

**CITY OF SAN ANTONIO
OFFICE OF THE CITY MANAGER
INTERDEPARTMENTAL CORRESPONDENCE SHEET**

TO: Mayor and City Council

FROM: Sharon De La Garza, Director, Human Resources Department

COPIES TO: Management Team Members; Nancy D. Trivino, Human Resources Administrator; File

SUBJECT: Proposed Ordinance for Employee-Management Committee

DATE: August 23, 2004

SUMMARY AND RECOMMENDATIONS

An Ordinance to establish an Employee-Management Committee to provide a consultation process for management and employees to discuss issues and concerns relating to employment conditions. Staff recommends this ordinance as it relates to those points of consensus as approved by a majority of the employee associations/organizations recognized by the City of San Antonio and city management.

BACKGROUND

In February 2004, the Service Employees International Union (SEIU) Local 1967 addressed City Council about adopting an ordinance to establish a formalized "meet and confer" process for City employees. On March 11, 2004, the City Attorney presented to City Council during executive session a discussion on the legal issues related to collective bargaining by public employees. Since that time, several meetings have occurred between the City Manager, executive team members and representatives of the employee associations/organizations recognized by the City of San Antonio. Acknowledging the importance of a structured format for management, employees, and the associations/organizations they choose to represent them to discuss important human resources issues, the City Manager proposed that this structure be established in an Administrative Directive. Beginning in April 2004, various meetings occurred to discuss the elements of the Employee-Management Committee.

Meetings were held with various associations/organizations representing city employees (SEIU Local 1967, American Federation of State, County and Municipal Employees (AFSCME), National Association of Public Employees (NAPE) #7, Association of City, County, & Municipal Employees/Texas Association of Public Employees (ACCME/TAPE), San Antonio Airport Police Officers Association (SAAPOA), and San Antonio Professional Fire Mechanics (SAPFMA) #4239) on April 9, 2004, April 27, 2004, and May 7, 2004 to discuss both the revised "consultation" ordinance proposed by SEIU Local 1967 and the draft Administrative Directive 4.35 Employee-Management Committee.

A request was made by Councilmember Radle to the Chairman of the Economic and Human Development Committee to have the "consultation" ordinance presented and discussed. This occurred on May 12, 2004. At that time, staff presented draft Administrative Directive 4.35 Employee-Management Committee, as had been drafted through this Employee-Management meeting process. The Committee

directed staff to continue working on the elements for which there was not a consensus. Several additional meetings occurred and an update was provided to the Economic & Human Development Committee on July 27, 2004. Several items were presented in which consensus was not reached, among those: the composition of members on the employee association side, annual reporting, and the method by which consensus would be memorialized after each meeting. The Committee asked staff to bring forward to City Council a blended ordinance, which would incorporate the Administrative Directive and the key elements that had received consensus. On August 17, 2004, another meeting was held with all employee associations whereby consensus was not reached in two primary areas: committee composition and employee obligations for association/organization dues deductions. On August 19, 2004 City Council received a draft ordinance from four organizations (NAPE #7, ACCME/TAPE, SAAPOA, and SAPFMA #4239) that captures the key elements of the blended ordinance.

POLICY ANALYSIS

This blended ordinance is a combination of the "Consultation" Ordinance proposed by Service Employees International Union (SEIU) Local 1967, alternate proposals by other employee associations/organizations and the draft Administrative Directive 4.35 (Employee-Management Committee) originally proposed by the City Manager. The blended ordinance outlines a formalized process by which city management, employees, and employee associations/organizations can communicate concerning personnel-related issues that affect a substantial number of city employees. Primary components are:

- Committee composition (management, employee, and association/organization representation)
- Eligibility of employee association/organization participation
- Frequency of meetings
- Documentation of points of consensus
- Topics for discussion
- Neutrality & Access

The text of the ordinance incorporates some points of consensus reached between city management and recognized employee associations/organizations (e.g. SEIU Local 1967, AFSCME, NAPE #7, ACCME/TAPE, SAAPOA, and SAPFMA #4239).

These points include the following:

- Meetings should be held quarterly, or more often
- Eligible associations/organizations include those who can provide all of the following:
 - State Charter approved by the Secretary of State
 - Listing of the name, address, and phone number of the business agent for the association and the officers of the association.
 - A copy of the association's article of incorporation and by-laws
 - Minimum of fifty employee members, designated through payroll dues deductions*
 - For organizations with fewer than fifty members, must show that membership reflects at least 5% of "eligible" or "targeted" employees
 - City shall audit employee associations/organizations membership bi-annually for compliance – organizations found to be in non-compliance will be given three-month grace period to attain compliance
 - *SEIU Local 1967 departs on this point of consensus – their position is further detailed below in "Committee Composition".

- Topics for discussion to include:
 - Compensation and incentive plans
 - Policies related to employee attendance, leave and hours of employment
 - Recommendations concerning employee health insurance, life insurance and other employee benefits
 - The grievance process (not to include any individual employee complaints or appeals, which are to be handled through formal grievance process)
 - Recommendations made to the legislature concerning the terms and conditions of covered employees
 - Training, Safety and Equipment
 - Working conditions, wages, hours and conditions of employment
- City employees shall not be discriminated against for discussing or expressing their views regarding employee association/organization representation or workplace issues.
- The meetings will be audiotaped and minutes shall be distributed to members for review and approval.
- City Council will be provided an update on committee progress annually through the budget process presentations and to the Economic & Human Development Committee as needed.

In addition to the minor point of non-consensus noted above, dissenting opinions have arisen in two major areas:

- Committee Composition
 - This blended ordinance incorporates the following:
 - The City Manager or designee, the Human Resources Director or designee, and three Department Directors (on a rotating basis) would sit on the Committee, with City Manager/designee as Chairperson.
 - Each registered employee association/organization would be entitled to two members:
 - One representative from the association/organization
 - One employee member of that employee association/organization
 - A citywide election would be held to designate seven employees, reflecting each of the EEO categories, to serve two-year terms on this committee. There is no restriction on these employee's abilities to affiliate with an employee association/organization
 - Elections conducted by the City Clerk's Office

- SEIU Local 1967's "consultation" ordinance proposes the following:
 - Workers should choose a designated organization to represent them at meetings as follows:
 - The organization receiving the support of 30% or more of employees in each of the seven designated EEO (Equal Employment Opportunity) Categories (e.g. Service/Maintenance, Skilled Craft, Technicians, Office/Clerical, Para-professional, Professional, Protective Services) would be selected as the "designated" organization authorized to represent all employees within that EEO category.
 - In the event two or more employee organizations petition in a timely manner, to be recognized as the Designated Representative and each can demonstrate the threshold showing of support, the Human Resources Department shall then conduct an election between all such employee organization(s) to be conducted within forty-five days of the filing of the second petition.
 - The employee organization that receives a majority of the votes cast in the election shall be recognized as the Designated Representative for covered employees in the unit.
 - Recognition as the Designated Representative shall continue but may be challenged through the filing of an election request by any employee organization in accord with the requirements set forth above.
 - "Designated" organizations would be entitled to have two representatives at the meeting, selected at the pleasure of the organization.
 - Any employee organization that can establish that 50 or more of its members are covered employees under this ordinance will be entitled to one representative on the Consultation Committee.
 - In the event that more than one employee organization is entitled to participate in the consultation process, the Designated Representative with the largest representative membership shall be deemed the chief spokesperson for covered city employees.
- The alternate ordinance proposed by NAPE #7, ACCME/TAPE, SAAPOA, and SAPFMA #4239 proposes:
 - A citywide election would be held to designate seven employees, reflecting each of the EEO categories, to serve two-year terms on this committee. These employees would be prohibited from affiliating with any employee association/organization for the duration of their tenure on the committee.
 - Managerial representation shall consist of the City Manager or her designee, the Human Resources Director or her designee, three directors on a rotating basis, and a representative from the City Attorney's Office.
 - Employee organizations will rotate status as the "designated chairperson" every nine months.
- Dues Maintenance
 - Neither the blended ordinance nor the alternate ordinance proposed by NAPE #7, ACCME/TAPE, SAAPOA, and SAPFMA #4239 includes provisions requiring maintenance of association/organization dues deductions via the city's payroll system.

- SEIU Local 1967's proposal includes the provision that employees who voluntarily join an employee association/organization will retain membership for a minimum period of one year, with a four week window each year to cancel such membership.

With the exception of these final two areas, the proposed ordinance combines all other areas of consensus between the "Consultation" proposal, the draft ordinance from other employee associations, and draft Administrative Directive 4.35. This ordinance provides a formal, on-going process for employee-management communication regarding personnel issues while maintaining the City Manager's discretion in the ultimate disposition of those matters.

FISCAL IMPACT

There are no additional allocated with this ordinance. Staff will assess the Human Resources Department's current ability to support this process.

COORDINATION

The Ordinance was coordinated with City Manager's Office, City Attorney's Office, Department of Human Resources, Department of Environmental Services, Department of Parks and Recreation, Department of Public Works, American Federation of State, County and Municipal Employees (AFSCME), National Association of Public Employees (NAPE) #7, Association of City, County, & Municipal Employees/Texas Association of Public Employees (ACCME/TAPE), San Antonio Airport Police Officers Association (SAAPOA), Service Employees International Union (SEIU Local 1967), and San Antonio Professional Fire Mechanics (SAPFMA) #4239.

SUPPLEMENTAL COMMENTS

The City and employee associations/organizations understand that the City, by state law, does not enter into contracts, agreements, documented arrangements, or memorandum of agreement (MOA) with employee associations, employee organizations, unions or other organizations representing civilian employees. A draft ordinance is attached.

SIGNATURES



Sharon De La Garza
Director of Human Resources



Frances A. Gonzalez
Assistant City Manager

APPROVED:



Terry M. Brechtel
City Manager

AN ORDINANCE

AN ORDINANCE ESTABLISHING AN EMPLOYEE-MANAGEMENT COMMITTEE TO PROVIDE A CONSULTATION PROCESS FOR MANAGEMENT AND EMPLOYEES TO DISCUSS ISSUES AND CONCERNS RELATING TO EMPLOYMENT CONDITIONS.

*** * * * ***

WHEREAS, the fair and equitable treatment of all employees of the City of San Antonio is essential to the effective operation of city government and to promoting better morale and efficiency among city employees;

WHEREAS, public employees and public employee organizations have rights to freedom of speech and association; and to be free from discrimination in exercising such rights;

WHEREAS, the effectiveness and efficiency of city services is improved by a constructive and cooperative working relationship between the City and its employees and through a structured communications process between the City and its employees on matters pertaining to wages, hours and other terms and conditions of employment;

WHEREAS, public employees have a right under state law and the City Charter of San Antonio to present and discuss grievances concerning their wages, hours, or conditions of work with City management either individually or through a representative;

WHEREAS, the public interest is best served by adopting clear guidelines and a structured process through which City employees can select representatives to meet and consult with their employer on matters pertaining to working conditions and to communicate their views through representatives of their own choosing; and

WHEREAS, it is in the public interest that the process for selection of employee representatives be fair but not unduly burdensome on the City;

WHEREAS, City representatives shall maintain a position of neutrality with respect to employee organizations and their role in labor - management issues;

WHEREAS, city employees are free to meet and talk with representatives of employee organizations in designated areas during non-work periods; **NOW THEREFORE**,

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:

SECTION 1. The City Code of San Antonio, Texas, is amended to add a new Division 4 (Employee-Management Committee) to Article IV (Equal Opportunity and Employee Relations) of Chapter 2 (Administration), to read as follows:

DIVISION 4. EMPLOYEE-MANAGEMENT COMMITTEE

SECTION 2-137. CONSULTATION WITH CITY EMPLOYEES.

(a) City management will consult with employees and registered employee organizations on terms and conditions of employment through the Employee-Management Committee established by this division in accordance with the process established by this division.

(b) This division does not apply to an employee whose terms and conditions of employment are governed by a collective bargaining agreement authorized by state law or to an employee organization authorized to engage in collective bargaining with the city on behalf of its members.

(c) Nothing in this division is intended nor shall it be construed to authorize collective bargaining, a collective bargaining agreement of any type or characterization, or to recognize a registered employee organization as a bargaining agent for any group of employees. The City is not obligated to implement any issue discussed during consultations and retains the right to unilaterally determine employment conditions for employees.

(d) In this division,

- (1) "Consultation" means that the employees, representative(s) of registered employee organizations, and city management shall meet to discuss terms and conditions of employment affecting employees. Although no party is required to agree to a proposal, it is expected that all participants will consult in good faith to reach consensus on issues and matters raised.
- (2) "Employee" means an individual employed by the City, but does not include a confidential, or managerial employee or an employee described by subsection (b) of this section.
- (3) "Confidential employee" means an employee (i) who has access to confidential or discretionary information regarding the formulation of City policy or procedures; (ii) whose functional responsibilities or knowledge concerning employee relations makes the employee's membership in an employee organization incompatible with that employee's duties; or (iii) who is the executive secretary of the chief administrator or executive officer of a department.

- (4) "Managerial employee" means an employee who (i) is engaged predominantly in executive functions or (ii) charged with the responsibility of directing the effectuation of management policies and practices.
- (5) "Terms and Conditions of Employment" means wages, salaries, hours and other terms and conditions of employment with the city, including but not limited to:
 - (A) compensation and incentive plans;
 - (B) policies related to employee attendance, leave and hours of employment;
 - (C) recommendations concerning employee health insurance, life insurance and other employee benefits;
 - (D) the grievance process (but not an individual or group grievance that is to be considered pursuant to that process);
 - (E) recommendations made to the Legislature concerning the terms and conditions of covered employees;
 - (F) training, safety, and equipment; and
 - (G) all other issues related to working conditions, wages, hours and conditions of employment.

SECTION 2-138. EMPLOYEE-MANAGEMENT COMMITTEE.

- (a) The Employee-Management Committee will consist of the following:
 - (1) One (1) representative from each registered employee organization;
 - (2) One (1) city employee member of each registered employee organization, as designated by the registered employee organization;
 - (3) One (1) representative from the City Manager's Office;
 - (4) One (1) representative from the Human Resources Department (Director of Human Resources or designee);
 - (5) Three (3) Department Directors (on a rotating basis); and
 - (6) Seven (7) employees from the citywide employee population (not including uniformed employees).
- (b) For purposes of this division, a "registered employee organization" means an association or organization that includes among its members employees of the City of San Antonio and that exists for the purpose of dealing with an employer concerning terms and conditions of employment, and which meets the following eligibility criteria:
 - (1) certified copies of the association or organization's charter, bylaws, and any amendments thereto, have been provided to and are on file with the Director of Human Resources; and
 - (2) the Director of Human Resources has sufficient evidence that the association or organization represents, as members, either (i) five percent (5%) of the total number of employees "eligible" or "targeted" for membership by the association or organization, if that population is less than one thousand (1,000) employees, or (ii) fifty (50) employees. A signed form authorizing

deduction and payment of dues to an association or organization from an employee's paycheck shall be considered proof of membership by that employee. The Director of Human Resources shall audit the membership requirement established by this subsection (b)(2) on a semi-annual basis. An association or organization that does not meet this eligibility requirement shall be given a three-month notice and the opportunity to provide evidence of sufficient membership before losing eligibility to participate on the Employee-Management Committee.

(c) The Human Resources Department will solicit interest from employees to fill the seven (7) employee member positions who will serve for two (2) years, to coincide with the Fiscal Year, with seven (7) alternate employees selected in each category to step in should any of the elected members resign from the committee. An election will be conducted bi-annually by the Human Resources Department to select a member and one alternate member from each of the following EEO Categories:

- (1) Office/Clerical;
- (2) Para-professionals;
- (3) Protective Services;
- (4) Professionals;
- (5) Service Maintenance;
- (6) Skilled Craft; and
- (7) Technician.

(d) Any employee selected mid-fiscal year will be allowed to serve additional time so that his or her tenure encompasses at least one (1) fiscal year. The employee must have completed his or her initial probationary period and must not have incurred any of the following disciplinary actions within the twelve (12) months prior to selection: suspension, disciplinary demotion, or termination. Any employee who receives a finalized disciplinary suspension, demotion or termination during his or her term will be removed from the committee and the alternate employee in that category will be selected to serve the remainder of that member's term.

(e) Each employee organization will designate one (1) covered employee from its membership who will serve for two (2) years, to coincide with the Fiscal Year, with an alternate covered employee selected. An employee designated mid-Fiscal Year will be allowed to serve additional time so that his or her tenure encompasses at least one Fiscal Year. If for any reason the employee cannot serve their full term, the alternate employee will be selected to serve the remainder of that employee's term. A committee member selected under this subsection serves at the pleasure of their respective organization(s). A change in a designated representative by an employee association/organization shall be communicated in writing to the Human Resources Department.

SECTION 2-139. MEETINGS OF THE EMPLOYEE-MANAGEMENT COMMITTEE.

(a) The Employee-Management Committee shall be scheduled to meet at least once each quarter, or more frequently as determined by the City Manager.

(b) An agenda will be distributed prior to each meeting and include all topics of discussion. Topics must involve issues of a general nature or suggestions for improved or more effective operation on a citywide basis. The agenda for the following meeting will be discussed and voted on for approval at each meeting of the committee, with topics receiving a majority vote placed on the agenda for the next meeting.

(c) Meetings of the Employee-Management Committee shall be audio taped. A copy of the audiotape of each meeting shall be retained by the Director of Human Resources in accordance with applicable state law.

(d) Meetings will be of an informal nature. Minutes, including items discussed and solutions proposed, will be prepared by the Human Resources Department and copies will be provided to all committee members at the next meeting. Minutes shall be approved by majority vote of the members in attendance at the meeting for which minutes are proposed. The Director of Human Resources shall retain a copy of the approved minutes in accordance with applicable law.

(e) The Director of Human Resources shall report on the status of consultations through the Employee-Management Committee during the annual budget presentation to the City Council and to the Economic & Human Development Committee as needed.

SECTION 2-140. EMPLOYEE RIGHTS CONCERNING EMPLOYEE ORGANIZATIONS.

(a) An employee shall not be discriminated against for discussing or expressing his or her view regarding workplace issues or representation by an employee organization.

(b) City employees are free to communicate with one another and with representatives of employee organizations on pertinent issues and to receive and distribute literature regarding union issues during non-work periods and in non-work areas.

SECTION 2. This Ordinance is effective _____, 2004.

PASSED AND APPROVED THIS ____ DAY OF AUGUST, 2004.

M A Y O R

ATTEST: _____
City Clerk

APPROVED AS TO FORM: _____
City Attorney