

**MERCED COUNTY  
EMPLOYEES' RETIREMENT  
ASSOCIATION**

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**Board of Retirement Bylaws  
December 2017**

Table of Contents

Administration ..... 4  
    Name ..... 4  
    Purpose of Association ..... 4  
    Definitions ..... 4  
    Management ..... 4  
    Communication and Requests to the Board ..... 4  
    Officers ..... 4  
    Election and Appointment of Board Members ..... 4  
Meetings ..... 5  
    Regular Meetings ..... 5  
    Special Meetings ..... 6  
    Attendance ..... 6  
    Training ..... 6  
    Board Meeting Governance ..... 6  
    Quorum ..... 6  
    Minutes ..... 6  
    Disability Hearings ..... 7  
    Confidentiality ..... 7  
    Meeting Agendas ..... 7  
    Committees ..... 7  
    Travel ..... 7  
Membership ..... 7  
    Mandatory Membership ..... 7  
    Exempt ..... 8  
    Eligibility for Service Retirement ..... 8  
    Associations Normal Retirement Age and Employment Regulations ..... 8  
Evidence of Birth ..... 8  
Evidence of Beneficiary ..... 9  
Election of Benefits ..... 9  
Member Contributions ..... 9  
    Member Contributions ..... 9  
    Refund of Contributions ..... 9  
    Redeposits ..... 10  
    Acceptance of Plan to Plan Transfers and Rollovers ..... 10

|   |    |
|---|----|
| True up of Plan to Plan Transfers and Direct Rollovers .....  | 10 |
| Correction of Errors or Omissions .....                       | 11 |
| Corrections to Employee Contributions.....                    | 12 |
| Appeals and Review of Benefit Calculations .....              | 12 |
| Service .....   | 13 |
| Current Service .....   | 13 |
| Compensation Earnable .....                                   | 13 |
| Additional Contributions .....                                | 13 |
| Amendments of Bylaws.....                                     | 13 |
| Request for Delay or Rescheduling of Disability Hearing ..... | 14 |
| Repeals.....  | 14 |

## **Administration**

### **Name**

The name of this association is the Merced County Employees' Retirement Association (Association).

### **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., (CERL). For the purposes of carrying out the provisions of CERL, this Association is governed by the CERL as supplemented by these bylaws. These bylaws are intended to implement the CERL and not to conflict with the CERL and shall be interpreted accordingly. If portions of these bylaws conflict with the CERL, the CERL shall prevail.

### **Definitions**

Words, terms and phrases used in these bylaws shall be as defined in the CERL unless otherwise specified in these bylaws

### **Management**

The management of the Association shall be vested in the Board of Retirement (Board). The day to day operations of the Association is delegated to the Plan Administrator or designee.

### **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 Attention Board of Retirement, 3199 M Street, Merced, California 95348.

### **Officers**

Board members are elected and appointed pursuant to Government Section 31520.1. At the first regular meeting in July of each year or as soon as practical thereafter, the Board shall elect from its members a Chair, Vice Chair and Secretary, for a term of one (1) year or until the successor is duly elected. Should any officer fail 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, or when practical. Officers may be removed by a two-thirds vote of the entire Board.

### **Election and Appointment of Board Members**

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.

The Board of Retirement seats are as follows;

Seat 1 – County Treasurer appointed by Statute §31520.1

Seat 2 – Elected by general membership

Seat 3 – Elected by general membership

Seat 4 – Appointed by the Board of Supervisors  
Seat 5 – Appointed by the Board of Supervisors (currently a Merced County Supervisor)  
Seat 6 – Appointed by Board of Supervisors  
Seat 7 – Elected by safety membership  
Seat 8 – Appointed by the Board of Supervisors  
Seat 9 – Elected by retired membership  
Alternate Safety seat – Elected by safety membership  
Alternate Retiree seat – Elected by retired membership

The Board shall determine by motion which procedure shall be established for the election of the second, third, seventh, eighth, the alternate safety member and the alternate retired member:

- a) The election may be conducted by the County Registrar of Voters who may 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, or
- b) The election may be conducted by Association staff. The Plan Administrator will establish a procedure which will be brought to the Board for approval.

The candidate who receives the highest number of votes of the ballots for the position cast shall be declared the winner unless otherwise determined by the CERL. The newly elected member of the Board may assume the seat for which the candidate ran at the first Board meeting following the expiration of the term of the incumbent, or if the seat is vacant, may assume at the next meeting after the election.

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

Pursuant to Government Code Section 31521, the fourth, fifth, sixth, eighth, ninth and alternate retired members of the Board shall receive compensation at the rate of one hundred dollars (\$100) per meeting, limited to three meetings per month. A Board member must be an appointed member of a committee to receive compensation for attendance at a committee meeting. Mileage and travel costs will not be reimbursed for attendance at Board meetings. The fifth seat (or Seat 5), as a Supervisor for the County, waives all meeting stipends from the Association to attend meetings.

## **Meetings**

### **Regular Meetings**

Regular meetings of the Board shall be held on the second and fourth Thursday of each month at 8:15AM at the Retirement Office located at 3199 M Street, Merced, CA 95348 unless the place and or dates of the meeting are changed by order of the Board and timely noticed. The first meeting of the month may be for administrative matters and the second meeting may be for investment matters, unless changed by order of the Chair or the Board. Meetings may be adjourned by a Board member if a quorum is not present to conduct the meeting. The Plan

Administrator may cancel a meeting if it is confirmed in advance that a quorum will not be present to conduct Association business.

### Special Meetings

Special meetings of the Board may be called in accordance with the Brown Act.

### Attendance

Attendance at Board meetings is expected by every Board member. It is critical for the Association to conduct its business and make improvements in the Association. Without a quorum (five Members) no business may be conducted. With less than all Members attending, every Member's perspective is not included in all decisions. Every meeting is an opportunity not only to conduct the Association's business but to learn more about the Association's business and how to improve the Association. To that end, one hour of Board Member education will be provided each month so that Board Members may fulfill their 24 hours of education in two years as mandated by Government Code section 31522.8 just by attending regular meetings.

### Training

The Board recognizes the importance of training for all trustees to enable them to perform the duties of their position. All Board members are encouraged to attend training courses held annually sponsored by organizations such as SACRS, CALAPRS or other educational organizations. One hour of Board member education shall be provided each month so that Board members may fulfill their 24 hours of education in two years as mandated by Government Code section 31522.8 by attending regular meetings.

### Board Meeting Governance

Rosenberg's Rules of Order shall guide the Board in its proceedings. Further, the Ralph M. Brown Act shall govern the Board in its proceedings.

### Quorum

Five (5) members of the Board constitute a quorum. An exception to the requirement for five (5) member quorum requirement, is in the case of hearings on Disability Hearings (formal or informal). The CERL provides that four (4) members constitute a quorum for such hearings. In the event a majority of the Board members find themselves attending a purely social or ceremonial occasion, such Board members shall not discuss among themselves business that is within the subject matter jurisdiction of the Board.

### Minutes

The Chair shall cause to be recorded in the minutes, the date, time and place of each meeting of the Board, the names of members present, all official acts of the Board, the motions and seconds, the votes given by Board members, 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 and presented for approval at the next regular meeting. The minutes shall be submitted by the Plan Administrator and approved or signed by the Chair and Secretary, shall form part of the permanent records of the Board. Recordings of Board meetings will be kept for 180 days from the date of recording.

### Disability Hearings

Disability hearings shall be scheduled and conducted as provided under Disability Rules and Regulations. The minimum quorum requirement for a Board Disability Hearing (formal or informal) is four (4) voting members.

### Confidentiality

No Board member or staff shall publicly disclose any information received and discussed in a closed session, unless the information is authorized to be disclosed by law or by action of the Board. Public or third party disclosure, either direct or indirect, of any properly closed session information by a Board member or staff shall be subject to sanctions as permitted by law against the person for willful misconduct in office, and/or other sanctions or disciplinary actions as permitted and deemed appropriate by the Board.

### Meeting Agendas

Meeting agendas may be set by the Plan Administrator with approval from the Chair. Any member of the public, consultant, or member of the Board shall forward items to be put on the agenda to the Plan Administrator and those items will be discussed and may be agendaized with the Chair. Members of the public may appear at any open session Board meeting during Public Comment and ask for an item to be placed on the agenda and the Board may direct the Plan Administrator to place an item on the meeting agenda to be heard at the next regular meeting, if appropriate.

### Committees

Board members may be appointed by the Chair to committees of the Board as needed by the Chair. These Committees may be ad hoc in nature.

### Travel

All members of the Board and the Plan Administrator shall receive reimbursement for actual and necessary expenses consistent with the travel and reimbursement policy of the County of Merced for trainings or Board related business. Board members and the Plan Administrator may have to travel on Board business which may not be defined under the procedures of the Merced County Travel Policy. All travel that falls under this definition shall be discussed and approved by the Board of Retirement prior to travel taking place, if possible. The Board and Association may use [www.GSA.gov](http://www.GSA.gov) as a guide if the County's travel policy does not prevail.

## **Membership**

Membership shall be as defined by the CERL and by the California Public Employees' Pension Reform Act of 2013 (PEPRA).

### Mandatory Membership

Any employee of the County of Merced, Merced County Superior Court or of any District included in the 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. The

Association may delay the effective start date of a member up to 12 weeks after the date of employment, or may terminate credited service with the Association 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 CERL.

#### Exempt

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

- a) Extra Help
- b) Seasonal Employee
- c) Intermittent Employee
- d) Part Time Employee
- e) Student Intern/Assistant

#### Eligibility for Service Retirement

In addition to the provisions of the CERL pertaining to service retirement, the Association references Government Section Code 31499.4 of the CERL.

#### Associations Normal Retirement Age and Employment Regulations

The Board has adopted policy defining normal retirement age as 50 for safety members and as age 60 for miscellaneous members. The resolutions also require that a bona fide separation from service must occur before any retired member who is younger than normal retirement age can be employed as a retiree by an Association's employer. These regulations do not apply to a safety members 50 years or older or a retiring miscellaneous member, 60 years or older.

#### **Evidence of Birth**

Prior to the time that the first warrant is issued to any member for retirement allowance, every member of the Association shall be required to submit to the Plan Administrator a certified copy of a birth certificate. If a birth certificate is not attainable because such a record does not exist, then a member may submit one of the following; infant baptismal certificate, hospital birth record, current passport. If those certifications could not be obtained, then the member may submit any of the two following; notarized affidavit by an older member of the family, certificate of military service, marriage certificate if age is shown on the certificate, naturalization certificates issued the by US government or child's birth certificate if the age of the member is shown on the certificate. The failure to comply with this requirement shall give the Board the discretion to determine the rate of contribution.

In the event of a discrepancy of age, the latest birth date shall prevail. The evidence of birth shall be submitted to the Plan Administrator. If the evidence does not meet the criteria above or is not acceptable to the Plan Administrator, a request may be submitted to the Board to determine whether evidence of birth shall be accepted. Any member contribution shortfall that may arise from the difference in age, shall be paid by the member to the Association, prior to retirement.

### **Evidence of Beneficiary**

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

### **Election of Benefits**

Prior to the first warrant being issued to a member for retirement allowance, such member shall be furnished with a statement indicating the amount of his or her retirement allowance, calculated in accordance with the unmodified and various optional modes of settlement. Such statement shall provide for the signature of the member, indicating the choice as to type of allowance selected and when signed by the Plan Administrator or any other authorized retirement staff, shall constitute the annuity certificate provided for in Government Section Code 31760.

After the initial retirement payment is processed for payment (estimated 5 business days prior to actual receipt of payment by member) no changes shall be made to the option selected by the member. No changes shall be made to the beneficiary named by the member unless Option 1 (return of employee contributions) was selected.

Reciprocal members who are granted a disability retirement may be subject to an offset of their retirement allowance, in accordance with Government Section Code 31838.5 of the CERL.

### **Member Contributions**

#### Member Contributions

Member contributions for Tiers 1, 2 and 3 shall be based on the compensation earnable and member age at entry into the Association 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.

#### Refund of Contributions

- a) A member terminating membership and employment from the Association employer 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 Plan Administrator may make 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) At the Board meetings preceding June 30<sup>th</sup> and December 31<sup>st</sup> 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 Board's Interest Crediting Policy in accordance with the CERL.

### Redeposits

After a refund of contributions, if a member fails to redeposit in cash or communicate an intention to redeposit in writing to the Association, the member forfeits credit for past service and the rate of contribution is then based on the member's age at the time of reentry into the Association, per Government Section Codes 31652 and 31642.

An eligible member who wishes to redeposit the amount previously withdrawn plus interest may do so upon application to the Association. In its discretion, the Board may delegate to the Plan Administrator and staff to allow a maximum period of up to five years. Per Government Code Section 31831.3, the redeposit of contributions for service credit from a previous employment within a different benefit tier allows the member reentry into that former tier. If no request is made regarding a specific duration for repayment or if redeposit is not made in cash, the redeposit shall be made by means of increased contributions plus interest (see Board's Policy on Interest Crediting) until such redeposit has been completed, provided that this period shall not extend beyond five years after the date of reentrance into the Association. If a member terminates employment during a service purchase or redeposit, the remainder of payments must be made in a lump sum or service and contributions made toward the purchase or redeposit will be refunded.

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.

### Acceptance of Plan to Plan Transfers and Rollovers

For 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 Plan Administrator. No transfer or rollover shall be accepted if, or to the extent, that it does not comply with federal and state tax laws.

### True Up of Plan to Plan Transfers and Direct Rollovers

Effective on adoption of these bylaws, 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. If the member does not pay the amount owed for the applicable purpose by the date required by the redeposit agreement, the Plan 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 Plan 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. 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.

#### Correction of Errors or Omissions

Pursuant to Government Code Section 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 Association more than ten (10) years after all obligations to or on behalf of the member, former member, beneficiary, or annuity beneficiary have been discharged.
- b) If the Association makes an error that results in incorrect payment to a member, former member, beneficiary, or annuity beneficiary, the Association's right to commence recovery shall expire ten (10) years from the date the incorrect payment was made or the error was discovered, whichever is later.
- 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) For overpayments less than \$100, the Plan Administrator shall make a request for payment, but if no payment is made, the Plan Administrator may write off the account.
- f) If the member is receiving an ongoing benefit and the Association, or employer error caused an overpayment in a benefit, then the Association may collect from the member's ongoing benefit up to 5% of the gross monthly benefit, until discharged. If the recipient is receiving an ongoing benefit and the member's error caused the overpayment in a benefit, then the Plan Administrator may collect from the member's ongoing allowance up to 15% of the gross monthly benefit until discharged.
- g) If the member is not receiving an ongoing benefit and has received an overpayment in a lump sum benefit of up to \$25,000, then the Plan Administrator shall have authority pursuant to these bylaws to take action to recover the overpayment. If the member is not receiving an ongoing benefit and has received an overpayment in a lump sum benefit of more than \$25,000, then the Plan Administrator will pursue collection efforts after consultation with the Board.

### Corrections to Employee Contributions

- a) The amount of any underpayment of employee contributions must be made to the Association prior to retirement through the employer's payroll system unless the Plan Administrator determines that the underpayment is de minimis and cost of collection would exceed the benefit of recovery. If the underpayment of employee contributions is discovered at or after termination of service, the amount of the underpayment will be deducted from the member's monthly retirement warrant.
- b) In accordance with Title 26 of the U.S. Code, overpayment of employee contributions made on a pretax 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) In the collecting, withdrawing, redepositing, 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 redeposits) that are made through the employer's payroll system.

### **Appeals and Review of Benefit Calculations**

Requests for the review or change of pension benefits for which any member feels has been made in error by the Association shall be addressed in writing to the Plan Administrator. The Plan Administrator will review and provide a written response to the member on the calculations in question. The Plan Administrator has the authority to verify the calculations by the Association's actuary.

If the member disputes the Plan Administrator's review and outcome of the calculations, the member may request the Board to review the matter. The Board will review 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.

A decision by the Board is final. The Board will direct its Counsel to prepare a written decision to the member.

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 Plan 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."

## **Service**

### **Current Service**

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 Association unless the member qualifies for a thirty (30) year exemption.

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.

A member may purchase and receive retirement service credit for any Association employer service that is rendered prior to becoming member for which contributions were not made. Under certain conditions, military and medical leave without pay may also be purchased.

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.

## **Compensation Earnable**

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 an Association 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" or "Pensionable Compensation".

Pursuant to the CERL and PEPRA, the "Compensation Earnable" or "Pensionable Compensation" 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 Board.

For the purpose of calculating a final average compensation, it will be calculated based on 26 consecutive biweekly pay periods for Tier 1 members and 78 consecutive biweekly periods for Tier 2, 3 and 4 members.

## **Additional Contributions**

No additional contributions in excess of those provided in the CERL or PEPRA can be made by any member of the Association.

## **Amendments of Bylaws**

The Board as it deems necessary, may amend these bylaws 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. Bylaws may be reviewed every three years for amendments and or changes.

### **Request for Delay or Rescheduling of Disability Hearing**

The Board shall allow only two requests for a delay or a rescheduling of an informal or formal disability hearing. If a second request for a delay or rescheduling results in the applicant's medical records being 6 months old or older, the member may be sent to an independent medical examiner (IME) by the Plan Administrator. All request(s) for a delay or rescheduling must be made in writing to the Plan Administrator. After the second request is made, and if a member feels they have extenuating circumstances to request another (third request or beyond), the member may submit a request in writing to the Board. The Board may grant, deny or direct Plan Administrator to look into the member's circumstances and bring to the Board for consideration.

### **Repeals**

All former bylaws, regulations and resolutions of policy inconsistent with these regulations are hereby repealed.

The foregoing bylaws were adopted by the Merced County Employees' Retirement Association Board upon motion.

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

Approved by Board of Supervisors, November 8, 2016

Approved by Board of Supervisors, January 9, 2018