

ORDINANCE NO. 92-9 .

AN URGENCY ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF AMERICAN CANYON, CALIFORNIA,
ESTABLISHING ORDERLY PROCEDURES FOR THE ADMINISTRATION OF
EMPLOYER-EMPLOYEE RELATIONS

The City Council of the City of American Canyon does ordain as follows:

SECTION 1. An Employer-Employee Organization Relations Ordinance is hereby established for the City of American Canyon:

CITY OF AMERICAN CANYON

**EMPLOYER-EMPLOYEE ORGANIZATION
RELATIONS ORDINANCE**

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**CITY OF AMERICAN CANYON
EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS ORDINANCE**

Article I -- General Provisions

Section 1. Statement of Purpose.

This Ordinance 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. This Ordinance is intended 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 Ordinance 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, but are not limited to, the following: 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 and for termination therefrom; direct its employees; take disciplinary action; lay off employees; relieve its employees from duty because of lack of work 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 Ordinance, the following terms shall have the meanings indicated:

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

b. "City" means the City of American Canyon, and, where appropriate herein, refers to 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/Consultations in Good Faith" means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet-and-confer process, does not involve an exchange of proposals and 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.

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

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

g. "Impasse" means that the representative of the City and a Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

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

i. "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee. The words "recently signed" shall mean within ninety (90) days prior to the filing of a petition.

j. "Exclusively Recognized Employee Organization" means an employee organization which has been formally acknowledged by the City as the sole 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.

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 responsibility 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.

Article II -- Representation Proceedings

Section 3. Filing of Recognition Petition by Employee Organization.

An employee organization that seeks to be formally acknowledged as the Exclusively Recognized 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 of whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner with, a local, regional, state, national, or international organization, and, if so, the name and address of each such other organization.

f. Certified copies of the employee organization's constitution and bylaws.

g. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.

h. A statement that the employee organization has no restriction on membership based on race, color, creed, sex, national origin, age, or physical disability.

i. The job classification or position titles of employees in the unit claimed to be appropriate and the appropriate 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 preliminary confirmation to the State Mediation and Conciliation Service.

k. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized 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 officer(s) of the employee organization executing it.

Section 4. City Response to Recognition Petition.

Upon receipt of the Petition, the Employee Relations Officer shall determine within a reasonable time 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 is not affirmatively determined, the Employee Relations Officer shall inform that organization of the reasons therefor in writing. The petitioning employee organization may appeal such determination in accordance with Section 10 of this Ordinance.

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 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 fifty (50) 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 (1) the effect of a proposed unit on the efficient operations of the City, (2) the unit's compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (3) 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 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.

The Employee Relations Officer shall, after notice to an 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.

Notwithstanding the foregoing provisions of this Section, managerial, supervisory and confidential responsibilities, as defined in Section 2 of this Ordinance, are determining factors in establishing appropriate units hereunder, and therefore such managerial, supervisory and confidential employees may only be included in units that do not include non-managerial, non-supervisory and non-confidential employees. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees.

Section 7. Election Procedure.

The Employee Relations Officer shall arrange within a reasonable time for a secret-ballot election to be conducted by the State Mediation and Conciliation Service in accordance with its rules and procedures and subject to the provisions of this Ordinance. All employee organizations which have duly submitted petitions which have been determined to be in conformance with this Article II shall be included on the ballot. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation, or 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 in which it receives a majority of the votes cast. In an election involving three or more choices, where none of the choices receives a majority of the valid votes case, a runoff election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election shall be applicable to a runoff election.

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

The City and each employee organization appearing on the ballot shall bear its own costs.

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 first month following the first full year of recognition, during the thirty (30) day period commencing ninety (90) days prior to the termination date of a Memorandum of Understanding then having been in effect three (3) years or less, or at any time during which a Memorandum of Understanding is not in effect. A Decertification Petition may be filed by employees or their representative, or any employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete:

a. The name, address, and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.

b. The name of the established appropriate unit and of the incumbent 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 fifty (50) percent of the employees in the established appropriate unit no longer desire to be represented by the Incumbent Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to 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 fifty (50) percent of the employees in the bargaining unit, 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 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 within a reasonable time for a secret-ballot election to be conducted by the State Mediation and Conciliation Service in accordance with its rules and procedures and subject to the provisions of this Ordinance, 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 own motion, when he/she has a good-faith reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give written notice to that organization and all unit employees that he/she will arrange for an election to determine that issue. Such written notice shall state the reasons for his/her good-faith reason to believe that a majority of the employees no longer wish to be represented by the incumbent Exclusively Recognized Employee organization. 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.

Section 9. Procedure for Modification or Clarification of Established Appropriate Units.

Requests by employee organizations for modifications or clarifications of established appropriate units may be filed and considered by the Employee Relations Officer only during the open periods 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 open periods specified in Section 8 of this Article that an established unit be modified. The employee Relations officer shall give written notice of the proposed modifications(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard.

Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 6 of this Article II, and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 10 of this Article. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Section 3 hereof.

Section 10. Appeals.

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer under this Article II may appeal such determination to the City Council for final decision with fifteen (15) days of notice of the Employee Relations Officer's determination or the termination of proceedings pursuant to Government Code Section 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 copy thereof served on the Employee Relations Officer. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any decision of the City Council on the 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 Recognition Petition under Section 3 of this Ordinance shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

Section 12. Employee Organization Activities -- Use of City Resources.

Access to City work locations and the use of City paid time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in Memoranda of Understanding and/or administrative procedures, shall be limited to lawful activities consistent with the provisions of this Ordinance that pertain directly to the employer-employee relationship and not to such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

Article IV -- Impasse Procedures

Section 13. Initiation of Impasse Procedures.

If the meet and confer process has reached impasse as defined in this Ordinance, 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 14. Impasse Procedures.

Impasse procedures are as follows:

a. If the parties agree to submit the dispute to mediation, the dispute shall be submitted to mediation under the State Mediation and Conciliation Service. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.

If the parties do not agree to submit the dispute to mediation, or having so agreed the impasse has not been resolved through the mediation process, the dispute shall be referred to the City Council. The City Council may take such action regarding the impasse as it in its discretion deems appropriate in the public interest. Any legislative action by the City Council on the impasse shall be final and binding.

Article V -- Miscellaneous Provisions

Section 15. Construction.

This Ordinance shall be administered and construed as follows:

a. Nothing in this Ordinance 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 applicable law.

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

c. Nothing in this Ordinance 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 law 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 16. Severability.

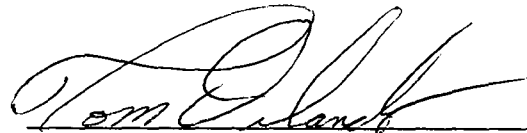
If any provision of this Ordinance, or the application of such provision to any persons or circumstance, shall be held invalid, the remainder of this Ordinance, or the application for such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

The foregoing ordinance was introduced, approved and adopted at the meeting of the City Council held on April 2, 1992, by the following vote:

AYES: Councilmembers: Anderson, Bennett, Mahanay,
Orlando and Winters

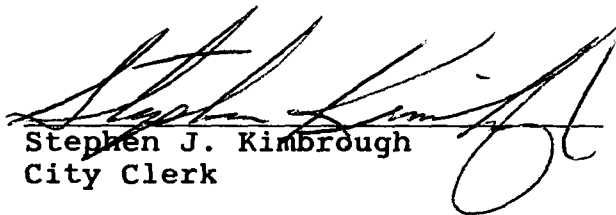
NAYS: Councilmembers: None

ABSENT: Councilmembers: None




Tom Orlando
Mayor

ATTEST:



Stephen J. Kimbrough
City Clerk

ATTEST AS TO FORM:



William Ross
City Attorney