

ORDINANCE NO. 1704-919

AN ORDINANCE OF THE COUNCIL OF THE CITY OF AVONDALE, ARIZONA, AMENDING CHAPTER 2 OF THE AVONDALE CITY CODE BY AMENDING SECTION 2-54 PERTAINING TO DEFINITIONS; AND AMENDING SECTION 2-55 PERTAINING TO EMPLOYEE GROUPS; AND AMENDING SECTION 2-65 PERTAINING TO MEMORANDUM OF UNDERSTANDING; AND PROVIDING FOR SEVERABILITY AND FOR AN EFFECTIVE DATE.

WHEREAS, the City has enacted Section 2-50 of the City Code providing that the citizens of Avondale have a fundamental interest in the development of harmonious and cooperative relations between city management, elected officials, administrators and the employees of the City of Avondale; and

WHEREAS, the City has enacted Section 2-60 of the City Code providing in part that:

1. The City's and City Manager's rights are not subjugated or diminished in any way by an express or implied duty or obligation to "meet and discuss" or "meet and confer".
2. The City has, and will continue to retain whether exercised or not, the unilateral and exclusive right to operate, administer and manage its municipal services and work force performing those services. The authority of the City shall not be modified or limited by inference or implication; and

WHEREAS, nothing in this ordinance shall be interpreted to preclude the City from enacting legislation in the future designating employee groups; and

WHEREAS, the designation of an employee group is the City acting through its City Council in a legislative function; and

WHEREAS, that the City, its City Council and City Manager are committed to having harmonious and cooperative relationships with its employees; and

WHEREAS, that the City, its City Council and City Manager value the employees of the City as we work together to provide the best services to our community; and

WHEREAS, that the City, its City Council and City Manager will continue to abide by and implement the Council adopted open door policy and to seek employee input on matters of interest to employees.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF AVONDALE as follows:

SECTION 1. The recitals above are hereby incorporated as if fully set forth herein.

SECTION 2. Chapter 2 of the Avondale City Code is amended by amending Section 2-54 pertaining to Definitions and which shall read as follows:

2-54 - Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning. All other words shall have the meaning ascribed to them by Chapter 1, Article 1-5 of this Code.

"Budget year" means the twelve-month period of time, beginning July 1 and ending June 30, for which the city council appropriates city funds during its budget process.

"Certification" means the designation by the city manager of an employee organization as the exclusive representative of an employee group for the purpose of meeting with the city manager as specified in this division.

"Confidential employee" means any employee, as determined by the city manager, who has access to financial or other information regarding relations between the city and its recognized employee groups including, but not limited to, information relating to city employment relations issues or who is otherwise in a confidential relationship with city management. The term "confidential employee" also includes any employee who has the opportunity to, or who actually does, influence or advise the city with regard to issues subject to this division.

"Decertification" means the removal of an employee organization designation as the exclusive representative of an employee group.

"Day" means calendar day, unless otherwise stated.

"Employee group" means a defined set of employees, ~~as set forth in section 2-43 below,~~ who are regularly assigned to one (1) department, or group of related functions, of the city and are specifically designated by this division as an employee group.

"Employee organization" means an organization in which city employees within an employee group participate and which exists for the purpose, in whole or in part, of meeting with the city manager as specified in this division.

"Fiscal crisis" means a loss of revenues or change in legal requirements that necessitates a budget change during the fiscal year outside the normal budget process which results in (i) a significant reduction in services to the city; (ii) a reduction in force affecting one (1) or more of the employee groups established by this division; or (iii) enacts a general decrease in salary or material reduction in employee benefits affecting one (1) or more of the employee groups established by this division.

"FMCS" means Federal Mediation and Conciliation Service.

"Non-exempt employee" means employees who, due to the nature of their employment with the city, are eligible for overtime compensation as defined and governed by the Fair Labor Standards Act.

"Non-supervisory employee" means any city employee who does not write performance appraisals, or have authority to recommend the hire, discharge, transfer, suspend, layoff, or discipline other employees, with the exception of fire captains and police sergeants.

"Probationary employee" means an employee in their "original probationary period" as defined by the City of Avondale Policy and Procedures manual.

SECTION 3. Chapter 2 of the Avondale City Code is amended by amending Section 2-55 pertaining to Employee Groups and which shall read as follows:

2-55 - Employee groups.

(a) The following personnel are ineligible for representation under this division:

- (1) Regular, non-probationary city firefighters above the rank of captain.
- (2) Regular, non-probationary city police officers above the rank of sergeant.
- (3) Probationary, temporary, or reserve city firefighters and police officers.

(b) There may be, at the city's discretion, one (1) employee groups within the City of Avondale as limited by subsection (a) of this Section. They shall include:

- (1) Fire employee group - Regular, non-probationary, city firefighters, in all classifications up to and including the rank of captain.

SECTION 4. Chapter 2 of the Avondale City Code is amended by amending Section 2-65 pertaining to Memorandum of understanding and which shall read as follows:

2-65 - Memorandum of understanding.

(a) Nothing in this section shall be construed as to require an employee group to negotiate a memorandum of understanding. However, should they choose to do so, the memorandum of understanding shall be negotiated as provided for in this section.

(b) The term of a memorandum of understanding shall begin on July 1 and shall not exceed two (2) budget years.

(c) In the event of a specific conflict between (1) the City of Avondale Policy and Procedures Manual, city manager's directives, administrative directives, departmental rules and regulations, or work place practices and (2) a memorandum of understanding that results from the process established by this division, the memorandum of understanding will prevail.

(d) The employee organization may submit proposals regarding those items within the scope of the meet and confer process, as defined in section 2-64, 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 September 15 or later than October 15 for the following budget year.

(e) Upon receiving a proposal from an employee organization, the city manager will submit a written response to the employee organization, generally within thirty (30) days.

(f) Generally within ten (10) days from the receipt of the city manager's response, representatives of the employee organization and the city manager will begin "meeting and conferring" in a private session at mutually agreed upon times and places within the city, for the purpose of entering into a written memorandum of understanding relating to the proposals. A meet and confer meeting may not exceed three (3) hours in length unless otherwise mutually agreed. Only those issues identified in the employee organization's initial proposal and those raised in the city manager's response shall be discussed during the meet and confer process, unless otherwise mutually agreed. Meeting ground rules shall be mutually agreed upon and will be adhered to while meeting and conferring.

(g) It is the intent of this section that negotiations occur between city management and full-time city employees who are members of the employee organization. As such, outside negotiators will not be permitted to participate in any meet and confer sessions. On-duty team members from the employee organization shall be released from duty with pay for the duration of the meeting.

(h) The meet and confer process shall involve two (2) negotiating teams, with one (1) team consisting of no more than five (5) members appointed by the city manager, including the city manager or one of his/her assistant city managers, and a second team consisting of no more than five (5) members selected by the employee organization. The minimum number of members necessary to conduct discussions shall be three (3) members from each team. Either negotiating team may have such advisors present as they deem necessary and appropriate. Advisors may observe and provide input but may not actively participate in the negotiation process.

(i) City management and the employee organization are expected to participate in a good faith effort to come to agreement on all issues presented during the meet and confer process.

(j) During the meet and confer process the members and representatives of the employee organization are prohibited from discussing with city elected officials or the news media any information, bargaining strategy, term(s), or issue(s) which are the subject of the meet and confer process between the city and the employee organization. Members and representatives of the employee organization are also prohibited from negotiating or discussing the terms of any memorandum of understanding or agreement independent of the negotiating team with respect to any matter that is the subject of the meet and confer process.

(k) During the meet and confer process city elected officials and management employees are prohibited from discussing with employees or the news media any information, bargaining strategy, term(s) or issue(s) which are the subject of the meet and confer process between the city and the employee group. City elected officials and management employees are also prohibited from negotiating the terms of any agreement and from making any commitment or promise whatsoever to employees independent of the city manager or his/her designee with respect to any matter that is the subject of the meet and confer process.

(l) Unless otherwise provided in this division, during the meet and confer process, all proposals submitted by the employee organization and all counter-proposals submitted by the city manager will remain confidential, to the extent permitted by law, except that they will be available to the city manager, the employee organization representatives, the employees within the employee group, department management personnel, and others upon mutual agreement.

(m) It is the intent of this section that all meeting and conferring occur only between the parties' respective representatives at the times and places specifically agreed to for that purpose.

(n) The city manager and the employee group representative shall reduce all areas of agreement to writing in one or more tentative agreements that shall be signed by both parties. Those areas not in agreement may be withdrawn or shall be outlined as areas in dispute. If agreement on all issues has not been reached by February either the Employee Organization or the City Manager may initiate a request in writing to the other party to engage in mediation.

(o) The mediator shall be selected by mutual agreement of the parties. The cost for the services of the mediator, including per diem expenses, if any, and actual and necessary travel and subsistence expenses, shall be borne equally by the City and the Employee Organization. The mediator will control the procedural aspects of the mediation. There will be no direct communication between the parties without the concurrence of the mediator. The mediator will be free to meet and communicate separately or jointly with each party. The mediation will continue until: (1) a settlement is reached; or (2) one of the parties withdraws from the process; or (3) the mediator concludes and informs the parties that further attempts at resolution will not be useful.

(p) If the parties fail to develop mutually acceptable settlement terms on or after March 1, the mediator may, before terminating the procedure, submit to the parties a recommended settlement proposal. The parties agree in good faith to consider such proposal and discuss the same. In the event the settlement recommendations of the mediator are not acceptable to both parties, the issues in dispute shall be submitted to the City Council.

(q) No later than March 31, the City Council shall conduct a meeting to address those items provided by the Employee Organization and public employer pursuant to subsection (n) where agreement was not reached. At that meeting the City Council will provide an opportunity for the Employee Organization and public employer to present their positions on those items. Following presentations, the City Council shall provide direction concerning the items in dispute. The City Council's directions on the disputed items, together with the tentative agreements, shall serve as a proposed memorandum of understanding ("Proposed MOU").

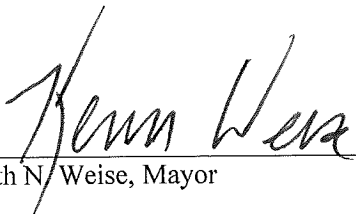
(r) Following a City Council meeting described in Subsection (q), the City shall provide the Proposed MOU to the Employee Organization for ratification. If the Employee Organization ratifies the Proposed MOU, the Proposed MOU will be presented to the City Council for consideration at the next regularly scheduled City Council meeting. If the Employee Organization does not ratify the Proposed MOU, the City Council shall take such action as it deems in the public interest, including the interest of the employees involved. Such City Council action may include adopting a resolution prescribing work rules, compensation, and other meet and confer items. If a mediator has submitted recommendations to the City Council pursuant to Subsection (p), the City Council may reject, accept or modify any recommendations of the mediator.

SECTION 5. If any section, subsection, sentence, clause or phrase of this Ordinance 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 of this Ordinance.

SECTION 6. This Ordinance shall become effective in the manner provided by law.

SECTION 7. The Mayor, the City Manager, the City Clerk and the City Attorney are hereby authorized and directed to take all steps and to execute all documents necessary to carry out the purpose and intent of this Ordinance.

PASSED AND ADOPTED by the Council of the City of Avondale, September 9, 2019.



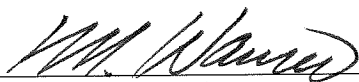
Kenneth N. Weise, Mayor

ATTEST:



Marcella Carrillo, City Clerk

APPROVED AS TO FORM:



Michael Wawro, City Attorney