

RESOLUTION NO. 9754

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, ARIZONA ENDORSING MANAGEMENT POLICY NO. 358 AS REVISED ESTABLISHING A MEET AND CONFER PROCESS FOR SWORN PUBLIC SAFETY EMPLOYEE GROUPS.

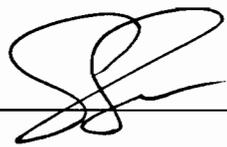
BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MESA, MARICOPA COUNTY, AS FOLLOWS:

Section 1: The citizens of Mesa have a fundamental interest in maintaining a strong working relationship between the City and the sworn public safety employee groups.

Section 2: It is the intent of this resolution to maintain the strong working relationship between the City and sworn public safety employee groups by providing a uniform Meet and Confer process. Management Policy 358 as revised sets forth that process and is hereby endorsed by the Mesa City Council. The City Manager will consult with the City Council and notify participating sworn public safety employee groups in writing prior to any proposed modification of Policy 358.

PASSED AND ADOPTED by the City Council of the City of Mesa, Maricopa County, Arizona this 23rd day of August, 2010.

APPROVED:

Mayor 

ATTEST:

City Clerk 



	MANAGEMENT POLICY	POLICY NUMBER: 358
	SUBJECT: MEET AND CONFER	EFFECTIVE DATE: 11/16/09 Revised: 08/23/10

I. PURPOSE

The purpose of this document is to define and describe an orderly process by which sworn Police and sworn Fire employees of the City of Mesa and their designated representatives can meet and confer with the City Manager relating to their wages, hours, and working conditions.

II. DEFINITIONS

When used in this document the following words, terms and phrases, shall have the meanings defined below. All other words shall have the meaning ascribed to them by Personnel Rule, City Charter, or other sections of the City Code as appropriate.

- A. **Budget Year:** Budget year means the period for which the Council appropriates City funds during its budget process.
- B. **Certification:** Certification is the designation by the City Manager of an Employee Organization as the designated representative of an Employee Group for the purpose of engaging in the Meet and Confer process.
- C. **Employee Organization:** An organization in which employees within an Employee Group participate and which exists, in whole or in part, for the purpose of engaging in the Meet and Confer process. An Employee Organization will have by-laws that require internal elections of officers at least every 3 years.
- D. **Decertification:** Decertification is the removal of an Employee Organization as the designated representative of an Employee Group, pursuant to the processes outlined in section VI and VIII.
- E. **Eligible Employee:** Eligible Employees include sworn Police employees (in classifications up to and including the rank of Sergeant) and sworn Fire employees (in classifications up to and including the rank of Captain), who have graduated from the police or fire academy. Contract, temporary, and seasonal employees are excluded; as are probationary employees who have not graduated from the Police or Fire Academy. An individual

employee's eligibility to participate in the process described in this document will be determined by the City Manager.

- F. **Meet and Confer Process:** The process defined in this document by which certain Eligible Employees of the City and their designated representatives meet and confer with the City Manager relating to their wages, hours and working conditions.
- G. **Memorandum of Understanding (MOU):** A document resulting from the Meet and Confer process, which is in effect when approved by Council.
- H. **Probationary Employee:** Probationary employee shall mean initial probationary employees who serve at the will and pleasure of the City and may be released at any time with or without cause. Initial probationary employees are expressly excluded from participating in the Meet and Confer process and from voting until such employees fully graduate from the Police or Fire Training Academy. The terms of the MOU will apply to all eligible employees. Initial probationary employees are expressly precluded from any employment or other due process protections that may otherwise violate their At-Will status.
- I. **Sworn Employee:** A sworn employee is a police or fire employee who is a member of the Arizona Public Safety Personnel Retirement System.

III. **EMPLOYEE GROUPS**

The Meet and Confer process shall be limited to a total of two Employee Groups. They shall include:

- A. Sworn Police Officers (who have graduated from the Police Academy) in classifications up to and including the rank of Sergeant.
- B. Sworn Firefighters (who have graduated from the Fire Academy) in classifications up to and including the rank of Captain.

IV. **PETITION PROCESS**

- A. An Employee Organization seeking recognition as the Certified Employee Organization of an Employee Group for purposes of Meet and Confer, shall submit a petition or signature cards to the City Clerk requesting such certification. There shall be no solicitation of employees to sign such

petitions during the employees' working time. Petitions shall be submitted no earlier than July 15th, and no later than September 15th in any budget year. Each petition shall contain or be accompanied by:

1. The name and address of the Employee Organization, a copy of its charter, constitution and by-laws, and the names, titles, addresses and telephone numbers of all of its current duly elected officers.
 2. The name, title, address and telephone number of at least one duly elected officer of the Employee Organization who has full authority to meet on behalf of the Employee Organization, make commitments on its behalf, and if appropriate reach agreement on items to be included in a MOU with the City.
 3. A request for a secret ballot election to determine whether Eligible Employees in the Employee Group desire to be represented for purposes of Meet and Confer by the Employee Organization.
 4. Signatures of at least thirty percent (30%) of the Eligible Employees in the Employee Group who support the petition for an election.
 5. The printed name, signature, date of signature, and employee classification and number of each person supporting the petition. Signatures may be submitted on a single petition or on separate signature cards. Petition or card signatures that are not post-marked or stamped received by the City Clerk's Office within the designated petition period, or are dated more than sixty (60) calendar days prior to submission shall not be counted. If an employee signs more than one petition, the earliest dated signature will be counted and later dated signatures will not be counted. If a person signs more than one petition on the same date, neither signature will be counted. Signatures of individuals who are not Eligible Employees will not be counted.
- B. The City Clerk and the Human Resources Department will verify that the signatures submitted by the Employee Organization are those of Eligible Employees currently in the Employee Group as of the date the petition is submitted. If the City Manager determines that at least thirty percent (30%) of the Eligible Employees in an Employee Group support the petition for an election, a secret ballot election will be held in accordance with this document.

- C. Upon verification of a showing of interest, the City will create an employee list of Eligible Employees. The list may be reviewed by, but shall not be copied by or distributed to, the Employee Organizations or anyone else. A member of the City Manager's Office, the City Clerk's Office, or Human Resources, will be present when the Employee Organizations review the list of Eligible Employees.

V. ELECTION PROCEDURES

The following will be adhered to during the election process:

- A. Pursuant to a verified petition process as described above, the City Manager will authorize the City Clerk to conduct an election. The Employee Organization(s) will provide a publicity sheet to the City Clerk to mail directly to the list of Eligible Employees. The length and format of the sheet will be authorized by the City Manager.
- B. The City Manager will oversee the conduct of elections. The procedures for the elections and matters related to the elections will be specified by the City Manager, including campaign protocols. The City Manager, in his sole discretion, will determine the remedy for any misconduct during the election process, except the City Manager may not invalidate an election without Council approval. If the City Manager determines that the misconduct has potentially impaired the validity of the election, the City Manager shall present the facts relating to the misconduct to the City Council, which shall determine the appropriate remedy for the election. The City Council retains full authority to take any action it deems necessary with respect to the election, including but not limited to invalidating the election results and precluding an employee organization from being placed on future ballot(s). The City Manager retains full authority to address all other complaints, grievances and disciplinary matters pertaining to potential violations of this policy or process.
- C. Early voting to be conducted by the City Clerk's Office at Mesa City Plaza seven (7) days prior to the election and concurrently for two (2) days at an East Mesa location.
- D. The City Manager will schedule the election at an appropriate time and place such that Eligible Employees have an opportunity to vote. The City Manager through the City Clerk shall post a notice prior to the election informing Eligible Employees of the date and time of the election and election and campaign procedures and protocols.

- E. Ballots will show the names of each Employee Organization submitting a verified petition for an election to represent the Employee Group for purposes of Meet and Confer. Eligible Employees who participate in the election may mark their ballot to choose an Employee Organization or choose "none of the above." Ballots that indicate more than one choice will not be counted. Ballots on which the voter's intent is not clear will not be counted.
- F. Employees may cast their ballots at any time the polls are open, but not during their working time.
- G. No more than one certification election may be held within any Employee Group during any 12-month period, unless otherwise approved by the City Manager. Notwithstanding the above, representation elections may be held at any time upon mutual agreement of the City Manager and the Employee Organization.
- H. An Employee Organization will be certified by the City Manager if either: (1) a majority of Eligible Employees in the Employee Group cast ballots selecting the Employee Organization as their representative for Meet and Confer, or (2) at least 60% of Eligible Employees in the Employee Group cast valid ballots in the election and a majority of the ballots cast select the Employee Organization.
- I. In the event that the difference in number of votes between the Employee Organizations is ten ballots or less, an Employee Organization may make a written request to the City Clerk for a recount. The written request for a recount must be received by the City Clerk no later than one (1) business day after the City Manager notifies the Employee Organizations of the election results. If a recount is requested, the City Clerk shall recount the ballots and provide the results to the City Manager. Failure to request a recount within one (1) business day will result in the prevailing Employee Organization (as defined in V(H) above), being the certified Employee Organization for purposes of engaging in the Meet and Confer process.

VI. DECERTIFICATION PROCESS

- A. Once an Employee Organization becomes the Certified Employee Organization, any Eligible Employee in the Employee Group may request an election to decertify the Employee Organization by submitting a petition supported by the signatures of not less than thirty percent (30%) of Eligible Employees in the Employee Group. Decertification elections may ONLY be held in odd numbered years starting with year 2013. Petitions

for Decertification must be filed no earlier than July 1 and no later than July 31.

- B. If the City Manager, through the City Clerk, verifies the petition, an election shall be conducted. The Certified Employee Organization that is being challenged will be placed on the ballot without requiring another petition. All other Employee Organizations wishing to appear on the ballot must file a petition as described in Section IV (A) above. Petitions for other Employee Organizations must be filed no later than 30 days after the City Manager calls the election. With the exceptions of the procedures set forth in this Section, the procedures for the petitions and elections set forth in Section IV above will be followed for the decertification election.
- C. In addition to A above, Decertification can be declared at any time by the City Council for violations of this document.

VII. RIGHTS OF MANAGEMENT

- A. The following are illustrative of rights of management and are not to be construed as being all-inclusive.

The City will maintain the right of determination as to the purpose of each of its departments, agencies, boards and commissions, and set standards of service to be offered to the public and shall exercise complete control and discretion over its organization and operations. For example,

1. The City will direct its employees, take disciplinary action, relieve its employees from duty because of lack of work or for other legitimate reasons, determine whether goods and services shall be produced or provided by City employees, purchased or contracted for, and determine the methods, means, and personnel by which the City's operations are to be conducted.
2. The City will take all necessary actions to maintain uninterrupted service to the community.
3. The City Manager may consult with the City's employees, or their authorized representatives, about the direct consequences that decisions on any of the foregoing matters may have on wages, hours, and working conditions.
4. The City will determine the overall goals, objectives and policies affecting City programs.

5. The City will determine the size of the City's workforce, its organization, functions, duties, amount of supervision and table of organization and will direct, appoint, employ and assign officers, agents and employees of the City and determine the standards therefore.
6. The City will determine the location of City facilities, including the establishment or relocation of buildings, divisions or subdivisions thereof, and the relocation, reorganization, or closing of offices, departments, divisions or subdivisions, buildings or other facilities.
7. The City will determine the financial policies, including all accounting procedures and all matters pertaining to finance.
8. The City will direct, supervise, control and evaluate the departments, units, programs, functions and services of the City.
9. The City will classify the various positions of the City, develop and determine levels of staffing and training, prescribe duties and standards of productivity therefore, and adopt reasonable rules and regulations for acceptable conduct.
10. The City will authorize, assign and apportion overtime, including authorization for any full, part time or contract labor.

VIII. RIGHTS OF EMPLOYEES AND EMPLOYEE ORGANIZATIONS

The following are the designated rights of both employees and the employee organizations who represent them:

- 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 with respect to the exercise of these rights.
- B. Violations of Employees' rights described in subsection (A) above by City Employees will result in disciplinary action up to and including discharge. Violations of Employees' rights described in subsection (A) above by officials, officers or agents of an Employee Organization may also result in Decertification of the Employee Organization by the City Council.

- C. There can be only one Certified Employee Organization for each Employee Group for purposes of the Meet and Confer process. Nothing in this document will prohibit any employee from exercising any rights the employee may have to meet with the City Manager or other City official consistent with personnel rules and regulations or any City Manager policies or directive. The City Manager will maintain an "open door" policy regarding communication with employees and will use a variety of resources to actively and regularly communicate with employees. Employees are encouraged to communicate directly with the City Manager and Human Resources throughout the year. In addition to the procedures outlined in this document, the City Manager or designee may agree to meet with any employee or Employee Group at any time on any issue.
- D. Meeting and conferring will be conducted through the defined process with the City Manager. Violation of this process may result in decertification by the City Manager.
- E. The City will facilitate the collection of membership dues by a Certified Employee Organization by setting up automatic deductions from the pay of employees who submit a completed authorization form prepared by the City.

IX. SCOPE OF MEET AND CONFER

The following describes the intended scope of the Meet and Confer process to include permissible and impermissible topics of discussion.

- A. **Permissible Subjects:** The Meet and Confer process may encompass certain wages, hours, and working conditions which may 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; 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 reviews; distribution of information; meet and confer procedures; uniform procedures for employee grievances and discipline; and items mutually agreed upon by an Employee Organization and the City Manager.
- B. **Impermissible Subjects:** The following are examples impermissible items that will not be included in the Meet and Confer process: health benefits including but not limited to medical, dental, vision, life insurance, COBRA, Short Term Disability (STD), Long Term Disability (LTD),

Industrial Injury Program, Workers Compensation, Health Claims Administration; compensation studies; individual cases of hiring, promoting, performance evaluation, or transfer; individual cases of disciplinary or non-disciplinary corrective action including discharging, demoting, suspending, reprimanding, corrective action plans, written counseling (or equivalent); determination of the size or composition of the workforce; determining the qualifications and fitness for employment and conditions for continued employment or dismissal.

X. MEET AND CONFER PROCESS

The following is the authorized process for meeting and conferring:

- A. A Certified Employee Organization may submit proposals regarding those items within the scope of the Meet and Confer process that affect the Employee Group it represents to the City Manager. All proposals submitted to the City Manager by the Employee Organization must be in writing and shall specifically delineate the issues that will be discussed in the Meet and Confer process. Proposals shall be submitted no earlier than November 1, and no later than November 30 prior to each budget year.
- B. Upon receiving a proposal from a Certified Employee Organization and response from the City Manager, representatives of the employee organization and the City Manager or his designated representative(s) shall begin "meeting and conferring" at mutually agreed upon times (likely January through March) and places within the City, for the purpose of entering into a written MOU relating to the proposals. This process is intended to work toward understanding of issues and identifying the interests that underlie each side's issues and positions. Meetings shall continue until an agreement, for the purposes of Meet and Confer, is reached or impasse is declared by either party. Meeting ground rules shall be established, mutually agreed upon, and adhered to while meeting and conferring.
- C. Only those issues identified in the Certified Employee Organization's initial proposals and those raised by the City Manager and/or in the City Manager's response shall be discussed during the Meet and Confer process, unless otherwise mutually agreed.
- D. The City Manager and the representative of the Employee Organization shall reduce all areas of agreement, for the purposes of Meet and Confer, to writing. If agreement has not been reached on a subject, by mutual agreement of both parties, a neutral facilitator may be requested to assist

the parties to reach an agreement. The neutral facilitator shall be from the Federal Mediation and Conciliation Service or a non-employee of the City that is mutually agreed upon by the City Manager and the representative of the Certified Employee Organization. Any costs for the neutral facilitator shall be equally shared between the City and the Employee Organization.

- E. On or before March 15, the City Manager will prepare a document outlining the subjects in dispute. All written areas of agreement, for purposes of Meet and Confer, and the outline of subjects in dispute shall be submitted to the Council for their consideration.
- F. The Mayor and Council may accept, reject or modify any of the areas of agreement submitted by the City Manager, and may take any action appropriate with respect to the outline of subjects in dispute. The MOU will not become effective until approved by the Council.

XI. RESOLUTION OF CLAIMS OF BREACH OF A MEMORANDUM OF UNDERSTANDING (MOU):

- A. If there is a claim of breach of a MOU and the Certified Employee Organization's existing MOU does not provide a process for resolution of the breach, the breach process described in this document shall apply. If the matter is submitted for resolution to the City Council either through the breach process established in this document or a breach process established in a MOU, the decision of the City Council shall be final.
- B. The following procedure will be used to resolve claims by an Eligible Employee, a Certified Employee Organization, or the City that the MOU has been breached:
 - 1. Within thirty (30) calendar days of the alleged breach, the party alleging the breach shall give written notice to the party who has allegedly breached the MOU. The notice shall specify the specific provision(s) breached and the facts and evidence demonstrating or supporting the breach.
 - 2. A written response to the alleged breach shall be submitted to the party alleging the breach within ten (10) calendar days.
 - 3. Within fourteen (14) calendar days of the written response, the parties shall meet and attempt to resolve the matter.

4. A written agreement which is intended to resolve the matter shall be signed by the parties.
5. If the parties are unable to resolve the matter, all written materials shall be submitted to the City Council for resolution. The decision of the City Council is final.
6. The time frames set forth herein may be extended, if agreed to, by the parties.

XII. REOPENING A MEMORANDUM OF UNDERSTANDING (MOU)

- A. **Fiscal Emergency** - During a MOU, if the City determines that revenues are less than expected or expenditures are greater than expected, and as such, the City is considering changes to City expenditures in response to projected shortfalls the City Manager, in consultation with City Council, may reopen the MOU.
- B. The City Manager will notify the Certified Employee Organizations' representatives of the reopening of the MOU. Such reopening shall include at a minimum, the reasons for the reopening and the anticipated amount of budget shortfall.
- C. The City Manager and the Certified Employee Organizations will Meet and Confer for a period of up to (30) calendar days to discuss the reasons for the reopening and attempt to reach accord on revisions to the MOU. The initial thirty (30) day period may be extended another thirty (30) days, if feasible and agreed to by the parties.
- D. The City Manager's proposed revisions to the MOU, together with a written response from the Certified Employee Organization, if applicable, shall be submitted to the City Council, which will make final determination as to the implementation of the recommended revisions.

XIII. CONFLICTS

In the event there is a conflict between the City's personnel rules and regulations and a MOU, the MOU will apply to the conflicting issue.

XIV. DELEGATION

The City Manager may delegate any duties and responsibilities under the Meet and Confer process and may appoint personnel to assist in the performance of those duties and responsibilities.

XV. PROHIBITIONS

Strikes, work stoppages, slow downs, and any other concerted efforts that interfere with City of Mesa services, are contrary to the public good and are strictly prohibited. Participation in such activities may be grounds for disciplinary actions up to and including discharge.

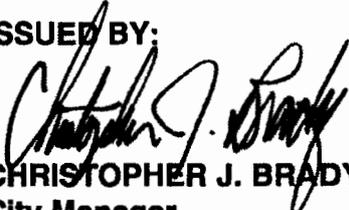
XVI. SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this enabling document or any part of the Code adopted herein by reference, is for any reason held to be invalid or unconstitutional by the decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

XVII. PETITION AND ELECTION EXCEPTIONS

For the petition and election schedule for Fiscal Year 2010/11, the parties agree that they will attempt to complete the election process, and the Meet and Confer process prior to Council consideration and action on the 2010/11 operating budget. All timeframes for the completion of the Meet and Confer process for 2010/11 (petitions, the election and MOU), will be identified by the City Manager. The City Manager, with agreement from all impacted Employee Organizations, may change the petition and/or election processes for 2010.

ISSUED BY:


CHRISTOPHER J. BRADY
City Manager