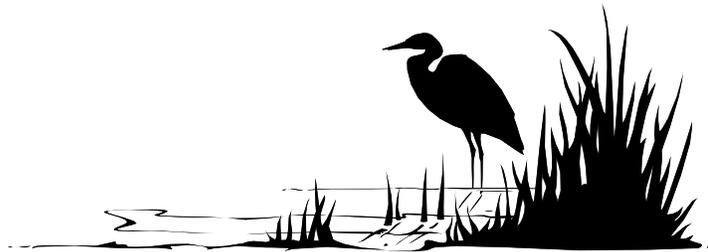


**Merced County Employees' Retirement
Association**

MCERA



BOARD OF RETIREMENT BY LAWS

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**By Laws
Of
The Board of Retirement of
Merced County Employees' Retirement Association**

I. Administration

- 1. Name**
The name of this association is: “**Merced County Employees' Retirement Association**”
- 2. Purpose of Association**
This Association is established pursuant and subject to the County Employee's Retirement Law of 1937, California Government Code Sections 31450 et seq., (1937 Act). For the purposes of carrying out the provisions of said Act, this Association is governed by the Act as supplemented by these bylaws. These bylaws are intended to implement the Act, and not to conflict with the Act and shall be interpreted accordingly.
- 3. Definitions**
Words, terms and phrases used in these bylaws shall be as defined in the Act unless otherwise specified in these bylaws
- 4. Management**
The Management of the Retirement Association shall be vested in the Board of Retirement. The routine day to day operation of the Retirement System is delegated to the Plan Administrator.
- 5. Communication and Requests to the Board**
Unless brought personally to the Board at its regular meeting, all communication and requests to the Board, whether addressed to the Chair or to any individual member, shall be in writing and such requests and actions of the Board in response shall be noted in the minutes. Such communications should be sent to MCERA Board, 3199 M Street, Merced, California 95348.
- 6. Officers**
Annually at the regular meeting in July, the Board of Retirement shall elect one of the members, pursuant to open nomination and roll call, Chair, Vice Chair and Secretary, each to hold office for a term of one year or until his successor is duly elected and qualified. Should any officer fail to for any reason to complete the term, the Board shall elect a successor for the balance of the unexpired term at its next regular meeting. Officers may be removed by a two-thirds vote of the entire Board.

7. Election and Appointment of Board Members

- a. Pursuant to Government Code Section 31520.1, and Section 31520.5 the Board shall be composed of nine (9) members, one alternate safety member and one alternate retired member.

- b. The following procedure shall be established for the election of the second, third, seventh, eighth members, the alternate safety member and the alternate retired member:
 - i. The election shall be conducted by the County Registrar of Voters who shall establish the filing dates for candidates, the method of election, all election rules, the election date, and who also shall conduct the election and certify the results.

 - ii. The candidate who receives the highest number of votes of the ballots cast shall be declared the winner and new member of the Retirement Board to assume the seat for which the candidate ran at any Board of Retirement meeting following the expiration of the term of the incumbent.

 - iii. Approval of these bylaws by the Board of Supervisors shall be deemed approval of the election method for the retired members.

- c. Pursuant to Government Code Section 31521, the fourth, fifth, sixth, eighth, ninth and alternate eighth members of the Board shall receive compensation at the rate of one hundred dollars (\$100) per meeting, however limited to three meetings per month. A member must be an appointed member of a committee to receive compensation for attendance at a committee meeting. All members of the Board shall receive reimbursement for actual and necessary expenses consistent with Merced County travel and reimbursement policy.

Article I amended September 13, 2007.

Article I, section 7(b) 2, amended February 11, 2009

Article I, section 7(a), (b), (c), amended July 8, 2010

Article I, section 2, amended September 9, 2010

II. Meetings

1. Regular Meetings

Regular meetings of the Board of Retirement shall be held on the second and fourth Thursday in each month at 8:15 a.m. at the Retirement Office in Merced unless the place of the meeting is changed by order of the Board of Retirement and timely noticed. The first meeting shall be for administrative matters and the second meeting shall be for investment matters.

2. Special Meetings

Special meetings of the Board of Retirement may be called at any time by the Chair or Secretary or by any three members. A notice of not less than twenty-four hours as required by the Brown Act shall be given to each member except that requirement of notice is waived for any special meeting at which all members are present.

3. Attendance

Members are required to attend all meetings of the Board. The Board shall determine whether a member's absence from a meeting is excused or unexcused, the Board's determination shall be noted in the minutes. Members who have three consecutive unexcused or five unexcused absences in a calendar, year shall be deemed to have resigned their membership.

4. Training

The Merced County Employee Retirement Association Board of Retirement recognizes the importance of training for all trustees to enable them to perform the duties of their position. All Board of Retirement members shall be required to attend the CALAPRS Training course held annually at Stanford during their first term of office or any equivalent course sponsored by SACRS, CALAPRS or other educational organization. Equivalent shall mean a course similar in hours and subject matter as the Stanford course. Failure to attend such training without good cause shall subject a member to public censure.

5. Rules of Order

Roberts' "Rules of Order," except as otherwise provided herein, shall guide the Board of Retirement in its proceedings. The order of business shall be:

- a. Roll Call
- b. Reading of the Minutes
- c. Public Input
- d. Closed Session
- e. Applications for Disability Retirement
- f. Board Action/Discussion
- g. Consent Calendar
- h. Reports
- i. Other Business Information
- j. Correspondence

6. Quorum

Five members of the Board of Retirement constitute a quorum. No motions may be passed or business transacted without five affirmative votes.

7. Minutes

The Secretary shall cause to be recorded in the minutes, the date, time and place of each meeting of the Retirement Board, the names of members present, whether a Board member's absence is excused or unexcused, all official acts of the Retirement Board, the motions and seconds, the votes given by members of the Board, except where the action is unanimous, and when requested, a member's dissent or approval with reasons, and shall cause the minutes to be written up forthwith and presented for approval at the next regular meeting. The minutes or a true copy thereof, submitted by the Secretary and signed by the Chair shall form part of the permanent records of the Retirement Board; tape recordings of Board Meetings will be kept for 180 days from the date of taping.

8. Disability Hearings

Disability hearings shall be scheduled and conducted as provided under MCERA'S Disability Rules and Regulations.

9. Confidentiality

The Ralph M. Brown Act or the "Act", as codified in Government Code sections 54950-54962, allows for legislative bodies, which includes the Merced County Employees Retirement Association or "MCERA", to hold closed or private meetings in accordance and compliance with the Act and to withhold from public disclosure proper closed session discussions and exchanges of information. Disclosure of closed session discussion or information by any individual MCERA Trustee or staff member would necessarily compromise and prejudice the position of MCERA in matters properly considered confidential under the Act. Therefore, no MCERA Board trustee or staff member shall publicly disclose any information received and discussed at a closed session, unless the information is authorized by law or by action of the MCERA Board of Trustees to be disclosed. Public or third party disclosure, either direct or indirect, of any properly closed session information by an MCERA Trustee or staff member shall be subject to sanctions as permitted by law, including but not limited to the barring of that member from future closed sessions, and/or obtaining an injunction against the person's public disclosures, and/or filing an accusation against the person for willful misconduct in office, and/or other sanctions or disciplinary actions as permitted and deemed appropriate by the MCERA Board of Trustees.

Article II amended September 13, 2007.

III. Membership

1. Membership Defined

Membership shall be as defined by the 1937 Act as supplemented by these bylaws.

- a. Active member is a person in the present employment of one of MCERA's employers;
- b. Deferred member is a person who has terminated employment with one of MCERA's employers and has left contributions on deposit with MCERA
- c. For the purpose of Government Code Section 31831.3 subsection (e), and in conformance with past and present MCERA practice, a former member shall be considered a safety member if the member was previously an MCERA safety

member or is presently classified and employed by a reciprocal system as such.

2. Mandatory Membership

Any employee of the County of Merced, Merced County Superior Court or of any District included in the Retirement Association, who is eligible for membership, shall be considered to be a member on the first day of employment (as adopted by Board Resolution 98-02 in 1998). Newly hired employees who have attained the age of 60 and elected officials have the option of waiving membership. Employees hired prior to 1998 became members on the first day of the next payroll period following appointment to a full time permanent position. Members may delay the effective start date of their membership with MCERA up to 12 weeks after the date of employment, or may terminate credited service with MCERA no earlier than 12 weeks prior to the member's termination from employment for the purpose of establishing reciprocity with another public retirement system as described in the 1937 Act.

3. Exempt

An employee who is classified by his department head in any one of the following classifications shall be exempt from membership in this Retirement Association:

- a. Extra Help
- b. Seasonal Employee
- c. Intermittent Employee
- d. Part Time Employee

4. Eligibility for Service Retirement

a. General Members

Any general member in Tier I with 10 years of retirement service credit who is age 50 or older, or with 30 years of retirement service credit regardless of age, is eligible for service retirement. Any general member in Tier 2 or Tier 3 with 10 years of retirement service credit and age 55 or with 30 years of retirement service credit regardless of age is eligible for service retirement. Any general member in Tier 4 with 5 years of retirement service credit who is age 52 is eligible for service retirement.

b. Safety Members

Any safety member in either Tier 1, 2, or 3 with 10 years of retirement service credit who is age 50 or older, or with 20 years of retirement service credit regardless of age, or if member reaches age 70 regardless of years of service, is eligible for service retirement. Any safety member in Tier 4 with 5 years of retirement service credit who is age 50 is eligible for service retirement.

c. Age 70

Any member having attained the age of 70 may retire for service, regardless of their years of retirement service credit, applicable to Tiers 1 – 3 only. A member may retire at age 65 if they were a member prior to December 31, 1978, applicable to Tier 1 only.

d. **Retirement service credit**

Retirement service credit for retirement eligibility is defined as 10 years of continuous county service 20,800 hours for which contributions are paid or if deferred, after five years of continuous county service for which contributions are paid at any time at which the member could have retired had the member remained in county service in a full-time position. One year of service is defined as 2080 hours.

Article III amended September 13, 2007.

Article III, section 1, amended, section 4 added, September 9, 2010

Article III, section 4 amended, June 14, 2012, November 21, 2013

IV. Evidence of Birth

1. Sworn Statement

Every employee who is made a member of the Retirement Association shall immediately fill out and properly execute a sworn statement form that complies with Section 31526(b) of the 1937 Act. The failure to comply with this requirement shall give the Board the discretion to determine the rate of contribution.

2. Birth Certificate

a. Every member who applies for retirement benefits shall be required to submit a certified copy of his/her birth certificate.

b. If unable to secure a birth certificate, the following documents will be acceptable to the Retirement board:

(1) Any one item of the following:

Infant Baptismal certificate

Hospital birth record

Authenticated family record

Current Passport

Or

(2) Any two items of the following:

Notarized Affidavit by older member of family

Certificate of military service

Marriage record if age is shown

Naturalization certificates issued by the Immigration and

Naturalization Service

Child's birth certificate showing age of parent

In the event of a discrepancy of age, the earliest birth date shall prevail. The evidence of birth shall be submitted to the MCERA staff. If the evidence of birth satisfies the criteria above, the same shall be accepted by the MCERA staff. If the evidence does not meet the criteria above or is not acceptable to the MCERA staff, same shall be submitted to the Board to determine whether evidence of birth shall be accepted by MCERA staff.

3. Evidence of Beneficiary

At the time of applying for a retirement benefit, the employee shall provide evidence of marriage or Domestic Partner Registration if the designated beneficiary is a spouse or domestic partner. Evidence of birth as described Section 2 above, shall be submitted for other beneficiaries.

Article IV amended September 9, 2010

Article IV section 2 amended January 2014

V. Election of Benefits

1. Prior to the first payment of the retirement allowance, each member shall be furnished with a document indicating the amount of his or her retirement allowance, both on the unmodified or optional methods of payment. This document shall provide for the signature of the member, indicating the choice as to type of allowance desired. This completed document shall constitute the annuity certificate provided for in section 31526 (c) of the 1937 Act.
2. After the initial retirement payment has been submitted to the retiree payroll, no changes can be made to the option selected by the member. No changes may be made to the beneficiary named by the member unless option 1 was selected.
3. Reciprocal Members who are granted a disability retirement may be subject to an offset of their retirement allowance.

Article V amended September 9, 2010

Article 5, added sections 2, 3, and amended June 14, 2012

VI. Member Contributions

1. Normal Contributions

Contributions for Tiers 1, 2 and 3 shall be based on the compensation earnable and member age at entry into the retirement system and shall be deducted only for the pay periods during which service for compensation is rendered. Contributions for Tier 4 members shall be a flat rate based on plan type, safety or general.

2. Refund of Contributions

- a. A member terminating membership and employment from the plan sponsor may receive a refund of contributions, including interest last credited if any. The date of termination is the date the employee last received compensation on payroll. A

request for a refund shall be made in writing and the Board may order payment in whole or in part withheld for a period not to exceed six months after date of separation.

- b. A deferred member may receive a refund of contributions if not classified as an outgoing reciprocal member; an outgoing reciprocal member may receive a refund upon receipt of confirmation from the reciprocal system that the member has terminated employment.
- c. A member who qualifies to move to Tier 1 membership from another Tier may convert his non Tier 1 service credit to Tier 1 only upon the payment of additional contribution amounts.
- d. At the regular meetings immediately preceding June 30 and December 31 of each year, the Board will declare the rate of interest which shall be credited to the members' and employers' accounts prospectively in accordance with the 1937 Act.

3. Re-deposits

- a. After a refund of contributions, if a member fails to re-deposit in cash or signify his intention to re-deposit in monthly payments, he forfeits credit for past service and his rate of contribution is then based on his age at the time of re-entrance.
- b. An eligible member who wishes to re-deposit the amount previously withdrawn plus interest may do so upon application to the Retirement Board. In its discretion the Retirement Board may allow a period of up to five years but no longer than the length of the service being purchased for such repayment. If no request is made regarding a specific duration for repayment or if re-deposit is not made in cash, the re-deposit shall be made by means of increased normal contributions each month until such re-deposit has been completed, provided, however, that this period shall not extend beyond 60 months after the date of re-entrance into the retirement system.
- c. Pursuant to Government Code Section 31831.3, a member may redeposit a refund of contributions while employed by a reciprocal system as a safety officer or if while employed by a reciprocal system seeks to redeposit contributions for past employment as a safety officer.

4. Acceptance of Plan-to-Plan Transfers and Rollovers

- a. County of Merced and District 457(b) Plans - To the extent authorized by both federal and state law and the Merced County Board of Supervisors or the District Board of Directors, the Association shall accept plan-to-plan fund transfers and accept direct rollover funds from eligible 457(b) plans of the County of Merced and Districts to satisfy all or part of the payment of contributions for the limited purposes of redepositing withdrawn contributions

and purchasing extra help or permanent time in a non-covered position, time as an elective officer with break in service, military service, and sick leave without pay. The amount transferred or rolled over shall not exceed the amount required for the applicable purpose. Further, all transfers must be timely made in the form and manner established by the Administrator. Transfers and rollovers may be voided, see subparagraph (c) below. No transfer or rollover shall be accepted if, or to the extent, that it does not comply with federal tax law.

b. True-Up of Plan-to-Plan Transfers and Direct Rollovers

- i. Effective on adoption of these by-laws, the Association will apply applicable interest on plan-to-plan transfers and direct rollovers based upon the date in which the funds were effectively received by the Association and the agreed upon date of transfer or rollover in the member's purchase agreement.
- ii. If the member does not pay the amount owed for the applicable purpose by the date required by the redeposit agreement, the Administrator shall as soon as reasonably possible inform the member of the additional amount owed to complete the redeposit agreement. The member will have 30 days to pay the additional amount owed by cash or personal check. If cash or a personal check for the additional amount is not received by the Association within 30 working days after the date that the Administrator notifies the member of the additional amount owed, then all of the transferred or rolled over funds will be returned to the qualified 457(b) or 457 plan and the purchase will be voided and treated as never having occurred. However, no cash or check shall be accepted if, or to the extent, that it does not comply with federal tax law.
- iii. If the member pays more than the amount owed for the applicable purpose by the date required by the redeposit or purchase agreement, the Association will return the excess amount immediately and directly to the transferring 457 plan.

5. Correction of Errors or Omissions

Pursuant to Government Code sections 31525 and 31539 for the purposes of payments into or out of the retirement fund for adjustments of errors or omissions:

- a. No action may be commenced by or against the Board or the system more than three years after all obligations to or on behalf of the member, former member, beneficiary, or annuity beneficiary have been discharged.
- b. If the retirement system makes an error that results in incorrect payment to a member, former member, beneficiary, or annuity beneficiary, the retirement system's right to commence recovery shall expire three years from the date the

incorrect payment was made.

- c. If an incorrect payment is made due to lack of information or inaccurate information regarding the eligibility of a member, former member, beneficiary, or annuity beneficiary to receive benefits, the period of limitation shall commence with the discovery of the incorrect payment.
- d. Notwithstanding any other provision of this section, if an incorrect payment has been made on the basis of fraud or intentional misrepresentation by a member, beneficiary, annuity beneficiary, or other party in relation to or on behalf of a member, beneficiary, or annuity beneficiary, then the board may commence an action up to 10 years from the date of the payment or upon discovery of the facts, fraud, or intentional misrepresentation, whichever is later.
- e. Collection for Overpayments – less than \$50.
For overpayments less than \$50, the Administrator shall make no demand and write off the account.
- f. Collections for Overpayments – Recipient Receiving an On-Going benefit.
 - i. If the recipient is receiving an on-going benefit and the Board, system, or employer error caused an overpayment in a benefit, then the Board may collect from the recipient's on-going benefit up to 5% of the gross monthly benefit, until discharged.
 - ii. If the recipient is receiving an on-going benefit and the member/recipient error caused the overpayment in a benefit, then the Board may collect from the recipient's on-going allowance up to 15% of the gross monthly benefit until discharged.

Notwithstanding i or ii above, the Administrator has the discretion to set up a contract or repayment plan with the recipient to collect the overpayment from an on-going benefit, allowing payment terms of up to five (5) years.

- g. Collections for Overpayments – Recipient Received a Lump Sum
 - i. If the recipient is not receiving an on-going benefit and has received an overpayment in a lump sum benefit of up to \$25,000, then the Administrator shall have authority pursuant to these By-laws to take action to recover the overpayment.
 - ii. If the recipient is not receiving an on-going benefit and has received an overpayment in a lump sum benefit of more than \$25,000, then the Administrator will pursue collection efforts after consultation with the Board of Retirement.

6. Corrections to Employee Contributions

- a. Under-payment of Employee Contributions – The amount of any under-payment of employee contributions must be made to the Association prior to retirement

through the employer's payroll system unless the Administrator determines that the underpayment is de minimis and cost of collection would exceed the benefit of recovery. If the under-payment of employee contributions is discovered at or after termination of service, the amount of the under-payment will be deducted from the member's monthly retirement check.

- b. Over-payment of Employee Contributions – In accordance with Title 26 of the U.S. Code, overpayment of employee contributions made on a pre-tax basis will be returned to the employee by the Association on separation from service with all employers that contribute to the Association or after the employee reaches normal retirement age. Prior to that time, the employer may correct the overpayment through its payroll system and the Association will credit the employer with the amount of the correction.
- c. Agent for the Employer – In the collecting, withdrawing, re-depositing, and returning of employee contributions, whether for mandatory or permissive employee contributions, the Association will act as an agent for the member's employer in arranging for the collection of employee contributions (and re-deposits) that are made through the employer's payroll system.

7. Appeals of any errors and correction made pursuant to this Article may be made per section VII.

Article VI, amended section 2 a, added b, c; section 3b, added c, Amended June 14, 2012.

Article VI, amended section 4, added section 6 April 11, 2013.

Article VI, Section 5 amended March 14, 2013.

VII. Appeals as to Non- Disability Benefits and Pensionable Compensation Issues

- 1. Requests for the award or change of pension benefits, other than disability benefits, and/or the inclusion of special pay items into pensionable compensation should be made by letter addressed to the Retirement Plan Administrator. The Administrator will provide a written response to the member on the requested benefits or on the inclusion of a special pay item into pensionable compensation.
- 2. If the member disputes the Administrator's decision, the member may request appeal to the Board of Retirement and may submit additional documentation, including affidavits, to the Administrator. The Administrator will provide copies of member's written request for benefits, staff recommendation and supporting documentation, along with any additional documentation from the member to the Board at a regularly scheduled Board Meeting in open session. The member may attend the Board meeting, and the Board, in its discretion, may invite the member to briefly address the issue, prior to its decision on the matter.

3. A decision by the Board is final. The Board will direct its Counsel to prepare a written decision, which will include: Findings of Fact, with supporting documentation; Basis in Law, with relevant statutory sections as attachments to the decision; and Final Disposition of the Case.
4. Judicial review of final Board of Retirement decisions shall be subject to Code of Civil Procedure Section 1094.6, as provided by these By-laws. Following final decision on disputed matters, the Administrator shall send to the member written notice as follows: “Pursuant to the Retirement Board's By-laws, action to seek judicial review of this decision is governed by the provisions of Section 1094.6 of the Code of Civil Procedure of the State of California. You are advised that any such petition must be filed not later than the ninetieth (90th) day following the date a decision becomes final.”

Article VII added February 14, 2013

VIII. Service

1. **Current Service**
 - a. Credit shall be given for each hour of service rendered for compensation after July 1, 1950 for which a contribution is made by the employee to the retirement system unless the member qualifies for a thirty (30) year exemption.
 - b. When computing service, such service shall be calculated by hours. No member shall be credited with more than 2,080 hours of service in any one year.
 - c. A member may purchase and receive retirement service credit for any Merced County or other MCERA employer service that is rendered prior to becoming an MCERA member for which contributions were not made. Under certain conditions, military and medical leave without pay may also be purchased.
 - d. A member may pay for service credit purchases by a lump sum; rollover of eligible funds or through payroll deductions. A purchase made through payroll deductions which is not completed in full requires Board approval to receive partial retirement service credit.

Article VIII, added sections 2, 3, amended June 14, 2012

IX. Compensation Earnable

Compensation Earnable: Effective October 1, 1997 and pursuant to Government Code section 31460 et seq. as interpreted by the California Supreme Court in Ventura County Deputy Sheriffs' Association vs. Board of Retirement et al, the “Compensation Earnable” of a member shall include only those items indicated by their title and pay code for which a retirement contribution is calculated and as listed in the pay code schedule maintained by the Auditor and as periodically amended, titled, Merced County Human Resources Department, Personnel Table, Attendance Special Pay and as approved by Resolution of the Retirement Board.

The Board of Retirement recognizes that compensation paid by an employer to an employee may take many different forms, some of which may not be or may not be known to the Board at this time, and some of which may change with succeeding collective bargaining agreements. Accordingly, the Board will make the determination of inclusion or exclusion in compensation earnable at such time that additional items of compensation are made known to the Board. Additionally, in the event a participating employer alters the manner in which compensation is paid, the Board will consider whether the altered benefit continues to meet the definition of "Compensation Earnable."

For the purpose of calculating a pension allowance, Final Average Compensation will be based on 26 consecutive pay periods for Tier 1 members and 78 consecutive periods for Tier 2, 3 and 4 members.

Article XIV, amended June 14, 2012, November 21, 2013

X. Additional Contributions

No additional contributions in excess of those provided in the County Employees' Retirement Act of 1937 can be made by any member of the Retirement Association.

XI. Interest on Employees Accounts

At the Retirement board meeting immediately preceding December 31st and June 30th of each year, the Board shall declare the rate of interest which shall be credited to the employees' contributions. Such rate shall be adopted in conformance with the Board of Retirement Interest Crediting Policy currently in effect.

XII. Mortality Tables

The Retirement Board, upon the advice of its actuary, shall adopt necessary mortality and other tables required in the operation of the system.

XIII. Amendments

The Retirement Board may, as it deems necessary and desirable, amend these by-laws at any regular Board meeting by an affirmative vote of at least five (5) Board members and shall become effective immediately following approval by the Merced County Board of Supervisors.

XIV. Repeals

All former by-laws, regulations and resolutions of policy inconsistent with these regulations are hereby repealed.

The foregoing By-Laws were adopted by the Merced County Employee Retirement Association Board upon motion of Board member Donnie Washburn, seconded by Board member Ralph Busby at a regular meeting of the Board held on January 12, 2006.

Ayes: Adams, Busby, Crookham, Lindsey, Rodriguez and Washburn

Noes: Gilsdorf

Abstain:

Absent: Cabral and Safety Member

Approved by Board of Supervisors February 28, 2006

Approved by Board of Supervisors October 16, 2007

Approved by Board of Supervisors May 12, 2009

Approved by Board of Supervisors, September 28, 2010

Approved by Board of Supervisors, February 25, 2014