

RESOLUTION NO. 2024-_____

**A RESOLUTION OF THE CITY COUNCIL OF
THE CITY OF MERCED, CALIFORNIA,
ESTABLISHING EMPLOYER-EMPLOYEE
ORGANIZATION RELATIONS WITHIN THE
CITY OF MERCED FOR LOCAL 1479**

THE CITY COUNCIL OF THE CITY OF MERCED DOES HEREBY
RESOLVE, DETERMINE, FIND, AND ORDER AS FOLLOWS:

Article 1 -- General Provisions

1.1 Statement of Purpose:

This Resolution implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.) Meyers-Milias-Brown Act (MMBA), by providing orderly procedures for the administration of employer-employee relations between the City of Merced (City) and its employee organizations. This Resolution is intended, instead, to strengthen civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the City.

This Resolution provides procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly and significantly affect the wages, hours, and other terms and conditions of employment of employees in appropriate units, and that are not preempted by federal or state law. The City will not be required to meet and confer over the merit, necessity, or organization of any service or activity provided by law or executive order.

Nothing contained in this Resolution will be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy. Unless specifically in conflict with a Memorandum of Understanding or the MMBA, the City retains all management rights provided by law, which include, but are not limited to: the sole and exclusive right to determine the City's mission, including that of its constituent departments, commissions, and boards; the sole and exclusive right to direct the affairs of, manage, and maintain the efficiency of the City, to set standards of service, and to control the organization and operation of the City. The City also has the sole and exclusive right to take any

actions to conduct its affairs, including, but not limited to, determining the procedures and standards of selection for employment, directing its workforce (including scheduling and assigning work and overtime), hiring, firing, discharging, promoting, demoting, transferring, or taking disciplinary action against any employee. The City also has the exclusive right to determine the methods, means, and personnel by which City operations are to be conducted, relieve employees from duty because of budgetary considerations, lack of work, or other lawful reasons, subcontract work to a third-party, maintain discipline and efficiency of employees, determine the content of job classifications, take all necessary actions to carry out its mission in emergencies and exercise complete control and discretion over its organization and the technology of performing its work consistent with the provisions of this Resolution and the MMBA. The foregoing is meant to be descriptive of the City's rights and is therefore not exhaustive.

1.2 Definitions:

As used in this Resolution, the following terms have the meanings indicated:

- a. "Appropriate unit" means a unit of employee job classifications established pursuant to Article 2 of this Resolution.
- b. "Council" means the City Council for the City of Merced.
- c. "City" means the City of Merced, and where appropriate, refers to the Council or any duly authorized City representative as herein defined.
- d. "Confidential Employee" means an employee who, in the course of their duties, has access to confidential information relating to the City's administration of employer-employee relations.
- e. "Day" means calendar day unless expressly stated otherwise.
- f. "Employee Relations Officer" means the City Manager or designee.
- g. "Exclusively Recognized Employee Organization" means an employee organization that has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate representation unit determined pursuant to Article 2 of this Resolution, having the exclusive right to meet and confer in good faith concerning matters within the scope of representation

pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees.

Such recognition status may only be challenged by another employee organization as set forth in Article 2, Sec. 2.6 of this Resolution.

h. "Impasse" means that the representatives of the City and a Recognized Employee Organization have reached a point in their good faith negotiations where their differences on matters to be included in a Memorandum of Understanding, and concerning matters that they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

i. "Management Employee" means an employee having responsibility for formulating, administering, or managing the implementation of City policies and programs.

j. "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, provided that the card has not been subsequently revoked in writing by the employee (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorizations, using the payroll register for the period immediately before the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee will not be considered as proof of employee support for any employee organization. The only authorization that will be considered as proof of employee support hereunder is the authorization last signed by an employee. The words "recently signed" mean within one hundred and eighty (180) days before the filing of such proof of support.

k. "Scope of Representation" means the inclusion of all matters relating to employment conditions and employer-employee relations, including but not limited to wages, hours, and other terms and conditions of employment, except, however, that the scope of representation does not include consideration of the merits, necessity, or organization of any service, or activity provided by law or executive order.

l. "Supervisory Employee" means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the

foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

m. Terms not defined herein have the meanings as set forth in the MMBA.

1.3 Employee Rights:

Subject to the limitations set forth in this Resolution, employees have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employee relations.

Employees have the right to refuse to join or participate in the activities of employee organizations and have the right to represent themselves individually in their employee relations with the City, if they are not members of an exclusively recognized employee organization.

The City and the employee organizations will not interfere with, intimidate, restrain, coerce, or discriminate against employees because of the exercise of these rights.

Article 2 -- Representation Proceedings

2.1 Filing of Recognition Petition by Employee Organization:

An employee organization that seeks to be formally acknowledged as the Exclusively Recognized Employee Organization representing the employees in an appropriate unit must file a petition with the Employee Relations Officer containing the following information and documentation:

- a. Name and address of the employee organization.
- b. Names and titles of its officers and mailing addresses.
- c. Names and telephone numbers of employee organization representatives who are authorized to speak on behalf of the organization in any communication with the City.
- d. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the City.

e. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with one or more local, regional, state, national, or international organization, and, if so, the name and address of each such other organization.

f. Certified copies of the employee organization's constitution and bylaws.

g. A designation of those persons, not exceeding two in number, and their addresses, and/or email addresses, to whom notice sent by regular United States mail and/or email will be deemed sufficient notice on the employee organization for any purpose.

h. A statement that the employee organization has no restriction on membership based on race, color, religion, creed, sex, national origin, age, marital status, sexual orientation, mental or physical disability, medical condition, military or veteran status, gender identity or expression, genetic information, or any other legally protected classification.

i. The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.

j. A statement that the employee organization has in its possession proof of employee support that a majority of the employees in the unit claimed have designated the employee organization to represent them in their employment relations with the City. Any written proof must be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.

k. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

The Petition, including the proof of employee support and all accompanying documentation, must be declared to be true, correct, and complete under penalty of perjury by the duly authorized officer(s) of the employee organization executing it.

2.2 City Response to Recognition Petition:

Upon receipt of the Petition, the Employee Relations Officer will determine whether:

- a. There has been compliance with the requirements for the filing of a Recognition Petition as set forth in Sec. 2.1, and;
- b. The proposed representation unit is an appropriate unit in accordance with Sec. 2.7 of this Article 2.

If the Employee Relations Officer determines the foregoing has been met, they will inform the petitioning employee organization, give written notice of the request for recognition to the employees in the unit, and will take no action on the request for thirty (30) days thereafter.

If the Employee Relations Officer determines the foregoing has not been met, they will offer to consult with the petitioning employee organization and, if the determination remains unchanged, will inform that organization of the reasons in writing.

The petitioning employee organization may appeal the determination in accordance with Sec. 2.10 of this Resolution.

2.3 Open Period for Filing Challenging Petition:

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty percent (30%) and otherwise in the same form and manner as set forth in Article 2, Sec. 2.1 of this Resolution. If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer will call for a hearing on the overlapping petitions for the purpose of ascertaining the appropriate unit, at which time the petitioning employee organizations will be heard. Thereafter, the Employee Relations Officer will determine the appropriate unit or units in accordance with the standards in Article 2, Sec. 2.7 of this Resolution,

and will provide written notice of their determination to each petitioning employee organization.

If one or more petitioning employee organizations do not agree with the decision rendered by the Employee Relations Officer, they will have fifteen (15) days from the date the Employee Relations Officer notified them of the Officer's unit determination to amend their recognition petition to conform to the Officer's unit determination or to appeal the Officer's determination pursuant to Article 2, Sec. 2.10 of this Resolution.

2.4 Granting Recognition without an Election:

If the Petition is in order, and the proof of support shows that a majority of the employees in the unit deemed by the Employee Relations Officer to be appropriate have designated the petitioning employee organization to represent them, and if no other employee organization filed a challenging petition, the Employee Relations Officer will request the California State Mediation and Conciliation Service, or another neutral third party, to review the count, form, accuracy, and propriety of the proof of support. If the neutral third party makes an affirmative determination, the Employee Relations Officer will formally acknowledge the petitioning employee organization as the Exclusive Recognized Employee Organization for the designated unit.

2.5 Election Procedure:

Where recognition is not granted pursuant to Sec. 2.4 of this Resolution, then, upon determination of an appropriate unit by the Employee Relations Officer in accordance with Sections 2.2 and 2.7 of this Resolution, the Officer will next arrange for a secret ballot election to be conducted by the California State Mediation and Conciliation Service. All employee organizations who have duly submitted petitions that have been determined to be in conformance with Article 2 will be included on the ballot. The choice of "no organization" will also be included on the ballot, thereby allowing employees the choice of representing themselves individually in their employment relations with the City.

Employees entitled to vote in such election are those employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately before the date that ended at least fifteen (15) days before the date the election commences, including those who did not work during such period

because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election.

An employee organization will be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three (3) or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election will be conducted between the two (2) choices receiving the largest number of valid votes cast. The rules governing an initial election also apply to a run-off election.

There will be no more than one (1) valid election under this Resolution pursuant to any petition in a 12-month period affecting the same unit.

Costs of conducting elections will be borne in equal shares by the City and by each employee organization appearing on the ballot.

2.6 Procedure for Decertification of Exclusively Recognized Employee Organization:

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the month of March of any year following the first full year of recognition. A Decertification Petition may be filed by two (2) or more employees or their representative, or an employee organization, and must contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete:

- a. The name, address, and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- b. The name of the established appropriate unit and the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.
- c. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.

d. Proof of employee support that at least thirty percent (30%) of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof must be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon, disinterested third party within the time limits specified in the first paragraph of this Section.

An employee organization may, in satisfaction of the Decertification Petition requirements set forth in this Resolution, file a Petition under this Section in the form of a Recognition Petition that evidences proof of employee support of at least thirty percent (30%), that includes the allegation and information required under this Section, and otherwise conforms to the requirements of Sec. 2.1 of this Article.

The Employee Relations Officer will initially determine whether the Petition has been filed in compliance with the applicable provisions of this Resolution. If the Petition filing is determined to be noncompliant, The Employee Relations Officer will offer to consult with the representative(s) of the petitioning employees or employee organization, and if, thereafter, the Petition remains noncompliant, the Employee Relations Officer will return the Petition to the employees or employee organization with a statement of the reasons in writing. The petitioning employees or employee organization may appeal the determination in accordance with Sec. 2.10 of this Resolution. If the Petition filing is found to be compliant, or if the finding of noncompliance is reversed on appeal, the Employee Relations Officer will give written notice of the Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees. Upon request, the Employee Relations Officer will provide a copy of the petition with names and all other identifying information redacted.

The Employee Relations Officer will thereafter arrange for a secret ballot election to be held on or about thirty (30) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed, the question of representation. Such an election is to be conducted in conformance with Sec. 2.5 of this Resolution.

If, pursuant to this Section, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, the organization will be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term and during the period of any negotiations for a successor Memorandum of Understanding, including any period of time during which the parties employ impasse procedures.

2.7 Policy and Standards for Determination and Administration of Appropriate Units:

The Employee Relations Officer will maintain a list of all current bargaining units in the City and will have the management discretion to form and define reasonable bargaining units based on the procedures specified in this Resolution. The policy objectives in determining the appropriateness of units will be the effect of a proposed unit on: (1) the efficient operations of the City and its compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit be the broadest feasible grouping of positions that share an identifiable community of interest.

In considering whether classifications share an identifiable community of interest, the following factors will be considered:

- a. Similarity of the work performed, required qualifications, levels of responsibility, and the general working conditions.
- b. Consistency with the organizational patterns and structure of the City.
- c. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
- d. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classification(s) among two or more bargaining units.

Notwithstanding the foregoing provisions of this Section, managerial and confidential responsibilities, as defined in Sec. 1.2 of this Resolution are determining factors in establishing appropriate units hereunder, and therefore, managerial and confidential employees may only be included in a unit consisting solely of managerial or confidential employees, respectively. Managerial and confidential employees may not represent any employee organization that represents other employees.

Under the MMBA, professional employees have the right to be represented separately from non-professional employees.

The Employee Relations Officer may, at any time after notice to and consultation with affected employee organizations, allocate new classifications or positions to appropriate units, delete eliminated classifications or positions from units, and retain, reallocate, or delete classifications or positions from one (1) unit to another in accordance with the provisions of this Section.

Management and confidential positions are accorded negotiating and representation rights under the MMBA. It is very important to ensure separate dealings between an agency and its managers and confidential employees on the one hand, and its regular employees on the other, in view of the obvious conflicts of interest and divided loyalties engendered by combining them. Furthermore, combining managers and confidential employees with rank-and-file employees will preclude the agency from building and maintaining a "management team," that is essential to a viable labor relations system.

2.8 Procedure for Modification of Established Appropriate Units:

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Sec. 2.6 of this Article 2. Such requests will be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Sec. 2.1 of this Resolution, will contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Sec. 2.7 of this Resolution. The Employee Relations Officer will process such petitions as other Recognition Petitions under this Article 2.

The Employee Relations Officer may, by their own motion and at any time, propose that an established unit be modified. The Employee Relations Officer will give written notice of the proposed modification(s) to any affected employee organization and will hold a meeting concerning the proposed modification(s), at which time all affected employee organizations may be heard.

Thereafter the Employee Relations Officer will determine the composition of the appropriate unit or units in accordance with Sec. 2.7 of this Resolution and will give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Sec. 2.10 of this Resolution. If a unit is modified pursuant to the motion of the Employee Relations Officer, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Section 2.1 of this Resolution.

2.9 Procedure for Processing Severance Requests:

An employee organization may file a request to become the exclusively recognized employee organization of a unit that is alleged to be appropriate and consisting of a group of employees who are already a part of a larger established unit represented by another exclusively recognized employee organization. The timing, form, and processing of such a request is specified in Sec. 2.8 of Resolution for modification requests.

The Employee Relations Officer may sever a unit at any time by using the unit modification procedure applicable to the Employee Relations Officer stated in the last paragraph of Section 2.8 of this Resolution.

2.10 Appeals:

An employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Sec. 2.1), Challenging Petition (Sec. 2.3), Decertification Petition (Sec. 2.6), Determination of an Appropriate Unit (Sec. 2.7), Unit Modification Petition (Sec. 2.8) or Severance Request (Sec. 2.9) has not been filed in compliance with the applicable provisions of this Article 2, may, within fifteen (15) days of notice of the Employee Relations Officer's determination, appeal such determination to the City Manager.

Appeals to the City Manager must be filed in writing, with a copy served on the Employee Relations Officer. The City Manager will consider the matter within thirty (30) days of the filing of the appeal. The City Manager may, in their discretion, refer the dispute to a non-binding third party hearing process.

Any decision by the City Manager on the use of such a procedure, and/or any decision by the City Manager determining the substance of the dispute, is final and binding.

Article 3 -- Administration

3.1 Submission of Current Information by Recognized Employee Organizations:

All changes in the information filed with the City by an Exclusively Recognized Employee Organization under items (a) through (h) of its Recognition Petition under Sec. 2.1 of this Resolution will be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

3.2 Employee Organization Activities -- Use of City Resources:

Access to City work locations and the use of City-paid time, facilities, equipment, and other resources by an employee organization and those representing them is authorized only to the extent provided for in Memoranda of Understanding applicable to the organization and/or administrative procedures, and will be limited to lawful activities consistent with the provisions of this Resolution that pertain directly to the employer-employee relationship and not such internal employee organization business as soliciting membership, or campaigning for office, and will not interfere with the efficiency, safety and security of City operations.

3.3 Administrative Rules and Procedures:

The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after consultation with affected employee organizations.

Article 4 -- Impasse Procedures

4.1 Initiation of Impasse Procedures:

If the meet and confer process has reached an impasse as defined in Article 1, Sec. 1.2 of this Resolution, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting will then be scheduled promptly by the Employee Relations Officer. The purpose of the meeting is:

- a. To identify and specify in writing the issue or issues that remain in dispute;
- b. To review the position of the parties in a final effort to reach agreement; and
- c. If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

4.2 Impasse Procedures:

Impasse procedures are as follows:

- a. If both of the parties agree to submit the impasse to mediation and agree on the selection of a mediator, the impasse will be submitted to mediation. All mediation

proceedings will be private. The mediator will make no public recommendation nor take any public position at any time concerning the issues.

b. Otherwise, the parties can utilize any other impasse procedures provided in accordance with the MMBA.

c. After any applicable impasse procedures have been exhausted, the City Council may hold a public hearing regarding the impasse and/or take such action regarding the impasse as it in its discretion deems appropriate as in the public interest, including implementation of the City's last, best, and final offer. Any legislative action by the Council on the impasse is final and binding.

4.3 Costs of Impasse Procedures:

The cost for the services of a mediator and any other mutually incurred costs of any impasse procedures will be borne equally by the City and Exclusively Recognized Employee Organization. Separately incurred services or costs will be borne solely by the party incurring the cost.

Article 5 -- Miscellaneous Provisions

5.1 Construction:

This Resolution will be administered and construed as follows:

a. Nothing in this Resolution will be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers, and authority granted by federal or state law, or the City Charter.

b. This Resolution will be interpreted to carry out its purpose as set forth in Article 1.

c. Nothing in this Resolution will be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sympathy strike, sickout or other total or partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions by them are in violation of their conditions of employment, except as expressly otherwise provided by legally

preemptive state or contrary local law. In the event employees engage in such actions, they will subject themselves to discipline up to and including termination and may be replaced to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit all rights accorded them under this Resolution and other City law for a period of up to one (1) year from commencement of such activity.

d. Nothing in this Resolution will be construed as a waiver of any rights unless expressly and specifically stated.

5.2 Severability:

If any provision of this Resolution, or the application of such provision to any persons or circumstances, is held invalid, the remainder of this Resolution, or the application of such provision to persons or circumstances other than those as to which it is held invalid, will not be affected thereby.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the ____ day of _____ 202_, by the following vote:

AYES: Council Members:

NOES: Council Members:

ABSENT: Council Members:

ABSTAIN: Council Members:

APPROVED:
MATTHEW SERRATTO, MAYOR

Mayor

ATTEST:
D. SCOTT MCBRIDE, CITY CLERK

BY: _____
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:
CRAIG J. CORNWELL, CITY ATTORNEY

Craig Cornwell 8/29/2024
City Attorney Date