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4/24/14

Lee Brand
Councilmember
District 6

AMENDMENT RESOLUTION FOR "LABOR MANAGEMENT ACT"

April 24, 2014

To: Fresno City Council Members
From: Councilmember Lee Brand *jl*

Agenda Item

1. Recommend that the Fresno City Council adopt Resolution No. _____ to amend two articles from the Labor Management Act that was adopted by the Council in July, 2010.
2. Amend Subsections (a) and (c) of Section 3-616 of the Fresno Municipal Code, Relating to the Employer-Employee Relations Ordinance

Background:

Four years ago the Council adopted the Labor Management Act to implement policies and procedures to improve City labor relations. The primary thrust of the Act was to improve financial and actuarial accountability for the City. Labor related costs comprise approximately 80% of our General Fund budget and it is essential that the City fully understand all labor related costs.

The amendment to the Labor Management Act only concerns Article XI (no contact clause) and Article XV (Council workshops). The current version of Article XI prohibits any contact between Employee Labor Organization official representatives and Council members that is directly related to MOU meet and confer negotiations. The time period begins when the initial meet and confer meeting is held and continues until the proposed MOU is heard in open session.

The amended version does not prohibit contact between Employee Labor Organization official representatives. It only establishes three conditions that are listed. This change will address potential legal issues and provide an improvement in communications between labor groups and the City.

The only other change is to Article XV. This amendment simply changes holding Council workshops on labor relations from every odd numbered year to as needed, as determined by the City Manager.

Recommended Action:

Recommend that Council adopt this amendment to Labor Management Act.

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RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO, CALIFORNIA, AMENDING RESOLUTION NO. 2010-156 ESTABLISHING A POLICY ENTITLED "LABOR MANAGEMENT ACT" PRESERVING MANAGEMENT RIGHTS ON EMPLOYEE LAYOFFS AND IMPROVING LABOR PRACTICES

WHEREAS, the Council for the City of Fresno adopted the Labor Management Act in Resolution No. 2010-156; and

WHEREAS, the Council desires to amend the Labor Management Act.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno that the Labor Management Act is hereby amended as follows:

SECTION 1. ARTICLE XI, NO CONTACT CLAUSE is amended to read:

**ARTICLE XI
NO CONTACT CLAUSE**

The Mayor and City Council members recognize the Fresno Municipal Code Section 3-615 designation of the City Manager to act as chief negotiator in City labor negotiations[,] therefore [Therefore] any contact or communication [on topics directly related to MOU negotiations during the pendency of labor negotiations process beginning from the initial meet and confer session and lasting until the City Council considers the proposed MOU in open session between Employee Labor Organization official representatives and Council members,] other than at a regularly scheduled Council meeting, ~~is prohibited by the Mayor and Council members with Employee Labor Organization official representatives on topics directly related to MOU negotiations during the pendency of labor negotiations process beginning from the initial meet and confer session and lasting until the City Council considers the proposed MOU in open session.~~ [should be restricted to ensure the City Manager's role as chief negotiator is not compromised. Any meeting between Employee Labor Organization representatives and Council members are subject to the following conditions:

1 of 3

Date Adopted:

Date Approved:

Effective Date:

City Attorney Approval: 

Resolution Amending Labor Management Act

1. Council members cannot disclose to other Council members, subject to Brown Act restrictions, the content of their discussions with the Labor Organization representatives;
2. Council members, at their discretion, shall notify the City Manager of a proposed meeting with a Council member and the Council member can request, at their discretion, that the City Manager and City Attorney or their representatives be present at the meeting;
3. All discussions between the Labor Organization representatives and the Council members are strictly prohibited from any negotiations on the proposed MOU.]

SECTION 2. ARTICLE XV, COUNCIL WORKSHOP ON LABOR RELATIONS is amended to read:

**ARTICLE XV
COUNCIL WORKSHOP ON LABOR RELATIONS**

~~[As determined] Every two years, on an odd-numbered year,~~ by the City Manager or his/her designee, in coordination with the Mayor, City Attorney's office and the Retirement Administrator, will present a workshop to the City Council to educate the Council on the following:

1. The labor relations process;
2. Labor relations laws that pertain to municipalities;
3. Recent judicial decisions affecting existing and future MOUs; and
4. A description of all employee costs including pay scales and benefits including retirement and the fiscal impact on the budget.

The purpose of this ~~bi-annual~~ workshop is to educate Council members, both existing members and new members coming in, on labor relations affecting the City to enable them to better understand labor issues and their fiscal impact on the budget.

SECTION 3. The full text of the Council Residency Act, as amended, is attached as Exhibit "A."

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SECTION 4. This resolution shall become effective upon date of final passage.
For the year 2014, councilmembers who comply by affidavit pursuant to this amendment shall provide such affidavit by April 24, 2014.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2014.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2014
Mayor Approval/No Return: _____, 2014
Mayor Veto: _____, 2014
Council Override Vote: _____, 2014

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Tina R. Griffin
Supervising Deputy

TRG:DTS:pn [reso] Reso 04/16/14

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CITY OF FRESNO

LABOR MANAGEMENT ACT



[APRIL 24, 2014] ~~JULY 22, 2010~~

The following policies are enacted in an effort to standardize and reinforce best practices for labor management policies for the City of Fresno. They are also intended to improve fiscal accountability and transparency in City government.

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ARTICLE I DEFINITIONS

City

"City" means the City of Fresno, a municipal corporation.

Concession

The act of conceding an item of value to the other party in an MOU negotiation.

Consultation in Good Faith

Means to communicate orally or in writing for the purpose of presenting and obtaining views and advising of intended actions, as defined in *Fresno Municipal Code, Chapter 3, Article Six, Section 3-603 (e)*.

Director

"Director" means the Chief Administrative Officer of the City (City Manager) or such other person in the City service as he/she shall designate in writing to act on his/her behalf in the exercise of any power or the performance of any duty of the Director under this article. *Fresno Municipal Code, Chapter 3, Article Six, Section 3-603 (f)*.

Employee

Means any person holding a permanent position, as defined in Section 3-201. *Fresno Municipal Code, Chapter 3, Article Six, Section 3-603 (g)*.

Employee Organization

Means any organization or joint council of two or more organizations, or its duly authorized representative, which includes employees of the City and, as one of its primary purposes, represents such employees in their employment relations with the City. *Fresno Municipal Code, Chapter 3, Article Six, Section 3-603 (i)*.

Fiscal Emergency

A fiscal emergency shall be declared by the Mayor and affirmed by a super majority, five votes of the City Council and based upon a financial crisis resulting from an abrupt and significant decrease in revenues or an abrupt and significant increase in operating expenses or emergency capital improvements. *Executive Order 3-01(01/09/04) and Council Resolution 2004-27*.

Layoff

The appointing authority, with the approval of the Chief Administrative Officer, may reduce the number of employees in the classified service upon the grounds of economy or because of lack of work or lack of funds, by laying off employees in any class in which he determines the curtailment is necessary. *Fresno Municipal Code, Chapter 3, Article Six, Section 3-291*.

Memorandum of Understanding (MOU)

When a meeting and conferring process is concluded between the Director and a formally recognized employee organization, all agreed upon matters shall be incorporated in a written memorandum or memoranda of understanding signed by the Director and the duly authorized representative. As to those matters within the authority of the Council, the memorandum of understanding signed by the Director and a duly authorized representative shall be submitted to Council for determination. *Fresno Municipal Code, Chapter 3, Article Six, Section 3-619.*

Meet and Confer In Good Faith

“Meet and Confer in Good Faith” means the performance, by the Director or his duly authorized representative, and by the duly authorized representative of a formally recognized employee organization of their mutual obligation to meet at reasonable times and to confer in good faith regarding matters within the scope of representation in an effort to (1) reach agreement on those matters within the authority of such representative, and (2) reach agreement on what will be recommended to the Council on those matters within the decision-making authority of the Council. “Meet and confer in good faith” does not require either party to agree to a proposal or to make a concession. *Fresno Municipal Code, Chapter 3, Article Six, Section 3-603 (r).*

MOU Cost Basis

The MOU cost basis is the total cost of employee wages and benefits per Employee Labor Organization based upon the current MOU terms.

**ARTICLE II
LAYOFF POLICY**

The City staff is prohibited from bargaining away in future MOUs City Management rights to layoff employees unless approved by the City Council as part of a one year agreement. The City will continue to comply with all legal requirements of the Meyers-Millias-Brown Act regarding the impacts of layoffs.

**ARTICLE III
EFFECT ON EXISTING MEMORANDA OF UNDERSTANDING**

This policy shall not affect existing MOUs that currently have ‘no layoff’ provisions or provisions which prohibit demotions or prohibit staff reductions except through attrition including: 1)The International Union of Operating Engineers, Stationary Engineers, Local 39 (Local 39) with an MOU expiration date of 6-30-10; 2) the Fresno Police Officers Association (FPOA) Unit 4-Non Supervisory Police with an expiration date of 6-30-12; 3) Unit 9-Police Management with an expiration of 6-30-12; and 4) International Association of Firefighters AFL-CIO, Fresno City Firefighters Association, Local No. 753 (IAFF) with an MOU expiration date of 6-30-12.

**ARTICLE IV
MEMORANDUM OF UNDERSTANDING TIME LIMITATIONS**

Ever changing economic conditions can dramatically affect City budget projections. Being legally bound to an MOU for over three years can have an adverse impact on the City budget and the delivery of core services. It is strongly recommended that MOU terms not exceed three years. The City Negotiation Committee (described in Article V below) must provide the City Council with a written justification if any proposed MOU exceeds three years.

**ARTICLE V
FISCAL EMERGENCY CLAUSE**

By the adoption of this policy it is the intent of the City to negotiate, in good faith, a Fiscal Emergency provision that will provide for a reopening of any future bargaining unit memoranda of understanding (MOU) whenever the Mayor declares a Fiscal Emergency, consistent with the provisions of Executive Order 03-01 (1/9/04), which also requires a five vote ratification by the City Council (Council Resolution 2004-27).

**ARTICLE VI
CITY NEGOTIATION COMMITTEE**

The City Negotiation Committee shall be assembled at the discretion of the City Manager. The City Manager will provide written notification and rationale to the City Council if he/she decides not to assemble the City Negotiation Committee. The City currently has 11 diversified Employee Organizations. Labor negotiations are fluid in nature and require flexibility in selecting the proper City Negotiation Committee. The City Manager may select some or all from the following positions or their designee: the Budget Manager; the City Controller; the City Attorney; Personnel Director; Labor Relations Manager; and from the City Manager's office. The City Manager must assign a team member with financial expertise. The City Manager may also, when appropriate, include on the City Negotiation Committee other experts including department heads and/or outside experts in a specific field (s) such as law, actuarial science, accounting, economics, employee benefits, human resources or other arts and sciences.

The City Manager shall designate a City Negotiation Committee Chair. This City Negotiation Committee will strategically plan, coordinate and analyze the fiscal, legal, managerial and overall impact of labor negotiations with an employee organization on behalf of the City. The City Negotiating Committee or its designees shall meet to initiate all formal negotiations.

The Retirement Administrator for the City shall continue to be a resource for information and analysis provided to the City's Negotiation Committee and to the various City Employee Organizations. The Retirement Board's actuary shall also be considered a resource should it be necessary for the negotiating parties to request an actuarial study of any proposed pension or other employee benefit enhancements.

ARTICLE VII USE OF OUTSIDE LEGAL COUNSEL

Labor negotiations are very complex and require a high level of expertise. Prior to any final agreement of MOU language, the City Negotiation Committee shall, through the City Attorney's Office, have the option to submit all or a portion of proposed MOU language to a designated outside legal counsel prior to the presentation to the City Council. The MOU document shall track any changes from the prior MOU. Outside legal counsel shall review all documents and submit, on a timely basis, any changes or recommendations back to the City Negotiation Committee for resolution if necessary. Once outside legal counsel is selected, every attempt should be made to ensure a continuity of services. Outside legal counsel rates shall be reviewed annually to insure they are comparable to industry standards.

ARTICLE VIII FISCAL IMPACT REPORT

Along with any new MOU, and excepting legal memoranda and legal opinion letters, the City Negotiation Committee shall be required to prepare a Fiscal Impact Report (see Exhibit 'A') for consideration by the City Council and the general public to encourage the highest level of transparency in the City's labor management practices. The City Manager, in consultation with the City Controller and Retirement Administrator, shall determine whether or not an actuarial report is required. The City Manager may request the City Retirement System Administrator to review all tentatively approved changes to pension and other employee benefits or work rules and prepare a written financial analysis report that the City Manager will incorporate in the Fiscal Impact Report. The City agrees to pay for the services of the Retirement Administrator including the reasonable costs of an actuarial report, for City proposals. Each Fiscal Impact Report shall include the following:

1. A detailed financial analysis of the MOU including step increases; promotions; demotions; additions, deletions or changes to any premium rate pays and any cost of living adjustments for wages.
2. On pension and health insurance benefit enhancements, the City Manager, in consultation with the City Controller and Retirement Administrator, has the authority to engage an actuary to prepare an actuarial report for all future costs or

additional accrued liabilities for past service costs of any proposed benefit changes contemplated in the proposed MOU. A copy of the actuary's report shall be included with the Fiscal Impact Report.

3. The net cost or benefit to the City, on a cash basis, for the current fiscal year of the MOU, the second year of the MOU, the third year of the MOU and the total net cost of the new MOU above the prior year base MOU. Future years' costs should be reflected both as to their absolute costs and the present value thereof as of the expected date of the MOU.
4. If the City Manager requests an actuarial report, the net cost or benefit to the City, on an accrual basis, over an extended period of at least 10 years. If the Actuary determines that the future costs are greater than those in the next 10 years, then the estimate costs (absolute and present values) should be shown for all periods.
5. A historical summary matrix of all City Employee Organization base salary, various premium pays and benefit enhancements (see Exhibit 'B').
6. The Fiscal Impact Report shall include a summary sheet and detailed attachments that document each item analyzed.

ARTICLE IX REVIEW BY INDEPENDENT ACCOUNTING FIRM

Quantifying compensation provisions from an MOU including benefit enhancements is a very complex process. Provisions in some MOU documents contain certain benefit enhancements or work rule changes that may have long term financial impacts. An independent review can help ensure that the City has properly evaluated short term and long term financial costs related to the MOU document. The City Manager, at his/her discretion, may engage an independent accounting firm to provide supporting calculations for all fiscal impacts in the proposed MOU and submit, on a timely basis, an opinion as to the reasonableness of the estimated fiscal impacts in the MOU along with any changes or recommendations to the City Negotiation Committee for resolution if necessary. The independent accounting firm's report to the City shall follow the guidelines outlined in Article VIII above.

The outside accounting firm may be selected by the City Manager using either a sole source if the contemplated amount is less than \$50,000. If the amount will exceed \$50,000, the RFP/RFQ process will be utilized and must be approved by the City Council. Once an outside accounting firm is selected, every attempt will be made to ensure a continuity of services. Hourly rates for the independent accounting firm rates shall be reviewed annually to insure they are comparable to industry standards.

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**ARTICLE X
PRESENTATION PROCESS FOR REVIEW AND APPROVAL OF MEMORANDUM OF
UNDERSTANDING**

The MOU review and approval process shall be as follows:

1. The City Manager will provide the City Council with prior written notification of start of negotiations to modify any existing MOU or seek a new MOU with an Employee Labor Organization. The City Council may, at any time, request that the City Manager or designee brief the Council in closed session regarding contemplated fiscal parameters, changes to existing MOU provisions or any other matter allowed under the Brown Act prior to or during the course of the collective bargaining process with the Employee Labor Organization.
2. Upon the formation of the City Negotiation Committee, the City Manager will promptly inform the Council as to the composition of members and any retained experts.
3. The City Manager may waive, at his/her discretion, developing a complete Fiscal Impact Report on proposed MOU negotiations that have a minimal fiscal impact (e.g. one time action(s) with no adverse actuarial consequence).
4. After meeting and conferring with the Employee Labor Organization and reaching a tentative agreement, the City Negotiation Committee shall present a proposed MOU staff report, including the Fiscal Impact Report, an actuarial report, if required and a draft of the proposed MOU to City Council in closed session for Council consideration. These reports shall be delivered to Council members the Friday before the Council meeting.
5. The Employee Labor Organization shall have the right to provide a written report to the Council outlining their position on the proposed MOU deal points. If they elect to provide this report it shall be included with the other mandated reports specified in number four above and delivered the Friday before the Council meeting.
6. If directed by the City Council in closed session, the MOU will be placed on the consent calendar at the next regularly scheduled meeting.
7. If any material change develops between the time the City Council directs the MOU forward in closed session and the regularly scheduled City Council meeting, the City Manager shall have the option to cancel the item for the regularly scheduled meeting and re-convene a closed session of the City Council hearing.
8. If any City Council member pulls the consent item for discussion, City staff shall make a presentation of the MOU and the Fiscal Impact Report.

9. The MOU and any supporting documents including the Fiscal Impact Report, as defined in this Act, shall be available for public viewing when approved in public session by Council.

ARTICLE XI NO CONTACT CLAUSE

The Mayor and City Council members recognize the Fresno Municipal Code Section 3-615 designation of the City Manager to act as chief negotiator in City labor negotiations[.] ~~[Therefore] therefore any contact or communication [on topics directly related to MOU negotiations during the pendency of labor negotiations process beginning from the initial meet and confer session and lasting until the City Council considers the proposed MOU in open session between Employee Labor Organization official representatives and Council members,] other than at a regularly scheduled Council meeting, is prohibited by the Mayor and Council members with Employee Labor Organization official representatives on topics directly related to MOU negotiations during the pendency of labor negotiations process beginning from the initial meet and confer session and lasting until the City Council considers the proposed MOU in open session. [should be restricted to ensure the City Manager's role as chief negotiator is not compromised. Any meeting between Employee Labor Organization representatives and Council members are subject to the following conditions:~~

- ~~1. Council members cannot disclose to other Council members, subject to Brown Act restrictions, the content of their discussions with the Labor Organization representatives;~~
- ~~2. Council members, at their discretion, shall notify the City Manager of a proposed meeting with a Council member and the Council member can request, at their discretion, that the City Manager and City Attorney or their representatives be present at the meeting;~~
- ~~3. All discussions between the Labor Organization representatives and the Council members are strictly prohibited from any negotiations on the proposed MOU.]~~

ARTICLE XII CHANGES AND SIDE LETTERS AFFECTING MEMORANDUM OF UNDERSTANDING

Any changes or side letters affecting existing MOUs that will have a material impact on the MOU shall require City Council approval. Material change is defined as any changes in terms and conditions that have a fiscal impact on the budget. The City Manager will be required to present a detailed analysis including the net fiscal impact. It is essential that the City Negotiation Committee allow ample time to prepare a Fiscal Impact Report and actuarial report, if required, to allow the City Council sufficient information to review on any proposed MOU changes.

**ARTICLE XIII
OVERSIGHT AND ANNUAL REPORTS**

In July of each fiscal year, the City Manager shall present an Annual Labor Relations Report (see Exhibit 'C') to the City Council with a summary of all MOUs. The report shall include the following:

1. A summary matrix of all existing labor bargaining agreements with effective dates including all wage and benefit changes.
2. A report of any changes or side letters affecting existing MOUs.
3. An analysis of the original labor bargaining agreements' fiscal impact to any subsequent changes.
4. An analysis of the original projected costs to the actual costs of the MOUs.
5. A report of the future fiscal impact on pending MOUs.

**ARTICLE XIV
TRANSPARENCY**

All MOUs, Fiscal Impact Reports, Actuarial Reports and the City Manager's Annual Labor Relations Report to the City Council shall be available for public viewing on the City's website and at the City Clerk's Office.

**ARTICLE XV
COUNCIL WORKSHOP ON LABOR RELATIONS**

[As determined by] ~~Every two years, on an odd-numbered year,~~ the City Manager or his/her designee, in coordination with the Mayor, City Attorney's office and the Retirement Administrator, will present a workshop to the City Council to educate the Council on the following:

1. The labor relations process;
2. Labor relations laws that pertain to municipalities;
3. Recent judicial decisions affecting existing and future MOUs; and

4. A description of all employee costs including pay scales and benefits including retirement and the fiscal impact on the budget.

The purpose of this ~~bi-annual~~ workshop is to educate Council members, both existing members and new members coming in, on labor relations affecting the City to enable them to better understand labor issues and their fiscal impact on the budget.

ARTICLE XVIII ONE YEAR REVIEW

One year from the adoption of this resolution, the City Council shall meet at a regularly scheduled public session to evaluate the provisions of this resolution. The City Council will comprehensively review the policies in this Act and determine if any modifications are necessary.

ARTICLE XVII EFFECTIVE DATE

This resolution shall take effect upon its final adoption by the City Council.

BILL NO. _____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF FRESNO, CALIFORNIA, AMENDING SUBSECTIONS (a) AND (c) OF SECTION 3-616 OF THE FRESNO MUNICIPAL CODE, RELATING TO THE EMPLOYER-EMPLOYEE RELATIONS ORDINANCE.

THE COUNCIL OF THE CITY OF FRESNO DOES ORDAIN AS FOLLOWS:

SECTION 1. Subsections (a) and (c) of Section 3-616 of the Fresno Municipal Code are amended to read:

SECTION 3-616. UNFAIR EMPLOYEE RELATIONS PRACTICES.

(a) It is an unfair employee relations practice for an employee, employee organization, or an employee representative

(1) to interfere with, restrain, or coerce any employee in the exercise of his rights granted in this article; or

(2) to violate any provision of Sections 3-621 or 3-622; or

(3) to discriminate against any employee because of race, creed, sex, age, color, or national origin with regard to the terms and conditions of membership in an employee organization; or

(4) [~~repealed and reserved~~] ~~to consult with an elective officer or member of a board or commission of the city, other than at a scheduled public meeting of the Council or the Board or Commission, on matters which have been delegated to the Director~~

Date Adopted:

Date Approved

Effective Date:

City Attorney Approval:

MRD

Ordinance No.

~~pursuant to Section 3-615 of this article and which are currently the subject of discussions in the meet and confer process.~~

(5) to fail, or refuse, to cooperate in impasse procedures invoked pursuant to Section 3-617; or

(6) For a formally recognized employee organization to fail, or refuse, to meet and confer in good faith with the Director at reasonable times, places, and frequencies on matters within the scope of representation.

...

(c) It is an unfair employee relations practice for

(1) the Director to refuse to meet and confer in good faith with the representative of a formally recognized employee organization at reasonable times, places, and frequencies, or to consult within a reasonable time after request; or

(2) ~~[repealed and reserved] an elective officer or member of a board or commission of the city to consult with an employee, an employee organization, or an employee representative, other than at a scheduled public meeting of the Council or the board or commission, on matters which have been delegated to the Director pursuant to Section 3-615 and which are currently the subject of discussion in the meet and confer process.~~

...

SECTION 2. This ordinance shall become effective and in full force and effect at 12:01 a.m. on the thirty-first day after its final passage.

* * * * *

STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing ordinance was adopted by the Council of the City of Fresno, at a regular meeting held on the _____ day of _____, 2014.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2014
Mayor Approval/No Return: _____, 2014
Mayor Veto: _____, 2014
Council Override Vote: _____, 2014

YVONNE SPENCE, CMC
City Clerk

BY: _____
Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: _____
Mary Raterman-Doidge Date
Deputy

MRD:prn 64541prn/Ord] 04-16-14

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