RESOLUTION NO. 4291

IMPLEMENTING MEYERS MILIAS BROWN ACT BY ESTABLISHING PROCEDURES FOR ADMINISTRATION OF EMPLOYER-EMPLOYEE RELATIONS BETWEEN THE CITY OF LODI AND ITS EMPLOYEE ORGANIZATIONS; AND FOR RESOLVING MATTERS AFFECTING EMPLOYMENT

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WHEREAS Chapter 10, Division 4, Title 1 of the Government Code of the State of California was amended effective January 1, 1969 for the purpose of promoting improved employer-employee relations between public employers and their employees by establishing uniform and orderly methods of communication between employees and the public agencies by which they are employed; and

WHEREAS Government Code Section 3507 empowers a City to adopt reasonable rules and regulations after consultation in good faith with representatives of its employee organizations for the administration of employer-employee relations; and

WHEREAS the City of Lodi desires to adopt such reasonable rules and regulations as authorized by law:

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF LODI DOES HEREBY RESOLVE AS FOLLOWS:

SECTION 1. TITLE OF RESOLUTION

This Resolution shall be known as the Employer-Employee Relations Resolution of the City of Lodi.

SECTION 2. STATEMENT OF PURPOSE

The purpose of this Resolution is to implement Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et.seq.) captioned "Public Employee Organizations", by providing orderly procedures for the administration of employer-employee relations between the City and organizations representing its employees and for resolving disputes regarding wages, hours, and other terms and conditions or employment.

SECTION 3. DEFINITIONS

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

(A.) APPROPRIATE UNIT--means a unit established pursuant to Section 10 of this Resolution.

(B.) CITY--means the City of Lodi, a municipal corporation, and where appropriate herein, "City" refers to the City Council, the governing body of said City, or any duly authorized management employee as herein defined.

(C.) CONSULT OR CONSULTATION IN GOOD FAITH--means to communicate orally or in writing for the purpose of presenting and obtaining views and advising of intended actions.

(D.) EMPLOYEE--means any person regularly employed by the City except those persons elected by popular vote.

(E.) EMPLOYEE, CONFIDENTIAL--means an employee who assists or acts in a confidential capacity to persons who participate in the formulation, determination, or implementation of City management policies in the field of employer-employee relations.

(F.) EMPLOYEE, MANAGEMENT--means:

(1) Any employee having significant responsibilities for formulating and administering City policies and programs, including but not limited to the chief executive officer and department heads; and

(2) Any employee having authority to exercise independent judgment to hire, transfer, suspend, lay-off, recall,

promote, discharge, assign, reward, or discipline other employees, or having the responsibility 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.

(G.) EMPLOYEE, PROFESSIONAL--means employees engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, registered nurses, engineers, architects, teachers, and various types of physical, chemical, and biological scientists.

(H.) EMPLOYEE ORGANIZATION--means any organization which includes employees of the City and which has as one of its primary purposes representing such employees in their employment relations with the City.

(I.) EMPLOYER-EMPLOYEE RELATIONS--means the relationship between the City and its employees and their employee organization, or when used in a general sense, the relationship between City management and employees or employee organizations.

(J.) GRIEVANCE-- as this term is defined in Section 14(A).

(K.) IMPASSE--means (1) a deadlock in the annual (or periodic) discussions between a majority representative and the City over any matters concerning which they are required to meet and confer in good faith, or over the scope of such subject matter; or (2) any unresolved complaint by an affected

employee organization, advanced in good faith, concerning a decision of the Municipal Employee Relations Officer made pursuant to Sections 9, 10 or 11 of this Resolution.

(L.) MAJORITY REPRESENTATIVE--means an employee organization, or its duly authorized representative, that has been granted formal recognition by the Municipal Employee Relations Officer as representing the majority of employees in an appropriate unit.

(M.) MEDIATION OR CONCILIATION--means the effort by an impartial third party to assist in reconciling a dispute regarding wages, hours and other terms and conditions of employment between representatives of the public agency and the recognized employee organization or recognized employee organizations through interpretation, suggestion and advice.

(N.) MEET AND CONFER IN GOOD FAITH--(sometimes referred to herein as "meet and confer" or "meeting and conferring") means performance by duly authorized City representatives and duly authorized representatives of an employee organization recognized as the majority representative of their mutual obligation to meet at reasonable times and to confer in good faith regarding matters within the scope of representation, including but not limited to wages, hours, and other terms and conditions of employment, in an effort to: (1) reach agreement on those matters within the authority of such representatives, and (2) reach agreement on what will be recommended to the City Council on those matters within the decision-

making authority of the City Council. This does not require either party to agree to a proposal or to make a concession.

(O.) MUNICIPAL EMPLOYEE RELATIONS OFFICER--means the City's principal representative in all matters of employer-employee relations designated pursuant to Section 12, or his duly authorized representative.

(P.) PEACE OFFICER--as this term is defined in Section 830, California Penal Code.

(Q.) RECOGNIZED EMPLOYEE ORGANIZATIONS--means an employee organization which has been acknowledged by the Municipal Employee Relations Officer as an employee organization that represents employees of the City. The rights accompanying recognition are either:

(1) Formal Recognition--which is the right to meet and confer in good faith as the majority representative in an appropriate unit; or

(2) Informal Recognition--which is the right to consultation in good faith by all recognized employee organizations.

(R.) RESOLUTION--means, unless the context indicates otherwise, the Employer-Employee Relations Resolution of the City of Lodi.

(S.) SCOPE OF REPRESENTATION--means all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. City Rights (Section 5) are excluded from the scope of representation.

SECTION 4. EMPLOYEE RIGHTS

Employees of the City shall 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 employer-employee relations including, but not limited to wages, hours, and other terms and conditions of employment. Employees of the City also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the City. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by any employee organization because of his exercise of these rights.

SECTION 5. CITY RIGHTS

(A.) The rights of the City include, but are not limited to the exclusive rights: to determine the mission of its constituent departments, commissions and boards; to set standards of service; to determine the procedures and standards of selection for employment; to direct its employees; to maintain the efficiency of governmental operations; to determine the methods, means and personnel by which government operations are to be conducted; to take all necessary actions to carry out its mission in emergencies; and to exercise complete control and discretion and the technology of performing its work.

(B.) City rights also include the right to determine the procedures and standards of selection for promotion, to relieve its employees from duty because of lack of work or other legitimate reasons, to take disciplinary action, and to determine the content of job classifications; provided, however, that the exercise by the City of the rights in this paragraph (B) does not preclude employees or their recognized employee organizations from filing grievances regarding the practical consequences that decisions on such matters may have on wages, hours, or other terms and conditions of employment.

SECTION 6. MEET AND CONFER IN GOOD FAITH--SCOPE

(A.) The City, through its representatives, shall meet and confer in good faith with representatives of formally recognized employee organizations with majority representation rights regarding matters within the scope of representation including wages, hours and other terms and conditions of employment within the appropriate unit.

(B.) The City shall not be required to meet and confer in good faith on any subject preempted by Federal or State law, nor shall it be required to meet and confer in good faith on Employee or City Rights as defined in Sections 4 and 5. Proposed amendments to this Resolution are excluded from the scope of meeting and conferring, but are subject to consultation in good faith.

SECTION 7. CONSULTATION IN GOOD FAITH--SCOPE

All matters affecting employer-employee relations, including those that are not subject to meeting and conferring, are subject to consultation. The City, through its representatives, shall consult in good faith with representatives of all recognized employee organizations on employer-employee relations matters which affect them. Whenever possible, and consistent with the good faith intent of this resolution, advance notice shall be given.

SECTION 8. ADVANCE NOTICE

Reasonable written notice shall be given to each recognized employee organization affected by any ordinance, rule, resolution or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council or by any board or commission of the City, and each such employee organization shall be given the opportunity to meet with such body prior to adoption.

In cases of emergency when the City or any board or commission of the City determines that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice of meeting with a recognized employee

organization, the City or the board of commission of the City shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution or regulation. Any such ordinance, rule, resolution or regulation affecting matters within the scope of representation as herein defined is subject to the meet and confer process as herein defined.

SECTION 9. PETITION FOR RECOGNITION

There are two levels of employee organization recognition-- formal and informal. The recognition requirements of each are set forth below.

(A.) FORMAL RECOGNITION--THE RIGHT TO MEET AND CONFER IN GOOD FAITH AS MAJORITY REPRESENTATIVE: An employee organization that seeks formal recognition for purposes of meeting and conferring in good faith as the majority representative of employees in an appropriate unit shall file a petition with the Municipal Employee Relations Officer containing the following information and documentation:

(1) Name and address of the employee organization.

(2) Names and titles of its officers.

(3) Names of employee organization representatives who are authorized to speak on behalf of its members.

(4) A statement that the employee organization has, as one of its primary purposes, representing employees in their employment relations with the City.

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

(6) Certified copies of the employee organization's constitution and by-laws.

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

(8) A statement that the employee organization recognizes the provisions of Section 3509 of the Government Code.

(9) A statement that the employee organization has no restriction on membership based on race, color, creed, sex or national origin.

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

(11) A statement that the employee organization has in its possession written proof, dated within six months of the date upon which the petition is filed, to establish that employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Municipal Employee Relations Officer or to a mutually agreed upon disinterested third party.

(12) A request that the Municipal Employee Relations Officer recognize the employee organization as the majority representative of the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith on all matters within the scope of representation.

(B.) INFORMAL RECOGNITION--THE RIGHT TO CONSULT IN GOOD FAITH: An employee organization that seeks recognition for purposes of consultation in good faith shall file a petition with the Municipal Employee Relations Officer containing the following information and documentation:

(1) All of the information enumerated in (A.) (1) through (9) of this Section inclusive.

(2) A statement that the employee organization has in its possession written proof, dated within six months of the date upon which the petition is filed, to establish that employees have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Municipal Employees Relations Officer or to a mutually agreed upon disinterested third party.

(3) A request that the Municipal Employee Relations Officer recognize the employee organization for the purpose of consultation in good faith.

(C.) The petition, including all accompanying documents, shall be be verified, in affidavit form, by the Executive Officer and Secretary of the organization that the statements are true. All changes in such information shall be filed forthwith in like manner.

(D.) The Municipal Employee Relations Officer shall grant recognition, in writing, to all employee organizations who have complied with either Sections 9 (A.) or (B.) and, in addition, Section 9 (C.) for purposes of consultation in good faith for its members. Employee organizations seeking formal recognition as majority representative must, in addition, establish to the satisfaction of the Municipal Employee Relations Officer that it

represents a majority of the employees in the manner prescribed in Section 11 (A.) below. No employee may be represented by more than one recognized employee organization for the purposes of this Resolution.

SECTION 10. APPROPRIATE UNIT

(A.) The Municipal Employee Relations Officer, after reviewing the petition filed by an employee organization seeking formal recognition as majority representative, shall determine whether the proposed unit is an appropriate unit. The principal criterion in making this determination is whether there is a community of interest among such employees. The following factors, among others, are to be considered in making such determination:

(1) Which unit will assure employees the fullest freedom in the exercise of rights set forth under this Resolution.

(2) The history of employee relations: (i) in the unit; (ii) among other employees of the City; and (iii) in similar public employment.

(3) The effect of the unit on the efficient operation of the City and sound employer-employee relations.

(4) The extent to which employees have common skills, working conditions, job duties or similar educational requirements.

(5) The effect on the existing classification structure of dividing a single classification among two or more units. Provided, however, no unit shall be established solely on the basis of the extent to which employees in the proposed unit have organized.

(B.) In the establishment of appropriate units, (1) professional employees shall not be denied the right to be represented separately from non-professional employees; and (2) management

and con: ential employees who are inclu d in the same unit with non-management or non-confidential employees may not represent such employees on matters within the scope of representation.

(C.) The Employee Relations Officer shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions; delineate eliminated classifications or positions; designate management and confidential employees; and retain, reallocate or delete modified classifications and positions for units in accordance with the provisions of this section.

SECTION 11. RECOGNITION OF EMPLOYEE ORGANIZATIONS AS MAJORITY REPRESENTATIVE-FORMAL RECOGNITION

(A.) The Municipal Employee Relations Officer shall:

(1) Determine the majority representative of City employees in an appropriate unit by arranging for a secret ballot election or by an other reasonable method which is based upon written proof, and is designed to ascertain the free choice of a majority of such employees. The employee organization found to represent a majority of the employees in an appropriate unit shall be granted formal recognition and is the only employee organization entitled to meet and confer in good faith on matters within the scope of representation for employees in such unit. This shall not preclude other recognized employee organizations, or individual employees, from consulting with management representatives on employer-employee relations matters of concern to them.

(2) Rev the recognition rights of a m rity representative which has been found by secret ballot election no longer to be the majority representative.

(B.) The recognition rights of the majority representative designated in accordance with this Section shall not be subject to challenge for a period of twelve (12) months following the date of such recognition.

SECTION 12. DESIGNATION OF MUNICIPAL EMPLOYEE RELATIONS OFFICER

The City Manager is hereby designated as the Municipal Employee Relations Officer who shall be the City's principal representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation including wages, hours and other terms and conditions of employment.

The Municipal Employee Relations Officer so designated is authorized to delegate these duties and responsibilities.

SECTION 13. RESOLUTION OF IMPASSES

Impasse procedures may be invoked only after the possibility of settlement by direct discussion has been exhausted.

The alternative impasse procedures are:

(A.) MEDIATION (OR CONCILIATION) (Defined in Section 3-M): All mediation proceedings shall be private. The Mediator shall make no public recommendations nor take any public position concerning the issues.

(B.) A DETERMINATION BY THE CITY COUNCIL--after a hearing on the merits of the dispute.

(C.) Any other dispute resolving procedures to which the parties mutually agree.

Any party may initiate the impasse procedure by filing with the other party (or parties) affected a written request to invoke said procedure within

twenty-one days afte reaching impasse together wit statement of its position on all disputed issues. An impasse meeting shall then be scheduled by the Municipal Employee Relations Officer within ten days after the date of filing of the written request for such meeting, with written notice to all parties affected. The purpose of such impasse meeting is twofold: (1) To permit a review of the position of all parties in a final effort to reach agreement on the disputed issues, and (2) if agreement is not concluded, to mutually select the specific impasse procedure to which the dispute may be submitted; in the absence of agreement between the parties on this point, the matter may be referred to the City Council.

The fees and expenses, if any, of mediators or of any other impasse procedure, shall be payable one-half by the City and one-half by the employee organization or employee organizations.

SECTION 14. GRIEVANCES

(A.) A grievance is any dispute concerning the interpretation or application of this Resolution, or of rules or regulations governing personnel practices or working conditions, or of the practical consequences of a City decision on wages, hours and other terms and conditions of employment.

(B.) Grievances shall be processed in accordance with procedures established by the City.

SECTION 15. MEMORANDUM OF UNDERSTANDING

When the meeting and conferring process is concluded between the City and a formally recognized employee organization representing a majority of the employees in an appropriate unit, all agreed upon matters shall be incorporated in a written memorandum of understanding signed by the duly authorized City and majority representatives.

As to those matters within the authority of the City Council, the memorandum of understanding shall be submitted to the City Council for determination.

SECTION 16. PROHIBITED PRACTICE

If either City Management representatives or the representatives of an employee organization, or its members, engage in prohibited practice, a formal charge of prohibited practice may be filed by the aggrieved party, invoking the

impasse procedure outlined in Section 13 of this Resolution.

Because this Resolution provides a sound and reasonable method of obtaining employer-employee agreements and settlement of disputes, it shall be a prohibited practice for City Management employees, as defined in Section 3 of this Resolution, or for management representatives, or the representatives of an employee organization or any employee member of an employee organization to attempt to by-pass the orderly employer-employee relations procedures and meet and confer and/or consulting machinery set up in this Resolution.

Nothing in this Section shall be construed: (a) to interfere with or prevent the City Manager from pursuing his normal duty of appearing before the Council and presenting recommendations to the Council, including recommendations on Employee Relations matters; (b) to interfere with the right of the City Council to hold executive sessions with its designated representatives prior to and during consultations and discussions with representatives of employee organizations as provided in Government Code Sections 11126 and 54957.6; (c) to deprive an employee of his individual rights as a citizen.

SECTION 17. RULES AND REGULATIONS

The City Council may adopt such Rules and Regulations necessary or convenient to implement the provisions of this Resolution and Chapter 10, Division 4 Title 1 of the Government Code of the State of California (Sections 3500, et seq.) Such rules and regulations shall be consistent with this resolution and the aforementioned Government Code sections.

SECTION 18. CONSTRUCTION

(A.) Nothing in this Resolution shall be construed to deny any person or employee the rights granted by Federal and State laws and City Ordinance provisions.

(B.) The rights, powers and authority of the City Council in all matters, including the right to maintain any legal action, shall not be modified

or restricted by this Resolution.

(C.) The provisions of this Resolution are not intended to conflict with the provisions of Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.) as amended in 1968.

SECTION 19. SEPARABILITY

If any provision of this Resolution, or the application of such provision to any person or circumstance, shall be 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, shall not be affected thereby.

BE IT FURTHER RESOLVED that Resolution No. 3312 and all other resolutions in conflict herewith are hereby repealed to the extent of any duplication or insofar as such conflict may exist.

Dated: November 17, 1976

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I hereby certify that Resolution 4291 was passed and adopted by the City Council of the City of Lodi in regular meeting held November 17, 1976 by the following vote:

Ayes: Councilmen - EHRHARDT, KATNICH, KATZAKIAN, PINKERTON and HUGHES

Noes: Councilmen - None

Absent: Councilmen - None

James B. Schroeder

JAMES B. SCHROEDER
Deputy City Clerk