

RESOLUTION NO. 08-14

A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF MARICOPA, ARIZONA, DECLARING AS A PUBLIC RECORD THAT CERTAIN DOCUMENT FILED WITH THE CITY CLERK AND ENTITLED MARICOPA MEET AND CONFER CODE, RELATING TO THE ESTABLISHMENT OF A MEET AND CONFER PROCESS WITH CITY EMPLOYEES.

WHEREAS, staff for the City has developed requirements relating to the establishment of a meet and confer process with city employees;

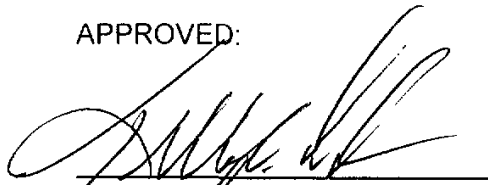
WHEREAS, the City Council believes that declaring such document a public record and adopting its provisions by reference will be in the City's best interests;

NOW THEREFORE, BE IT RESOLVED by the Mayor and City Council of the City of Maricopa, Arizona as follows:

That certain document known as MARICOPA MEET AND CONFER CODE relating to the establishment of a meet and confer process with city employees, is hereby declared to be a public record, and three (3) copies shall remain on file in the office of the City Clerk of the City of Maricopa for examination by the public.

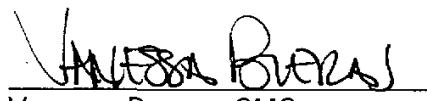
PASSED AND ADOPTED by the City Council of the City of Maricopa, Arizona this 18th day of March, 2008.

APPROVED:



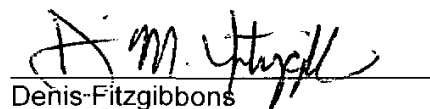
Kelly Anderson
Mayor

ATTEST:



Vanessa Bueras, CMC
City Clerk

APPROVED AS TO FORM:



Denis-Fitzgibbons
City Attorney

Draft March 12, 2008

MEET AND CONFER CODE

Article 3-6

3-6-1 Purpose. The purpose of this Meet and Confer Code is to establish an orderly process to allow regular non-probationary employees and their representatives, who have been certified as the exclusive representative of a particular employee group, to meet and confer with the City Manager, or his/her designee, relating to wages, hours, benefits and other conditions of employment.

3-6-2 Conflicts.

- A. In the event of conflict with other City Code Ordinance provisions, the provisions of this Code shall govern.
- B. The city's rules and regulations, administrative directives, departmental rules and regulations, and work place practices shall govern employee relations unless there is a specific conflict with a memorandum of understanding approved by the City Council pursuant to this Code. Where a specific conflict exists, the memorandum of understanding shall govern.
- C. A memorandum of understanding cannot contradict this Code.

3-6-3 Employee rights. Eligible City employees have the right to be represented by an employee organization certified as an exclusive representative under the provisions of this Code in the meet and confer process contained herein regarding wages, hours, benefits and other conditions of employment, and to have a member of the employee organization present during the disciplinary process. The disciplinary process does not apply to an interview of an employee during the normal course of work, counseling, instruction, informal verbal admonishment or other routine or unplanned contact with a supervisor.

3-6-4 Definitions. The following words, terms and phrases, when used in this article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Fiscal year means the budget term adopted by the City.

Business days means Monday through Friday excluding holidays as designated by the City Manager.

Confidential Employee means any employee designated by the City Manager who has access to information regarding relations between the city and its recognized employee organizations including but not limited to information affecting negotiations with the organizations or resolution of complaints or grievances relating to City Employment relations issues or who is in a confidential relationship with city management. Employee organization representatives are exempt from this classification.

Day means calendar day except as otherwise stated.

Employee shall mean benefitted full-time and benefitted part-time employees; but shall exclude contracted, temporary, seasonal, or new probationary employees, employees on leaves of absence where the duration of time off is in excess of six (6) months with the exception of employees on military leave.

Employee organization means an organization designated by the City Council as authorized to represent employees in the meet and confer process as described in this Code and other codes of the city for the purpose of meeting and conferring relating to wages, hours, benefits and other conditions of employment.

Management employee shall mean any city employee who is engaged primarily in executive, management, supervisory functions, and/or is charged with the responsibility of developing, administering or effectuating management policies. Fire personnel below the rank of Battalion Chief and Police officers below the rank of Sergeant are exempt from this designation. The determination of management status shall be made by the City Manager.

Professional employee shall mean any city employee who is engaged in functions, either administrative or technical in an exempt position. Fire personnel below the rank of Battalion Chief and Police officers below the rank of Sergeant are exempt from this designation. The determination of professional status shall be made by the City Manager.

Non-supervisory employees shall mean any city employee who does not have authority to hire, discharge, promote, transfer, suspend, layoff, or discipline other employees or to effectively recommend such action, or who is not in a confidential relationship with city management. Determination of non-supervisory and confidential status shall be made by the City Manager.

Petition shall mean a form for signatures established by the City Manager.

3-6-5 Employee groups.

- A. The maximum number of labor organizations to be designated for employee representation shall be limited to a total of four. Employee groups can include only

regular, non-probationary employees. They shall include:

1. Fire fighters, all sworn personnel below the rank of Battalion Chief.
 2. Police officers, all sworn personnel below the rank of Sergeant.
 3. All clerical, administrative, and technical non-supervisory, non-confidential employees.
 4. All labor and trades non-supervisory, non-confidential employees (including lead persons).
- B. The following personnel are ineligible for representation under the meet and confer process:
1. All sworn Fire personnel above the rank of Captain.
 2. All sworn Police personnel above the rank of Sergeant.
 3. All other city employees who are supervisory (except lead persons), management, professional, or confidential employees.

The Human Resources Director shall submit a list to the City Manager of those employees who are supervisory, management, professional, and confidential. A final determination shall be made by the City Manager.

3-6-6 Election process.

- A. Each employee organization seeking recognition as the authorized representative of an appropriate group shall file upon demand with the City Manager the following:
1. The name and address of the organization.
 2. A copy of its charter, constitution and by-laws, if such documents exist.
 3. The names, titles, addresses and telephone numbers of its duly elected officers.
 4. A statement that membership in such organization is not denied because of race, creed, color, sex, disability, national origin, ancestry, religion or age.
 5. A Petition requesting designation as the authorized representative of an appropriate group supported by the signatures of not less than thirty per cent (30%) of the eligible employees in that group.

- B. Each Petition submitted to the City Manager shall contain the name of the employee group, the name of the employee organization, signature, printed name, employee number, date of signature, and employee position of each person signing the petition. No signature on a petition shall bear a date greater than ninety (90) days in advance of submittal. If an eligible employee signs more than one petition, then the latest dated signature shall be considered valid.
- C. Petitions for recognition shall be filed during the time period from November 1 to November 30. The City Manager shall, within thirty (30) days from receiving the petition, verify the signatures of eligible employees within the designated group and shall then promptly set an election. No election should be directed in any appropriate group or any subdivision within which, in the preceding twelve (12) month period, a valid election shall have been held or under the conditions stated in Section 3-6-6(F).
- D. The City Manager shall, within thirty (30) days from receiving the Petition, verify that thirty percent (30%) of eligible employees within the designated group have signed the Petition and shall then promptly post conspicuous notice of receipt of such Petition. Once a Petition has been filed with the City Manager calling for a representation election, other organizations may seek to be placed on the ballot. To do so, the organization must file a Petition containing the valid dated signatures of not less than thirty percent (30%) of the employees in the employee group. This Petition must be filed no later than ten (10) days after the City Manager has posted the written notice. The City Manager shall conduct a secret ballot election among the employees in the employee group within thirty (30) days of the posting of the written notice.
- E. Each employee eligible to vote shall be provided the opportunity to choose the employee organization he/she wishes to represent him/her from among those on the ballot, or to choose "none." An organization shall not be listed on the ballot unless the City Manager has found a showing of interest as required under Section 3-6-6(A).
- F. To be certified as an authorized representative, an employee organization must receive a majority of the votes cast. In an election involving three or more choices, where none of the choices receive a majority of the votes cast, a run-off election shall be conducted between the two choices receiving the largest number of votes.
- G. Where a majority of the votes in an employee group cast votes in favor of representation by an organization, the City Manager shall certify the organization as the exclusive representative for all employees in that employee group.
- H. After an employee organization has been the exclusive representative of an employee group for at least one year (12 months), any member of the employee group can initiate an election to decertify the exclusive representation by submitting a petition containing not less than thirty percent (30%) of eligible employees in the employee group. If the City Manager verifies the Petition is valid and in compliance with this Code the election

shall be conducted in the same manner as a representation election. Petitions for decertification shall be filed during the time period from September 1 to October 1 of the year immediately preceding the expiration of said memorandum of understanding.

- I. Election disputes shall be resolved by a third party, designated by the Mayor and City Council, whose decision shall be final and binding on the parties.
- J. The City Manager may refer the administration of any election to the Chairperson of the Merit Board or the City Clerk.

3-6-7 *Right of employees and employee organizations.*

- A. Employees have the right to participate on behalf of or engage in activities on behalf of an employee organization and have the right to refrain from such activity. Employees shall be free from any interference, restraint, or coercion by any employee, supervisor, or manager for or against employee organizations. Violations will necessitate disciplinary action.
- B. There can be only one official and exclusive employee organization for each employee group for purposes of meeting and conferring. An exclusive employee organization must equally and fairly represent all employees as designated by 3-6-5 and shall provide to them the same voting rights and eligibility to hold office in the employee organization.
- C. Employee organizations shall have no rights beyond the specific terms of this Code and a resulting Meet and Confer agreement.
- D. Employee organizations shall have the right to bi-weekly dues deductions, if approved by the members of the organization and as allowed by law. Dues deductions from payroll must be authorized by each individual employee on the appropriate form provided by the Human Resources Department.

3-6-8 *Meeting and Conferring.*

- A. This meet and confer process covers wages, hours, benefits and other conditions of employment, which include: salary or wage rates or other forms of direct monetary compensation and direct cost subjects; paid time off and procedures therefore; leaves of absence; insurance benefits; total hours of work required of an employee on each workday or workweek, including overtime, compensatory time, rest and meal periods and call-in/call-back; health and safety; training; personnel records review; discussions with personnel by group representatives; distribution of information; meet and confer procedures; city-wide uniform procedure for employee grievances; uniform process for employee discipline; rights of the employee organizations and the City; items of concern

to the employee organization and the City Manager.

The following items shall not be included in the meet and confer process: personnel performance evaluations, discipline of employees or hiring, discharging, promotions, demotions, transfers or suspensions. Non-negotiable items include any fact of the hiring, promotion or transfer of employees, the types of discipline or the grounds for demotion, discharge, suspension or discipline.

It is the right of the City to determine the purpose of each of its departments, agencies, boards and commissions, and to set standards of service to be offered to the public and exercise control and discretion over its organization and operations. It is also the right of the City to direct its employees, take disciplinary action, relieve its employees from duty because of lack of work or for other legitimate reasons, determine *whether goods or services shall be made, purchased or contracted for*, and determine the methods, means, and personnel by which the employer's operations are to be conducted. The City has the right to take all necessary actions to maintain uninterrupted service to the community. The Mayor and City Council may, at their option and sole discretion, direct the city manager to consult with the city's employees, or their authorized representatives, about the direct consequences that decisions on these matters may have on wages, hours, and working conditions. The enumeration of the above rights is illustrative only and is not to be construed as being all-inclusive.

- B. The City and the employee organization shall have the duty through appropriate officials or representatives to meet and confer in good faith with respect to wages, hours, benefits and other conditions of employment. It is the intent that all meeting and conferring occur only between the parties' respective representatives.
- C. Once all areas of a proposed memorandum of understanding, including areas still in dispute, have been submitted to the Mayor and City Council, the Mayor, City Council, City Manager, or employee organization may request representatives from both management and the employee organization to provide information and clarification.
- D. Meet and confer shall consist of the following process:
 - 1. Employee organizations may submit proposals regarding wages, hours, benefits and other conditions of employment to the City Manager no later than January 5 prior to each fiscal year. Previously agreed upon multi-year memorandum of understanding shall not require a new submittal.
 - 2. All proposals submitted to the city manager must be in writing and in a form that can be incorporated into a memorandum of understanding. Unless otherwise provided in this Code and as allowed by law, during the meet and confer process, proposals shall remain confidential except that they shall be available to the City Manager, the employee organization representatives, or those designated by the City Manager, the employee organization representatives, or those designated by the City Manager.

3. Upon receiving a proposal from an employee organization, the City Manager shall submit a written response to the proposal no later than February 5.
4. Within ten (10) business days from the receipt of the City Manager's response, representatives of the employee organization and the City Manager or designated representative shall begin "meeting and conferring" at mutually agreed upon times and places for the purpose of entering into a written memorandum of understanding relating to the proposals. Meetings shall be at least (2) hours in duration, unless mutually agreed otherwise. Meetings shall continue weekly, unless mutually agreed otherwise, until an agreement is reached, or impasse is declared by either party. Meeting ground rules shall be mutually agreed on by the City Manager and employee group representative, and shall be adhered to while meeting and conferring.
5. The City Manager or designee, and the representative of the employee organization, shall initial all areas of agreement. Those areas not in agreement may be withdrawn by either party or shall be outlined as areas in dispute.
 - (a) Both parties shall advise the City Council by no later than March 1 that areas of dispute still exists.
 - (b) Either party, or both parties, may request that the City Council refer the matter to formal mediation.
 - (c) Upon receiving a request for formal mediation from either or both parties, the City Council may request that a mediator be assigned forthwith to the case. All costs associated with use of a mediator will be split equally between the city and the employee organization.
6. On or before April 15, all areas of agreement, areas in dispute and still under consideration, shall be submitted to the Mayor and City Council for their consideration.
7. The Mayor and City Council may accept, reject or modify the recommended areas of agreement within the proposed memorandum of understanding and may take whatever action they feel appropriate with regard to any areas in dispute consistent with the City Code. Final action by the Mayor and City Council shall constitute the memorandum of understanding for a fiscal year or other designated period.
8. If there is a claim of breach of a memorandum of understanding and the employee organization's existing memorandum of understanding does not provide a process for resolution of the breach, the breach process in Section 3-6(D)(9) shall apply.

9. In the event that there is a claim of breach of a memorandum of understanding that the employee organization and the City have been unable to informally resolve, the following process shall be followed:
- (a) If either party claims that the memorandum of understanding has been breached, the parties shall:
 - (i) Within forty-five (45) days of the alleged breach, the party alleging the breach shall give written notice to the party who has allegedly breached the memorandum of understanding. The notice shall specify the provision(s) breached and the facts and evidence demonstrating or supporting the breach and the proposed remedy.
 - (ii) A written response to the alleged breach shall be submitted to the party alleging the breach within ten (10) days of the written notice.
 - (iii) Within fourteen (14) days of the written notice, the parties shall meet and attempt to resolve the matter; and
 - (iv) A written agreement, which is intended to resolve the matter shall be signed by the parties and submitted to the City Manager.
 - (v) In the event that an agreement is not reached and the possibilities of settlement through direct discussions between the parties is remote, either the City Manager or his designated persons or the representative of the employee organization may initiate a request to the City Council to refer the matter to mediation. Upon receiving a request for formal mediation from either or both parties, the City Council may request that a mediator be assigned forthwith to the case. The mediator shall be selected by mutual agreement of the parties. All costs associated with use of a mediator will be split equally between the City and the employee organization.

3-6-9 City and management rights. The City and the City Manager's rights are not subjugated or diminished in any way by any expressed or implied duty or obligation to meet and confer or bargain. Retained management rights are not subject to the grievance procedure contained in any memorandum of understanding, nor are they subject to any other appeal or complaint process.

- A. The City has and will continue to retain, whether exercised or not, the unilateral and exclusive right to operate, administer, and manage its municipal services and work force performing those services. The authority of the City shall not be modified or limited by

inference or implication.

- B. The exclusive rights of the City shall include, but not be limited to, the right to determine the organization of city government, and the purpose and mission of its constituent agencies, to set standards of service to be offered to the public, and through its management officials to exercise control and discretion over its organization and operations, to establish rules and practices governing the conduct of employees, to direct and supervise its employees and their work, to take disciplinary action, to relieve its employees from duty because of lack of work or for other legitimate reasons, to determine the methods, means and personnel by which the City's services are to be provided, including the right to schedule, and assign work and overtime, to hire, transfer and reassign employees and to otherwise act in the interests of efficient service to the community. The City reserves the right to establish and revise work schedules and work locations; to establish, revise and implement standards for hiring and promoting employees; to determine the need for additional positions and the qualifications of new employees, and to determine the qualifications for and/or the qualifications of employees considered for transfer and/or promotion; to evaluate and judge the skill, ability and efficiency and general work performance of employees; to adopt and to manage its budget, provide for the funding of certain levels of service, to add, delete, modify, or suspend certain programs, functions, divisions, and departments as the City Council in the exercise of its legislative authority to create and manage the City's budget, determine to be necessary and appropriate.
- C. The City retains all rights not specifically limited by a memorandum of understanding approved in accordance with the provisions of this Code.

3-6-10. Prohibited activity.

- A. An employee, employee organizations or their representative(s) shall not:
 - 1. Discriminate against an employee with regard to employee organization membership because of race, color, religion, creed, age, disability, sex or national origin;
 - 2. Discriminate against an employee because he/she has chosen not to form, join or assist an employee organization;
 - 3. Use city time, property or equipment for employee organization business, except as specified in a memorandum of understanding.
 - 4. Obstruct, restrain or coerce any employee, elected or appointed City official in the exercise of any right provided by the provisions of this Code.

5. Obstruct, restrain, threaten or coerce any elected or appointed official, representative of the employer or City employee, for the purposes of gaining a concession;
6. Disclose or discuss any matters concerning the meet and confer proposal with City elected officials or the news media from the date negotiations commence until the date and time set for hearing before the City Council on the mutually agreed upon proposed memorandum of understanding or until the date and time set for a hearing before the City Council on the areas of dispute.
7. Refuse to meet and confer in good faith with the employer;
8. Refuse or fail to comply with any provision of this Code;
9. Coerce the employer in the selection of its agents for bargaining or resolving grievances;
10. Under no circumstances shall a City employee, official, and employee organization or any other individual or employee organization engage in, instigate, promote, cause, sponsor, condone, permit, encourage, or take part in any strike, slowdown, sympathy strike, withholding of services, work stoppage, curtailment of work, reduction of work or interference of any kind with the operations of the City. Strike shall mean concerted action of employees and/or others resulting in the failure of employees to report for work when directed to do so, the concerted absence of employees from their positions, the concerted stoppage of work and/or concerted slowdown of work, or the concerted effort to refrain from the full, faithful, and proper performance of the duties of employment with the City. In the event of a violation of this subsection, an employee organization shall immediately instruct the involved employees that their conduct is in violation of this section and/or any applicable memorandum of understanding; that the employees may be disciplined up to and including termination, and instruct all such persons to cease the prohibited conduct and take all reasonable means to end the breach.

B. City management and its representatives shall not:

1. Discriminate against an employee with regard to employee organization membership because of race, color, religion, creed, age, disability, sex or national origin;
2. Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in an employee organization;
3. Obstruct, restrain or coerce any employee in the exercise of any right provided

under this Code;

4. Dominate or obstruct the formation, existence or administration of any employee organization;
5. Discriminate in regard to hiring, or any term or condition of employment in order to encourage or discourage membership in an employee organization;
6. Discharge or otherwise discriminate against an employee because he/she has signed or filed a Petition, grievance or complaint or because an employee is forming, joining or choosing to be represented by a labor organization;
7. Obstruct, restrain or coerce any employee, elected or appointed City official, representative of the employee organization, for the purpose of gaining a concession.
8. Disclose or discuss any matters concerning the meet and confer proposal with City elected officials or the news media from the date negotiations commence until the date and time set for hearing before the City Council on the mutually agreed upon proposed memorandum of understanding or until the date and time set for a hearing before the City Council on the areas of dispute.
9. Refuse to meet and confer in good faith with the exclusive representative;
10. Refuse or fail to comply with any provisions of this Code;
11. Coerce the employee organization in the selection of its agent for meeting and conferring or adjustment of grievances.

3-6-11 Solicitations and distributions.

- A. Specific provisions regarding use of working hours for the solicitation of members, dues and other internal employee organization business shall be conducted only during non-working hours and shall not interfere with the work process unless otherwise agreed to in the memorandum of understanding.
- B. Specific provisions regarding the use of working areas or use of city equipment and information systems, for the solicitation of members, dues and distribution of other employee organization business shall be included in the memorandum of understanding.