

Affidavit of Posting

● City of Tucson ●

State of Arizona
County of Pima

} ss

I, the undersigned, the duly appointed City Clerk for the City of Tucson, Arizona, do hereby affirm the following Ordinance(s)/Resolution(s) was (were) posted online at <https://www.tucsonaz.gov/clerks/mayorcouncil>.

Ordinance(s) 12067
12069

Date adopted by Mayor and Council: January 23, 2024

Date Posted: January 24, 2024

To remain posted until: February 24, 2024

In witness whereof, I have hereunto set my hand and affixed the seal of the City of Tucson, Arizona, this 24th day of January, 2024.

Suzanne Mesich
City Clerk

By:


Deputy City Clerk

CITY CLERK FILE NOTE: Date prepared by Leg.Acts/Agenda Section: 01/24/2024
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ADOPTED BY THE
MAYOR AND COUNCIL

January 23, 2024

ORDINANCE NO. 12069

RELATING TO LABOR ORGANIZATIONS; ADDING A MEET AND CONSULT PROCESS; AMENDING PROVISIONS IN TITLE 14 OF THE TUCSON CITY CODE; PROVIDING AN EFFECTIVE DATE; AND DECLARING AN EMERGENCY.

WHEREAS, Chapter 14 of the Tucson City Code (the “**Code**”) was established for the purpose of improving relations between city employees and city management and establishes procedures for the designation of labor organizations to represent certain employee groups, and an orderly process to allow regular 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; and

WHEREAS, four labor organizations have been designated under the Code to represent groups of City employees: Tucson Police Officers Association; Tucson Firefighters Association, Local 479; Communications Workers of America, Local 7000; and American Federation of State, County & Municipal Employees, Local 905, the successor in interest to Local 449 (collectively, the “**Labor Organizations**”); and

WHEREAS, in 2021, the Labor Organizations filed a lawsuit against the City, case number C20213869 (the “**Lawsuit**”), seeking declaratory and injunctive relief; and

WHEREAS, the Lawsuit has been going on for over two years, consuming energy and resources of both the City and the Labor Organizations that could be directed more productively elsewhere for the benefit of both the public and City employees; and

WHEREAS, the Lawsuit has, contrary to the goal of Chapter 14 of the Code, strained the relationship between the Labor Organizations, City management, and the Mayor and Council; and

WHEREAS, the Labor Organizations have agreed to dismiss the Lawsuit, contingent on the Mayor and Council's adoption of this Ordinance amending and adding certain provisions in Chapter 14 of the Code; and

WHEREAS, the Mayor and Council finds that amending the Code as set forth in this Ordinance will benefit the relationship among the Labor Organizations, City employees, and City management by creating a new process for regular meetings between the City Manager and representatives of each of the Labor Organizations, a new process for notifying the Labor Organizations of any new generally applicable condition of employment that the City Manager is considering adopting or recommending to Mayor and Council, and an opportunity to meet with City management before adoption and implementation of that condition of employment;

NOW THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TUCSON, ARIZONA, AS FOLLOWS:

SECTION 1. This Ordinance will be effective on the date that the Labor Organizations cause the Lawsuit to be dismissed with prejudice.

SECTION 2. The Tucson Code, Chapter 14, §§ 14-1 through 14-19, are hereby amended by amending §§ 14-1 and 14-2; adding new §§ 14-2, 14-16 and 14-7; and renumbering the various sections; to read as follows:

Sec. 14-1. Purpose.

The purpose of this chapter is to improve and maintain relations between city employees and city management. This chapter establishes procedures for the designation of labor organizations to represent certain employee groups, and an orderly process to allow regular

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 relating to wages, hours, benefits and other conditions of employment to establish recommendations in the form of labor agreements to be submitted to the Mayor and Council and labor organization memberships for consideration and approval.

This chapter also establishes procedures for the recognition of employee associations that represent professional or supervisory employees and an orderly process to allow the employee associations to meet with the city manager and participate in the formulation of policies effecting annual salaries and benefits.

This chapter also establishes procedures for an orderly process to allow the labor organizations to (1) meet with the city manager or designee outside of the meet and confer process and consult regarding new or modified conditions of employment being considered by management or by mayor and council that are not addressed in approved labor agreements; and (2) meet with the city manager or designee on a regularly scheduled basis to discuss any employment policy matters of concern that any of them might have.

This chapter will be interpreted and implemented consistent with the city's authority under the Arizona Constitution and statutes, City Charter, ordinances, resolutions and civil service rules and regulations.

Sec. 14-2. Requirement of Good Faith.

When the city manager or designee and the representatives of the labor organizations meet and confer under Section 14-14, meet and discuss under Section 14-15, meet and consult under Section 14-16, and hold labor-management meetings under Section 14-17 of this chapter, they will do so in good faith.

Sec. 14-3. Definitions.

The words, terms and phrases as used in this chapter shall have the same meanings as defined in Sec. 10-3. In addition, the following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

1. Confidential employee means any individual who regularly assists or acts in a confidential capacity to an individual, manager, or supervisor who formulates, determines, and effectuates management, personnel, or labor relations policies, or who has access to confidential or discretionary information regarding the formulation of city policy or procedures; or whose functional responsibilities or knowledge concerning employee relations makes the employee's membership in an labor organization incompatible with that employee's duties.

2. Day means calendar day except as otherwise stated.
3. Employee association means the group that represents or seeks to represent professional or supervisory City employees in the meet and discuss process.
4. Employee group may be members of an employee association or labor organization.
5. Excluded employee means employees of the city manager's office except employees of the manager's program offices; employees of the offices of mayor and council; employees of the human resources department; police chief, deputy police chief and assistant police chief; fire chief and assistant fire chief; all department directors and deputy directors; program directors; and nonpermanent employees
6. Fiscal year means the budget term adopted by the city, July 1 through June 30.
7. Initial probationary period means an employee's initial probationary period in conformance with the civil service commission rules which must be completed before the employee becomes a permanent city employee. For purposes of this Chapter, an initial probationary employee may be eligible for representation if designated in the labor agreement and may sign a petition or vote in a representation election if represented under a current labor agreement.
8. Labor agreement means a statement of agreed upon goals and intentions to be implemented through the city's standard legislative and administrative procedures . A labor agreement cannot contradict, supersede, conflict with or modify the Tucson Charter, the Tucson Code, and/or the civil service commission rules.
9. Labor organization means an organization recognized by the mayor and council as authorized to represent employees in permanent positions in specified classifications in the meet and confer process as described in this chapter for the purpose of meeting and conferring relating to wages, hours, benefits and other conditions of employment.
10. Management employee means any city employee who is engaged primarily in executive and management functions and/or is charged with the responsibility of developing, administering or effectuating management policies.
11. Meet and confer means a process requiring the city manager or designee, together with other management representatives to meet with the representatives of a labor organization to discuss and develop mutual recommendations on issues affecting the city and members of the employee group represented by the labor organization, with such mutual recommendations being reduced to a written labor agreement signed by the parties subject to ratification by the members of the employee group and adoption by the mayor and council. The meet and confer process includes discussions of work issues including wages (for purposes of Tucson City Charter Chapter VII, Section 2), benefits, hours and other terms

and conditions of employment in connection with the negotiation of new or renewed labor agreements.

12. Meet and consult means the process requiring good faith consultation between the city manager or the manager's designee(s) and the representatives of the labor organizations to discuss new or modified conditions of employment that are proposed by the city manager outside of the meet and confer process and that are not already addressed in approved labor agreements. The meet and consult process is separate and distinct from the meet and confer and/or the meet and discuss processes defined in this chapter. The meet and consult process applies only as provided in Section 14-16 below.

13. Meet and discuss means the process for providing participation by professional and/or supervisory employees in the formulation of policies affecting their annual salaries and benefits, and requiring representatives of the city manager and representatives of the employee association to personally meet at reasonable times in advance of the budget making process and to discuss the proposals for consideration before any recommendations are submitted to the city council by the city manager.

14. Professional employee means city employees in classifications identified as professional in accordance with the Fair Labor Standards Act.

15. Supervisory employee means any individual, except lead persons, police sergeants and fire captains, having authority in the interest of the city either 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 exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

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Sec. 14-14. Meet and confer.

Sec. 14-14(a). The meet and confer process is used to develop mutual recommendations in the form of a labor agreement for submittal to the mayor and council. The meet and confer process may include discussions of work issues including wages (for purposes of Tucson City Charter Chapter VII, Section 2), benefits, hours and other terms and conditions of employment. As the processes outlined in this chapter are for a public purpose, the city may agree to provide paid release time for employees to conduct activity for a recognized labor organization.

Sec. 14-14(b). At least one hundred twenty (120) days prior to the expiration date of an existing labor agreement, the city manager and/or designated representatives and the

¹ Note: Tucson Code Sections 14-3 through 14-12 will be renumbered as Sections 14-4 through 14-13, to conform with the other amendments as shown in this Ordinance.

designated representatives of the labor organization shall commence the meet and confer process for the purpose of reaching a new labor agreement.

Sec. 14-14(c). If a labor organization questions the financial information provided by the city manager's representative, and the question cannot be resolved in the meet and confer process, the question shall be referred to the Independent Audit and Performance Commission (IAPC) for resolution.

Sec. 14-14(d). If the city manager and the labor organization reach a total impasse that prevents reaching a labor agreement, either party may request that the outstanding issues be mediated. The mediation will be conducted by a mediator from the Federal Mediation and Conciliation Service (FMCS). If the mediation is unsuccessful, the mediator, in the mediator's discretion, may submit a recommendation to the mayor and council on the resolution of the impasse. If either the city manager or the labor organization declines to agree to mediation, there shall be no mediation and that shall be reported to the mayor and council.

Sec. 14-14(e). When the city manager and the labor organization reach agreement on the recommended terms and conditions of employment for those persons in the represented classifications, that agreement shall be set forth in a written labor agreement to be submitted to the mayor and council.

Sec. 14-14(f). Final action by the mayor and council shall constitute approval of the labor agreement. Within ninety (90) days of mayor and council approval of the labor agreement, city staff shall amend city administrative directives, and departmental procedures to conform to the labor agreement. Revisions of Tucson City Code shall be recommended for adoption by the mayor and council as necessary in order to implement the terms of a labor agreement. Nothing herein shall limit the legal authority of the mayor and council to unilaterally legislate the terms and conditions of employment or in any way limit the legislative or annual budget discretion of the mayor and council. In the event there is a conflict between the labor agreement and the civil service commission rules and regulations, the civil service commission rules and regulations shall prevail.

Sec. 14-15. Meet and discuss.

Sec. 14-15(a). The scope of meeting and discussing shall be limited to salaries and benefits for professional and supervisory employees.

Sec. 14-15(b). An employee association may submit proposals to the city manager no earlier than January 1 of any calendar year and not later than March 1 of the same calendar year. Upon receipt of the proposals the city manager will schedule meetings between the association's representatives and the city manager's representatives. The first meeting shall be scheduled on or before March 15 and after a reasonable period of meeting and discussing the city manager shall advise the association's representatives of the manager's budget recommendations related to salary and benefits for professional and supervisory employees.

Sec. 14-15(c). If an employee association questions the financial information provided by the city manager's representative, and the question cannot be resolved in the meet and discuss process, the question shall be referred to the Independent Audit and Performance Commission (IAPC) for resolution.

Sec. 14-15(d). The employee association shall inform the city manager of its agreement or disagreement with the manager's recommendations and the city manager shall forward the employee association's comments to the mayor and council.

Sec. 14-15(e). A representative of the employee association may present the view of the association at a regular meeting of the mayor and council.

Sec. 14-16. Meet and consult.

Sec. 14-16(a). Purpose. The meet and consult process is used to provide for good faith consultation between the city manager or the manager's designee(s) and the representatives of the labor organizations to discuss new or modified conditions of employment that are proposed by the city manager outside of the meet and confer process and that are not already addressed in approved labor agreements. The meet and consult process is separate and distinct from the meet and confer and/or the meet and discuss processes defined in this chapter. The meet and consult process applies only as provided in this section.

Sec. 14-16(b). Applicability. The meet and consult process applies when all of the following conditions and circumstances are met:

- 1) The city manager intends to implement a new or modified condition of employment for city employees through the exercise of the manager's administrative authority or intends to recommend adoption of a new or modified condition of employment to the mayor and council; and
- 2) The proposed new or modified condition of employment applies to all city employees across the various city departments and divisions; and
- 3) The failure of an employee to satisfy the new or modified condition of employment subjects that employee to discipline up to and including termination; and
- 4) The new or modified condition of employment is not already addressed in the city's approved labor agreements.

Sec. 14-16(c). Process. Except as provided in subsection (d) below, the meet and consult process will be as follows:

- 1) The city manager or the manager's designee will provide written notice to the labor organizations of the proposed new or modified condition of employment not less than twenty (20) days prior to the date of administrative implementation; or in the case of a condition of

employment that the manager will recommend to the mayor and council for approval, not less than twenty (20) days prior to the date for mayor and council consideration of that recommendation. The written notice will provide a description of the proposed new or modified condition of employment, and the sanctions for an employee's failure to comply.

2) The city manager or the manager's designee(s) will meet in good faith with representatives of the labor organizations not less than ten (10) days prior to the date of implementation or the date of mayor and council consideration (whichever applies) to provide the labor organizations the opportunity to discuss, comment and consult with the manager or designee(s) relating to the proposed new or modified condition of employment.

3) In the case of a proposed new or modified condition of employment that the city manager recommends to the mayor and council for approval and that is subject to the meet and consult process provided under this section, the labor organizations will be provided an opportunity to submit written comments on the proposed new or modified condition of employment to the mayor and council and to address the mayor and council during the public meeting at which the mayor and council consider the adoption and approval of the proposed new or modified condition of employment.

Sec. 14-16(d). Emergency Measures. If the city manager determines in writing that the new or modified condition of employment must be implemented immediately as an emergency measure in order to protect, promote or preserve the health and safety of city employees and/or the community, the procedures described in subsection (c) above do not apply. However, in the event that the city manager proceeds with the implementation of a new or modified condition of employment as an emergency measure under this subsection (d), the city manager will: Provide written notice of the new or modified condition of employment to the labor organizations, using the email addresses provided by the labor organizations for such emergency notifications, within seventy-two (72) hours of the time of the emergency implementation; and

1) Meet with representatives of the labor organizations within five (5) days of the date of emergency implementation to provide the labor organizations the opportunity to discuss, comment and consult with the manager or designee(s) relating to the new or modified condition of employment.

2) Any new or modified condition of employment implemented as an emergency measure as provided in this section is temporary and shall expire 45 days after implementation if the meet and consult meeting has not yet occurred as of that date, through no fault of the labor organizations.

All discipline contemplated by the new or modified condition of employment shall be stayed until after the meet and consult meeting has been held.

Sec. 14-17. Monthly Management-Labor Meetings.

The city manager will meet, separately, with representatives of each of the labor organizations every other month to discuss any employment policy matters of concern to them, including but not limited to work issues such as wages, benefits, hours, or terms or conditions of employment. The city manager will ensure that the meetings are scheduled at least 6 months in advance and that representatives of each of the labor organizations are notified of their meeting times and places, or the city manager and a labor organization can agree on a standing meeting at a particular day and time each month.

Sec. 14-18. City management rights.

Sec. 14-18(a). The rights of the city, through its management employees, shall include, but shall not be limited to the following:

1. to determine the purpose of each of its departments;
2. to exercise control and discretion over the organization and efficiency of operations of the city;
3. to set standards for services to be provided to the public;
4. to direct the employees of the city, including the right to assign work and overtime;
5. to hire, compensate, examine, classify, promote, train, transfer, assign and schedule city employees;
6. to suspend, demote, discharge, or take other disciplinary action against employees for cause;
7. to increase, reduce change, modify or alter the composition and size of the city work force, including the right to relieve employees from duties because of lack of work, funds or a material change in the duties or organization of a department;
8. to determine the location, methods means and personnel by which operations are to be conducted, including the right to determine whether goods or services are to be made or purchased;
9. to establish, modify, combine or abolish job classifications;
10. to change or eliminate existing methods, equipment or facilities.

Sec. 14-18(b). The city's management rights are not subjugated or diminished in any way by any expressed or implied duty or obligation to meet and confer. Retained management rights are not subject to the grievance procedure contained in any labor agreement, nor are they subject to any other appeal or complaint process.

Sec. 14-19. City employee rights.

Sec. 14-19(a). Eligible city employees shall have the right to form, join and participate in any labor organization or employee association of their own choosing, or to refrain from forming, joining, or participating in same. City employees shall not be eligible for any paid release time for any elective or appointive office in any labor organization or employee association until the probationary period following their initial employment in a permanent position in the classified service has been successfully completed.

Sec. 14-19(b). This chapter does not prevent any city employee from communicating with city management and the mayor and council, in person, through a group, association or unrecognized organization or through counsel, with respect to the terms and conditions of employment.

Sec. 14-20. Prohibited activity.

Sec. 14-20(a). Employees, labor organizations, and employee associations and their representatives shall not:

1. Discriminate against an employee with regard to labor organization membership because of race, color, religion, creed, age, disability, sex, national origin, sexual orientation, gender identity, familial status, or marital status;
2. Discriminate against an employee because he/she has chosen not to form, join or assist a labor organization or employee association;
3. Use city time, property or equipment for labor organization or employee association business, except as specified in and consistent with this chapter; use of city email is governed by the applicable administrative directive;
4. Interfere with, restrain or coerce any employee, elected or appointed city official in the exercise of any right provided by the provisions of this chapter;
5. Interfere with, restrain, threaten or coerce any elected or appointed official, representative of the employer or city employee, for the purpose of gaining a concession;
6. Refuse to meet and confer or meet and discuss or meet and consult in good faith;
7. Refuse or fail to comply with any provision of this chapter;
8. Interfere with or coerce the city in the selection of its agents for resolving grievances.

Sec. 14-20(b). City management and its representatives shall not:

1. Discriminate against an employee with regard to terms and conditions of employment because of the employee's membership in a labor organization or employee association;

2. Interfere with, restrain or coerce any employee in the exercise of any right provided under this chapter;
3. Dominate or interfere in the formation, existence or administration of any labor organization or employee association;
4. Discriminate in regard to hiring, promotion or any term or condition of employment in order to encourage or discourage membership in a labor organization or employee association;
5. 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 or employee association;
6. Refuse to meet and confer or meet and discuss or meet and consult in good faith;
7. Refuse or fail to comply with any provisions of this chapter;
8. Coerce the labor organization in the selection of its agent for meeting and conferring or adjustment of grievances.

Sec. 14-21. No strike/lockout provisions.

Sec. 14-21(a). No employee, labor organization or employee association shall cause, instigate, encourage, support, threaten or participate, directly or indirectly, in a strike, slowdown, sickout, or work disruption of any type. The city shall not cause, instigate or engage in any employee lockout.

Sec. 14-21(b). In the case of an action by employees where the employer alleges a strike or other work disruption has occurred, the mayor and council may meet in emergency session and determine whether a strike or other work disruption has indeed occurred.

Sec. 14-21(c). Any labor organization or employee association whose employees participate in, threaten, cause, instigate, encourage or support a city employee strike, walkout, slowdown or other work disruption shall be automatically decertified as the exclusive representative. In such a case, the labor agreement shall be null and void in whole or in part at the discretion of the city, the exclusive representative for that employee group may not collect dues, meet and confer, meet and discuss or represent employees in any fashion, and shall be barred from serving as the exclusive representative of any unit of Tucson employees for a period of not less than three (3) years.

Sec. 14-21(d). The provisions and sanctions in this section do not prohibit the city from also taking disciplinary action, up to and including termination of employment, against some or all of the employees who are in violation of the provisions of this section, nor is the city prohibited from seeking other legal remedies against the employee(s), labor organization(s) or employee association(s).

Sec. 14-22. Labor organization business.


All labor organization business shall be conducted only during non-working time in non-working areas and shall not interfere with the work process, except as otherwise specified in an applicable labor agreement.

PASSED, ADOPTED, AND APPROVED by the Mayor and Council of the City of Tucson, Arizona, January 23, 2024.




MAYOR

ATTEST:



CITY CLERK

APPROVED AS TO FORM:



CITY ATTORNEY

REVIEWED BY:



CITY MANAGER

MR/RN/dg

1/16/24