

RESOLUTION NO. 90- 20

A RESOLUTION OF THE CITY COUNCIL OF THE  
CITY OF DEL MAR, CALIFORNIA, APPROVING  
EMPLOYER-EMPLOYEE RELATIONS PROVISIONS  
AND PROCEDURES.

WHEREAS, employees of the City of Del Mar, who are a viable part of the structure of municipal government, have existing rights to organize among themselves and/or to represent themselves individually with City management to discuss matters of wages, hours, and other terms and conditions of employment; and

WHEREAS, the City Council is desirous of outlining the purpose, policies and procedures whereby employees can undertake these rights in the City of Del Mar in a manner that will not only maintain the efficient operation of the City but will afford City employees an equitable and cooperative method of communicating to City management and, ultimately, the City Council.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Del Mar, California hereby approves the Employer-Employee Relations Provisions and Procedures contained as follows:

ARTICLE I - GENERAL PROVISIONS

Section 1. Statement of Purpose.

This Resolution implements Chapter 10, Division 4, title 1 of the Government Code of the State of California (Sections 3500 et seq.) captioned "Local Public Employee Organizations," by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of State law, City ordinances, resolutions and rules which establish and regulate the personnel system, which provide for other methods of administering employer-employee relations. This resolution is intended, instead, to strengthen personnel and/or merit systems 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 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. 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, lack of funds, or for other lawful reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; 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 2. Definitions.

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

a. "Appropriate Unit" means a unit of employee classes or positions, established pursuant to Article II hereof.

b. "City" means City of Del Mar and, where appropriate herein, refers to the City Council or any duly authorized City representative as herein defined.

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

d. "Consult" 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 require an exchange of proposals and counter proposals 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.

e. "Day" means calendar day unless expressly stated otherwise.

f. "Employee Relations Officer" means the City Manager or his/her duly authorized representative.

g. "Exclusively Recognized Employee Organization" or "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.

h. "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.

i. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of City policies and programs.

j. "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) an employee's membership dues deduction authorization voluntarily given and maintained, 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 "recently signed" shall mean within one hundred eighty (180) days prior to the filing of a petition.

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 a merely routine or clerical nature, but requires the use of independent judgment.

l. "Unit Modification" means to add positions to or subtract positions from an established bargaining unit in order to clarify or reflect a more appropriate unit composition.

## ARTICLE II - REPRESENTATION PROCEEDINGS

### Section 3. Filing of Recognition Petition of Employee Organization.

An employee organization that seeks to be formally acknowledged as the Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer containing the following information and documentation:

- a. Name and address of the employee organization.
- b. Names and titles of its officers.
- c. Names of employee organization representatives who are authorized to speak on behalf of the organization.
- d. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the City.
- e. A statement whether the employee organization is a chapter of, or affiliated with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.
- f. Current 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 relevant hereto.
- h. A statement that the employee organization has no restriction on membership based on race, color, creed, sex, national origin, age, or physical disability.
- i. The job classifications or position 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 at least thirty percent (30%) 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 Exclusively 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 the proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury, by the duly authorized officers(s) of the employee organization executing it.

Section 4. City Response to Recognition Petition.

Upon receipt of the Petition, the Employee Relations Officer shall within thirty (30) days determine whether:

a. There has been compliance with the requirements of the Recognition Petition, and

b. The proposed representation unit is an appropriate unit in accordance with Section 6 of this Article II.

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. The petitioning organization shall have fifteen (15) days to perfect the petition, provided, however, this time period shall not be used to obtain additional signatures in support of the petition. If such determination thereafter remains unchanged, the Employee Relations Officer shall inform that organization within ten (10) days of the reasons therefor in writing. The petitioning employee organization and any other directly affected organization may appeal such determination in accordance with Section 10 of this Resolution.

Section 5. 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 deemed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Section 3 of this Article II. If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 6 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by

the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 10 of this Article II.

Section 6. Policy and Standards for Determination of Appropriate Units.

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. 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 classifications among two or more units.

f. The right of professional employees to be represented separately from nonprofessional employees.

Notwithstanding the foregoing provisions of this Section, managerial, supervisory and confidential responsibilities, as defined in Section 2 of this resolution, are determining factors in establishing appropriate units hereunder and, therefore, except for units in place as of the adoption date of this resolution managerial, supervisory and confidential employees may only be included in a unit consisting solely of managerial, supervisory or confidential employees respectively. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees nor remain represented beyond such time as required by State law.

The Employee Relations Officer shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this Section.

Section 7. Election Procedure.

The Employee Relations Officer may upon request of an affected recognized employee organization or upon his/her own motion arrange for a secret ballot election to be conducted by the State Mediation and Conciliation Service, or a party agreed to by the Employee Relations Officer and the concerned employee organization(s), in accordance with its rules and procedures subject to the provisions of this resolution. All employee organizations who have duly submitted petitions which have been determined to be in conformance with this Article II shall be included on the ballot. The ballot shall also include the choice of "No Organization." 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 last day of the pay period immediately preceding the date the election commences, 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 runoff 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 runoff 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 runoff election.

There shall be no more than one valid determinative election under this resolution pursuant to any petition in a 12-month period affecting the same unit.

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

Section 8. 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 Employee Relations Officer only during the month of January of any year following the first full year of recognition or during the thirty (30)

day period commencing 180 days prior to the expiration of a valid Memorandum of Understanding then having been in effect three (3) years from date of ratification or less, whichever occurs later. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

a. The name, address and telephone number of the petitioner 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 the 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 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 8, and otherwise conforms to the requirements of Section 3 of this Article.

The 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 therefor in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 10 of this Article II. If the determination of the Employee Relations Officer is in the affirmative, or if 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 Employee Relations Officer shall thereupon arrange for a secret ballot election to be held not sooner than thirty (30) 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 7 of this Article II.

During the "open period" specified in the first paragraph of this Section 8, the Employee Relations Officer may on his/her motion, when he/she has documented evidence causing a good faith doubt that employees 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 8, which the Employee Relations Officer shall act on in accordance with this Section 8.

If, pursuant to this Section 8, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, the original organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term. However, negotiations between the City and the newly-designated organization for a successor agreement for the unit shall commence approximately sixty (60) days prior to expiration of the then current Memorandum of Understanding.

Section 9. 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 Section 8 of this Article II. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Section 3 of this Article, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 6 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Employee Relations Officer may on his/her own motion propose during the month of January of each year that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and employees, and shall hold a meeting concerning the proposed modification(s) at which time all affected employee organizations shall be heard. Thereafter, the Employee Relations officer shall determine the composition of the appropriate unit or units in accordance with Section 6 of this Article II, and shall give written notice of such determination to the

affected employee organizations and employees. The Employee Relations Officer's determination may be appealed as provided in Section 10 of this Article. If a new unit is established pursuant to the motion of the 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 3 hereof.

Modification of units may also be accomplished by written stipulation thereto by the Employee Relations Officer and each of the affected employee organizations.

Technical clarifications of an established bargaining unit such as updating classification titles where the duties are not changed sufficiently to cause deletion from the established unit, adding new classifications to the appropriate unit, deleting classifications no longer in existence, or adding and deleting classifications which have undergone a change in supervisory, confidential or managerial status shall be accomplished by written notification to the affected employee organization from the Employee Relations Officer.

#### Section 10. Appeals.

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

An employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Section 3); Challenging Petition (Section 5) or Decertification of Recognition Petition (Section 8) -- or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Section 8) -- has not been filed in compliance with the applicable provisions of this Article may, within fifteen (15) days of notice of such determination, appeal the determination to the City Council for final decision.

Appeals to the City Council shall be filed in writing with the City Clerk, and a complete copy thereof served on the Employee Relations Officer. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party for hearing and

recommendations. 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 11. Submission of Current information by Recognized Employee Organizations.

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

#### Section 12. Payroll Deductions on Behalf of Employee Organizations.

Upon formal acknowledgment by the City of an Exclusively Recognized Employee Organization under this resolution, only such Recognized Employee Organization may be provided payroll deductions of membership dues and insurance premiums of plans sponsored by such organization upon the written authorization of employees in the unit represented by the Exclusively Recognized Employee Organization on forms provided therefor by the City. The providing of such service to the Exclusively Recognized Employee Organization by the City shall be contingent upon and in accordance with the provisions of Memorandum of Understanding and/or applicable administrative procedures and shall not violate applicable State and Federal law.

#### Section 13. Employee Organization Activities -- Use of Resources.

Access to City work locations and the use of paid time off, City facilities, equipment and other resources by Exclusively Recognized Employee Organizations and their representatives 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 shall not interfere with the efficiency, safety and security of City operations.

Nonexclusively recognized employee organizations shall not enjoy any access to nonpublic areas controlled by the City, inter/intraoffice mails, other City resources, or to employees on paid time.

All requests for any access shall be made through the Employee Relations Officer in writing.

Section 14. 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 15. Initiation of Impasse Procedures.

If the meet and confer process has reached impasse as defined in this resolution, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the 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 16. Impasse Procedures.

Impasse procedures are as follows:

a. If either party proposes to submit the dispute to mediation, the dispute shall be submitted to mediation by requesting a mediator from the California State Mediation and conciliation service or another mutually acceptable mediator. 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 did not utilize mediation, or having utilized mediation, 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.

c. Nothing herein shall preclude the parties from utilizing any other form of impasse resolution procedure which has been mutually agreed upon in writing by the parties.

Section 17. Costs of Impasse Procedures.

The costs, if any, for the service of any third party utilized by the parties, and other mutually incurred costs of the impasse procedure, shall be born equally by the City and Exclusively Recognized Employee Organization.

ARTICLE V - MISCELLANEOUS PROVISIONS

Section 18. 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.

b. This resolution shall be interpreted so as to carry out its purposes as set forth in Article I.

c. Nothing in this resolution shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout or other total or partial stoppage or slowdown of work. In 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 permanently replaced, to the extent such actions are not prohibited by preemptive law.

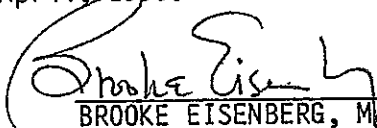
Section 19. Severability.

If any provision of this resolution, or the application of such provision to any persons 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.

Section 20. This resolution supersedes Resolution No. 78-88 which is hereby repealed.

NOW, THEREFORE, BE IT RESOLVED that the Del Mar City Council hereby adopts this Employer-Employee Relations Resolution which shall serve as the City Employee Relations Policy.

PASSED, APPROVED, AND ADOPTED by the City Council of the City of Del Mar, California, THIS 2nd day of April, 1990.

  
\_\_\_\_\_  
BROOKE EISENBERG, Mayor

ATTEST:

  
\_\_\_\_\_  
PATTI BARNES, City Clerk

Resolution No. 90-20

STATE OF CALIFORNIA  
COUNTY OF SAN DIEGO  
CITY OF DEL MAR


I, PATTI BARNES, City Clerk of the City of Del Mar, California, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 90-20 adopted by the City Council of the City of Del Mar, California, at a Regular Meeting held the 2nd day of April, 1990 by the following vote:

AYES: Councilmembers Gillies, McMillan, Hugo, Winterer

NOES: None

ABSENT: Mayor Eisenberg

ABSTAIN: None

  
\_\_\_\_\_  
PATTI BARNES, City Clerk