employee organization has no restriction on membership based on race, color, creed, sex, national origin, age, sexual orientation, mental or physical disability or medical condition.
- I. The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- J. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Municipal Employee Relations Officer or to a mutually agreed upon disinterested third party.
- K. A request that the Municipal Employee Relations Officer recognize the employee organization as the majority representative of 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.

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

Section 6. City Response to Recognition Petition

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

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- 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 10 of this Article II.

If an affirmative determination is made by the Municipal 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 Municipal 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 Section 15 of this Resolution.

Section 7. 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 exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Section 5 of this Article II. If such challenging petition seeks establishment of an overlapping unit, the Municipal Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit,

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at which time the petitioning employee organizations shall be heard. Thereafter, the Municipal Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 10 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 Municipal Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 15 of this Article II.

Section 8. Granting Recognition Without an Election

If 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 Municipal 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 Municipal Employee Relations Officer shall formally acknowledge the petitioning employee organization as the Exclusive Recognized Employee Organization for the designated unit.

Section 9. Election Procedure

The Municipal Employee Relations Officer may arrange for a secret ballot election to be conducted by a party agreed to by the Municipal Employee Relations Officer and the concerned employee organization(s), in accordance with such party's 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 ballot shall also reserve to employees the choice of representing themselves individually in their employment relations with the City. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated

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appropriate unit as of the date when that unit is determined to be appropriate, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

There shall be no more than one valid election under this Resolution pursuant to any petition in a twelve (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 California State Mediation and Conciliation Service.

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

Section 10. Procedure for Decertification of Exclusively Recognized Employee Organization

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Municipal Employee Relations Officer only during the month of March of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. A Decertification Petition may be filed by two or more employees or their representative, or an

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employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

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

An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this Section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent, that includes the allegation and information required under paragraph (C.) of this Section 10, and otherwise conforms to the requirements of Section 5 of this Article.

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The Municipal Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If his/her determination is in the negative, he/she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 15 of this Article II. If the determination of the Municipal Employee Relations Officer is in the affirmative, or if his/her negative determination is reversed on appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.

The Municipal Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 9 of this Article II.

During the “open period” specified in the first paragraph of this Section 10, the Municipal Employee Relations Officer may on his/her own motion, when he/she has reasonable factual basis 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 Section 10, which the Municipal Employee Relations Officer shall act on in accordance with this Section 10.

If, pursuant to this Section 10, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

Section 11. Appropriate Unit

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

- A. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- B. History of representation in the City and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
- C. Consistency with the organizational patterns of the City.
- D. Effect of differing legally mandated impasse resolution procedures.
- E. 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.

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

Managerial and confidential employees may not represent any employee organization that represents employees who are not managerial or confidential.

The Municipal 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 Municipal Employee Relations Officer shall be final.

Section 12. Designation of Municipal Employee Relations Officer

The City Council shall designate a Municipal Employee Relations Officer who shall be the City's principal representative in all matters of employer-employee relations, 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 Municipal Employee Relations Officer so designated is authorized to delegate these duties and responsibilities.

Section 13. Procedure for Modification of Established Appropriate Units

Requests by employee organizations for modifications of established appropriate units may be considered by the Municipal Employee Relations Officer only during the period specified in Section 10 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 5 of this Article, shall contain a complete statement of all relevant facts and citations in support of the proposed

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modified unit in terms of the policies and standards set forth in Section 11 hereof. The Municipal Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Municipal Employee Relations Officer may by his/her own motion propose that an established unit be modified. The Municipal 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 Municipal Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 11 of this Article II, and shall give written notice of such determination to the affected employee organizations. The Municipal Employee Relations Officer's determination may be appealed as provided in Section 15 of this Article. If a unit is modified pursuant to the motion of the Municipal Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Section 5 hereof.

Section 14. 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 requests shall be as specified in Section 13 for modification requests.

Section 15. Appeals

An employee organization aggrieved by an appropriate unit determination of the Municipal Employee Relations Officer; or an employee organization aggrieved by a

determination of the Municipal Employee Relations Officer that a Recognition Petition (Section 5), Challenging Petition (Section 7), Decertification Petition (Section 8), Unit Modification Petition (Section 9); or employees aggrieved by a determination of the Municipal Employee Relations Officer that a Decertification Petition (Section 10) has not been filed in compliance with the applicable provisions of this Article, may, within ten (10) days of notice of the Municipal Employee Relations Officer's final decision, request to submit the matter to mediation by the State Mediation and Conciliation Service, 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 Municipal Employee Relations Officer's determination or the termination of mediation proceedings, whichever is later.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the Municipal 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 use of such procedure, and/or any decision of the City Council determining the substance of the dispute shall be final and binding.

ARTICLE III — ADMINISTRATION

Section 16. Submission of Current Information by Recognized Employee Organizations

All changes in the information filed with the City by an Exclusively Recognized Employee Organization under paragraphs (A.) through (K.) of its Recognized Petition under Section 5 of this Resolution shall be submitted in writing to the Municipal Employee Relations Officer within thirty (30) days of such change.

Section 17. Employee Organization Activities – Use of City Resources

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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 Memorandum of Understanding and/or administrative procedures, shall be limited to lawful activities consistent with the provisions of this Resolution that pertain directly to the employer-employee relationship and not such internal employee organization business as soliciting membership, campaigning for office, organization of meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

Section 18. 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 19. Initiation of Impasse Procedure

If the meet and confer process has reached impasse as defined in Section 3 of this Resolution, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the Municipal Employee Relations Officer. The purpose of such meeting shall be:

- A. To review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding; and
- B. If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

Section 20. 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 recommendation, nor take any public position at any time concerning the issues.
- B. If the parties fail to agree to submit the dispute to mediation or fail to agree on the selection of a mediator, or fail to resolve the dispute through mediation within fifteen (15) days after the mediator commenced meeting with the parties, the parties may agree to submit the impasse to fact finding.
- C. If the parties agree on fact finding, they may agree on the appointment of one or more fact finders. If they fail to so agree on one or more fact finders, a fact finding panel of three (3) shall be appointed in the following manner: one member of the panel shall be appointed by the Employee Relations Officer, one member shall be appointed by the Exclusively Recognized Employee Organization, and those two shall name a third, who shall be the chairperson. If they are unable to agree upon a third, they shall select by agreement the third member from one or more lists of seven (7) names of individuals having fact finding experience in the municipal sector to be provided by the California State Mediation and Conciliation Service.
- D. The following constitute the jurisdictional and procedural requirements for fact finding:

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

- (iii) The pattern of change that has occurred in the total compensation of the employees in the unit at impasse as compared to the pattern of change in the San Francisco-Oakland-San José Area All Urban Consumer Index as published by the Bureau of Labor Statistics for goods and services, and the pattern of change in wages and compensation of other wage earners.
- (c) The fact finder(s) shall then determine preliminary recommendations based on the comparisons as adjusted above which, however, shall be reduced as appropriate based on the financial resources of the City to implement them. In assessing the City's financial resources, the fact finder(s) shall be bound by the following:
 - (i) Other legislatively determined and projected demands on agency resources, i.e., budgetary priorities as established by the governing body; and
 - (ii) Allowance for equitable compensation increases for other employees and employee groups for the corresponding fiscal period(s); and
 - (iii) Revenue projections not to exceed currently authorized tax and fee rates for the relevant fiscal year(s); and

- (iv) Assurance of sufficient and sound budgetary reserves; and
 - (v) Constitutional, statutory (and charter) limitations on the level and use of revenues and expenditures.
 - (3) The fact finders shall make written findings of fact, and advisory recommendations for the resolution of the issues in dispute, which shall be presented in terms of the criteria, adjustments, and limitations specified above. Any member of a fact finding panel shall be accorded the right to file dissenting written findings of fact and recommendations. The fact finder or chairperson of the fact finding panel shall serve such findings and recommendations on the Municipal Employee Relations Officer and the designated representative of the Exclusively Recognized Employee Organization.
- E. If these parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, the fact finder or the chairperson of the fact finding panel shall make them public by submitting them to the City Clerk for consideration by the City Council in connection with the Council's legislative consideration of the impasse.
- F. In accordance with Government Code Section 3505.4, if the parties did not agree on mediation or the selection of a mediator and did not agree on fact finding, or having so agreed, the impasse has not been resolved, the City Council may take such action regarding the impasse as it in its discretion deems appropriate as in the public interest. Any legislative action by the City Council on the impasse shall be final and binding.

Section 21. Costs of Impasse Procedures

The cost for the services of a mediator and fact finder or chairperson of a fact finding panel utilized by the parties, and other mutually incurred costs of mediation and fact finding, shall be borne equally by the City and Exclusively Recognized Employee Organization. The cost for a fact finding panel member selected by each party, and other separately incurred costs, shall be borne by such party.

ARTICLE V— MISCELLANEOUS PROVISIONS

Section 22. Memorandum of Understanding

When the meeting and conferring process is concluded between the City and a formally recognized employee organization representing a majority of the employees in an appropriate unit, all agreed upon matters shall be incorporated in a written Memorandum of Understanding signed by the duly authorized City and majority representatives. As to those matters within the authority of the City Council, the Memorandum of Understanding shall be submitted to the City Council for determination, and those matters within the authority of the recognized employee organization for determination. If either party rejects said Memorandum of Understanding, impasse procedures shall be initiated pursuant to Section 19.

Section 23. 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 purpose 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 consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions by them are in violation of their conditions of employment except as expressly otherwise provided by legally preemptive state or contrary local law. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination, and may be replaced, to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit rights accorded them under City law or contract.

Section 24. 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.

RESOLUTION NO. 12189

I, Jeanne M. Leoncini, Clerk of the City of San Rafael, hereby certify that the foregoing resolution was duly and regularly introduced and adopted at a regular meeting of the Council of said City held on Monday, the 5th day of February, 2007, by the following vote, to wit:

Ayes: COUNCILMEMBERS: Heller, Miller, Phillips and Mayor Boro

Noes: COUNCILMEMBERS: None

Absent: COUNCILMEMBERS: Cohen

Jeanne M. Leoncini , City Clerk

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