

**CITY OF BANNING  
EMPLOYER-EMPLOYEE RELATIONS RESOLUTION  
RESOLUTION NO. 2010-45**

**ARTICLE I -- GENERAL PROVISIONS**

Sec. 1. Title of Resolution.

This Resolution shall be known as the Employer-Employee Relations Resolution of the City of Banning and shall supersede and replace any prior Employer-Employee Relations Resolutions including but not limited to Resolution 2007-41 and Resolution 1977-2.

Sec. 2. Statement of Purpose.

This Resolution implements Chapter 10, Division 4, Title I of the California *Government Code* (Sections 3500 *et seq.*) captioned "Local Public Employee Organizations" known and cited as "Meyers-Milias-Brown Act (MMBA)", by providing reasonable and orderly procedures for the administration of employer-employee relations between the City and its employee organizations. This Resolution is intended to establish uniform and orderly methods of communication among employees, employee organizations, and the City.

However, nothing contained herein shall be deemed to supersede the provisions of federal or state law or regulations, City ordinances, resolutions, and/or rules which establish and regulate the merit service system, or which provide for other methods of administering employer-employee relations. This Resolution is intended to strengthen merit service and other methods of administering employer-employee relations by establishing uniform and orderly methods of communications between employees, employee organizations, and the City.

It is the purpose of this Resolution to provide procedures for meeting and conferring in good faith with exclusively recognized employee organizations regarding all matters that directly and significantly affect and primarily involve 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. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy.

Sec. 3. Definitions.

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

a. Appropriate Unit: A unit of employee classes or positions, established pursuant to Article II, below.

b. City: The City of Banning, and, where appropriate, the City Council or any duly authorized City representative as herein defined.

c. Confidential Employee: An employee, who, in the course of his/her duties, has access to confidential information relating to the City's administration of employer-employee relations, or who is required to develop or present management positions with respect

to employer-employee relations. Confidential employees include, but are not limited to, the Administrative Services Director/Deputy City Manager, Deputy Human Resources Director, Deputy Finance Director, Human Resources Technician, and any Executive Secretary when assigned to report to the City Manager.

d. Consult/Consultation in Good Faith: Oral or written communication with any or all exclusively represented employee organizations for the purpose of presenting and obtaining views or advising of intended actions; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counterproposals with an exclusively represented employee organization in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to the impasse procedures set forth in Article IV, below.

e. Day: Calendar day unless expressly stated otherwise.

f. Employee: Any person regularly employed by the City except those persons elected by popular vote.

g. Employee Organization: Any organization that includes employees of the City and has as one of its primary purposes representing such employees in their employment relations with the City or any organization that seeks to represent employees in their relations with the City.

h. Employee Relations Officer: The City Manager or his/her designee.

i. Employer-Employee Relations: The relationship between the City and its employees and their employee organization(s), or, when used in a general sense, the relationship between City management and employees or employee organizations.

j. Exclusively Recognized Employee Organization: An employee organization that has been formally acknowledged by the Employee Relations Officer as the sole employee organization representing the majority of employees in an appropriate unit, pursuant to Article II, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees.

k. Impasse: The point in labor negotiations at which one or both parties to the labor negotiations determine that no further progress can be made toward reaching agreement.

l. Management Employee: An employee having responsibility for formulating, administering, or managing the implementation of City policies and programs. Management employees shall be designated as such by the City Council.

m. Meet and Confer in Good Faith: The exchange of proposals and counterproposals between representatives of the City and an exclusively recognized employee organization regarding matters within the required scope of the meet and confer process in an endeavor to reach agreement in the form of a Memorandum of Understanding on either of the following issues:

1. Those matters within the authority of such representatives; or
2. What will be recommended to the City Council with respect to those matters within the decision-making authority of the City Council.

This process does not require either party to agree to a proposal or to make a concession. “Meet and confer in good faith” may also be referred to herein as “meet and confer” or “meeting and conferring.”

n. Professional Employee: Any employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, physicians, engineers, accountants, planners, and various types of scientists.

o. Proof of Employee Support: Any of the following: (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to 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 is not proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words “recently signed” shall mean within ninety (90) days prior to the filing of a petition.

p. Proposed Unit: A unit that the Employee Relations Officer has not yet designated as an appropriate unit.

q. Scope of Representation: All matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment. However, the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. The rights of the City as set forth in Section 5 of this Article are excluded from the scope of representation.

r. Supervisory Employee: 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 the responsibility to direct them, or to adjust their grievances, or effectively recommend such actions, 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.

Sec. 4. Employee Rights.

Employees 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 also 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 an employee organization because of his/her exercise of these rights, or by his/her decision to abstain from the exercise of these rights.

The right to self representation does not confer rights to bargain wages nor employment terms and conditions with the City.

Sec. 5. City Rights.

The rights of the City include, but are not limited to the following: determine the mission of its constituent departments, commissions, and boards; determine the processes and materials to be employed in performing services; set standards of service; determine the procedures and standards of selection for employment and promotion; direct and assign its employees; assign work to employees; establish and change work schedules and assignments; determine the days and hours when employees shall work; take disciplinary action for cause; relieve its employees from duty because of lack of work or other lawful reasons; determine the content of job classifications; subcontract work and transfer work out of a bargaining unit; expand or diminish services; maintain the efficiency of government operations; determine the means, methods, and personnel by which government operations are to be conducted; 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.

**ARTICLE II -- REPRESENTATION PROCEEDINGS**

Sec. 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 shall 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.
- c. Names of employee organization representatives who are authorized to speak on behalf of the organization.

d. A statement that the employee organization has, as one of its primary purposes, 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 a 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 by-laws, or articles of incorporation.

g. A designation of those persons, not exceeding two (2) 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.

h. A statement that the employee organization has no restriction on membership based on race, color, creed, religion, gender, sex, pregnancy, childbirth or related medical conditions, national origin, ancestry, age, physical or mental disability, legally protected medical condition, family care status, veteran status, marital status, sexual orientation, or any other basis protected by state or federal laws.

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

j. A Petition must be accompanied by proof of employee support equal to at least thirty percent (30%) of the employees within the proposed unit. Proof may be shown by payroll dues deductions, membership cards, signed authorization cards, petitions, or statements of intent signed by the employees.

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, shall be declared to be true, correct, and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

Sec.2. City Response to Recognition Petition.

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

a. There has been compliance with the requirements of the Recognition Petition, and

b. The proposed representation unit is an appropriate unit in accordance with Section 7 of this Article.

If an affirmative determination is made by the Employee Relations Officer on these matters, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit, and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization, and, if such determination thereafter remains unchanged, shall inform that organization of the reasons for the denial in writing. The petitioning employee organization may appeal such determination in accordance with Section 9 of this Article.

### Sec.3. Alternative Recognition Procedures.

Unless another employee organization has previously been recognized as the exclusive representative of all or part of the same proposed unit, the following procedures may be used as an alternative to Section 1 of this Article.

The City shall grant exclusive recognition to an employee organization based on a signed petition, authorization cards, or union membership cards showing that a majority of employees in an appropriate bargaining unit, as defined in Section 7 of this Article, desire the representation. An employee organization proceeding under these alternative recognition procedures must present the City with a Recognition Petition that meets all the requirements of Section 1 of this Article, except that instead of showing that there is employee support equal to at least thirty percent (30%) of the employees within the proposed unit under Section 1.j of this Article, the employee organization must present a signed petition, authorization cards, or union membership cards showing that a majority of the employees in an appropriate bargaining unit approve the employee organization.

Exclusive representation shall be determined by a neutral third party selected by the City and the employee organization. The neutral third party shall review the signed petition, authorization cards, or union membership cards to verify the exclusive status of the employee organization. In the event that the City and the employee organization cannot agree on a neutral third party, the State Mediation & Conciliation Service of the Department of Industrial Relations shall be the neutral third party, and shall verify the exclusive status of the employee organization.

In the event that the neutral third party determines, based on a signed petition, authorization cards, or union membership cards, that a second employee organization has the support of at least thirty percent (30%) of the employees in the unit in which recognition is sought, the neutral third party shall order an election to establish which employee organization, if any, has majority status. Such election shall be conducted in accordance with Section 5 of this Article.

### Sec.4. 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 Section 1 of this Article. If such challenging petition seeks establishment of an over-lapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 7 of this Article. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 9 of this Article.

#### Sec.5. Election Procedure.

The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a neutral third party agreed to by the Employee Relations Officer and the concerned employee organization(s), in accordance with its rules and procedures subject to the provisions of this Resolution. In the event that the parties are unable to agree on a third party to conduct an election, the parties agree that the election shall be conducted by the California Mediation and Conciliation Service.

All employee organizations who have submitted petitions which have been determined to be in conformance with this Article shall be included on the ballot. The choice of "no organization" shall also be included on the ballot. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall 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 or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

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

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

Sec. 6. Procedure for Decertification of Recognized Employees 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 January of any year following the first full year of recognition, or during the thirty (30) day period commencing one hundred eighty (180) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. A Decertification Petition may be filed by two (2) or more employees or their representative, or an employee organization, and shall 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 of the incumbent exclusively recognized employee organization sought to be decertified as the 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 shall be submitted for confirmation to the Employee Relations Officer within the time limits specified in the first paragraph of this Section.

An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this Section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent and otherwise conforms to the requirements of Section 1 of this Article.

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article. If his/her determination is in the negative, he/she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization, and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefor in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 9 of this Article. If the determination of the Employee Relations Officer is in the affirmative, or if his/her negative determination is reversed on appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent exclusively recognized employee organization and to unit employees.



The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) 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 hereunder, the question of representation. Such election shall be conducted in conformance with Section 5 of this Article.

During the “open period” specified in the first paragraph of Section 6 of this Article, the Employee Relations Officer may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wish to be organized, inform all unit employees that there will be an election to determine that issue. In such an event, any other employee organization may, within fifteen (15) days of such notice, file a Recognition Petition in accordance with Section 1 of this Article, which the Employee Relations Officer must act on in accordance with Section 2 of this Article.

If, pursuant to the procedure of Section 6 of this Article, a different employee organization is formally acknowledged by the Employee Relations Officer as the exclusively recognized employee organization, such organization will be bound by all the terms and conditions of any Memorandum of Understanding then in effect for that bargaining unit for which they are newly being exclusively recognized as the employee organization for its remaining term.

Sec. 7. Policy and Standards for Determination of Appropriate Units.

The policy objectives in determining the appropriateness of units shall 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 shall be the broadest feasible grouping of positions that share an identifiable community of interest. The City shall consider the following factors, among others, in making such determinations:

- a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- b. History of representation in the City and in similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
- c. Consistency with the organizational patterns of the City.
- d. Number of employees and classifications, and the effect on the administration of employee-employer relations.
- e. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single classifications among two (2) or more units.
- f. Effect of differing legally-mandated impasse resolution procedures.

Managerial, supervisory, and confidential responsibilities are determining factors in establishing appropriate units hereunder, and therefore such managerial, supervisory, and confidential employees may not be included in units that include non-managerial, non-supervisory, and non-confidential employees. Managerial, supervisory, and confidential employees may not represent any employee organization which represents other employees on matters within the scope of representation.

The Employee Relations Officer shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this Section.

Sec. 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 Section 6 of this Article. Such requests shall be submitted in the form of a Recognition Petition, and, in addition to the requirements set forth in Section 1 of this Article, shall 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 Section 7 of this Article. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article.

The Employee Relations Officer may, on his/her own motion, propose during the period specified in Section 6 of this Article, that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard.

Thereafter, the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 7 of this Article, and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 9 of this Article. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, 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 1 of this Article.

Sec. 9. Appeals.

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer under this Article may, within ten (10) days of notice thereof, request the intervention of the Department of Industrial Relations through the use of its State Mediation & Conciliation Service program pursuant to *Government Code* Sections 3507.1 and 3507.3, or may, in lieu thereof or thereafter, appeal such determination to the City Council for final decision within fifteen (15) days of notice of the Employee Relations Officer's determination or the termination of proceedings pursuant to *Government Code* Sections 3507.1 or 3507.3, whichever is later.

An employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition Challenging Petition or Decertification or Recognition Petition – or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition – has not been filed in compliance with the applicable provisions of this Article, may, within fifteen (15) days of notice of such determination, appeal the determination to the City Council for final decision.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the Employee Relations Officer. The City Council will commence to consider the matter within thirty (30) days of the filing of the appeal. The decision of the City Council shall be final and binding. The City Council may, in its discretion, but with the consent of the appellant, refer the dispute to a third party hearing process. The decision of the City Council to so refer the dispute shall be final and binding. However, if the City Council so refers the dispute, the City Council will determine whether the opinion of the hearing officer will be advisory or binding. If advisory, the City Council will review the decision of the hearing officer and determine whether it will adopt, modify, or reject the hearing officer's decision.

### **ARTICLE III -- ADMINISTRATION**

#### **Sec.1. Administrative Rules and Procedures.**

The Employee Relations Officer 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.

#### **Sec.2. Submission of Current Information by Exclusively Recognized Employee Organization.**

All changes in the information filed with the City by an exclusively recognized employee organization under Section 1 of Article II shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

#### **Sec. 3. Payroll Deductions on Behalf of Employee Organizations.**

Upon formal acknowledgement by the City of an exclusively recognized employee organization under this Resolution, only such exclusively recognized employee organization may be provided payroll deductions of membership dues and insurance premiums for plans sponsored by such organization upon the written authorization of employees in the unit represented by exclusively recognized employee organization on forms provided therefor by the City. The providing of such service to the exclusively recognized employee organization by the City shall be contingent upon and in accordance with the provisions of Memoranda of Understanding and/or applicable administrative procedures. This shall not preclude the continuation of payroll deductions heretofore granted to any employee. An exclusively recognized employee organization for which dues are deducted may be required to pay the City, upon written demand of the City, a service charge of ten cents (\$0.10) per name per month.

Sec.4. Reasonable Time Off to Meet and Confer.

The exclusively recognized employee organization may select employee members of such organization to attend scheduled meetings with the Employee Relations Officer or other management officials on subjects within the scope of representation during regular work hours without loss of compensation. The number of employee members who may attend these meetings shall be designated in the exclusively recognized employee organization's Memorandum of Understanding. If the Memorandum of Understanding does not so designate, no more than three (3) such employees may attend meetings under this Section. The exclusively recognized employee organization must, whenever practicable, submit the names of all such employee representatives to the Employee Relations Officer at least two (2) working days in advance of such meetings.

Any such meeting is subject to scheduling by City management in a manner consistent with operating needs and work schedules. In addition, no employee representative may abandon or leave his/her duties, work station, or assignment without specific approval from his/her Supervisor, Department Head, or other authorized City management official.

Sec.5. Bulletin Boards.

The City will furnish adequate bulletin board space where available and exclusively recognized employee organizations may use portions of City bulletin boards under the following conditions:

- a. No materials may be defamatory, violate the City's Personnel Rules, nor shall they advocate election or defeat of candidates for public office.
- b. All materials must be dated and must identify the organization that published them.
- c. Unless special arrangements are made, materials will be removed thirty-one (31) days after the posting.

The City reserves the right to determine where bulletin boards shall be placed and what portion of them are to be allocated to exclusively recognized employee organizations' materials.

An exclusively recognized employee organization that does not abide by these rules may forfeit its right to have materials posted on City bulletin boards. The City reserves the right to immediately remove any material posted in a manner that is not in conformance with this Section.

Sec.6. Reasonable Access to Work Locations.

Reasonable access to employee work locations shall be granted to exclusively recognized employee organizations and their officially designated representatives, for the purpose of processing grievances or contacting members of the exclusively recognized employee organization concerning business within the scope of representation.

a. Such officers or representatives shall not enter any work location without the prior consent of the Department Head or the Employee Relations Officer, which must be obtained at least one (1) business day in advance of the date of desired access.

b. Access shall be restricted so as not to interfere with the normal operations of the department, any of its facilities, or established safety or security requirements.

c. Officially designated representatives of the exclusively recognized employee organization must obtain prior permission from his/her immediate Supervisor to engage, during duty hours, in issues relating to business within the scope of representation. If permission is denied, an alternate time will be designated.

d. The Department Head and/or the Employee Relations Officer shall not arbitrarily or capriciously deny access to officers of exclusively recognized employee organizations.

Sec. 7. Solicitation of Membership and Activities.

Solicitation of membership and activities concerning the internal management of an employee organization, such as collecting dues, holding membership meetings, campaigning for office, conducting elections, and distributing literature shall not be conducted during working hours, unless specifically authorized by the Employee Relations Officer.

Sec. 8. Use of City Facilities.

Employee organizations may, with the prior approval of the Employee Relations Officer, be granted the use of City facilities during non-work hours for meetings of City employees, provided space is available, and provided further that such meetings are not used for organizational activities or membership drives of City employees.

All requests made for the use of City facilities must be made in writing. The City reserves the right to assess reasonable charges for the use of such facilities. The use of City equipment other than items normally used in the conduct of business meetings, such as desks and chairs, is strictly prohibited, the presence of such equipment in approved City facilities notwithstanding.

Sec. 9. Access to Information.

The City will make non-confidential employee information available to exclusively recognized employee organizations in accordance with the requirements of the California Public Records Act (*Government Code* §§ 6250 *et seq.*). Access to this information will be made during regular business hours and subject to payment for reasonable costs of copying. In addition, the City will impose additional charges for requests for records that are produced only periodically or for requests that require programming, compilation, or extraction of electronic data.

The following types of information are examples of the type of information that is not subject to disclosure under this Section:

- a. Personnel, medical, or similar files, the disclosure of which would cause the City to violate individual privacy rights;
- b. Working papers or memoranda that are not retained in the ordinary course of business;
- c. Records pertaining to pending litigation to which the City is a party;
- d. Records pertaining to claims or appeals that the City has not yet settled; or
- e. Records for which the public interest served by non-disclosure clearly outweighs the public interest served by the disclosure of the record.

#### **ARTICLE IV -- IMPASSE PROCEDURES**

##### Sec.1. Initiation of Impasse Procedures.

If the meet and confer process has reached impasse as defined in 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 disputed issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such impasse meeting shall be:

- 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 resolve such disputed issue or issues; and
- c. If the dispute is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

##### Sec.2. Impasse Procedures.

Impasse procedures are as follows:

a. Mediation. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.

b. Determination by the City Council. If the parties failed to agree to submit the dispute to mediation or failed to agree on the selection of a mediator, or failed to resolve the dispute through mediation within fifteen (15) days after the mediator commenced meeting with the parties, the matter may be submitted to the City Council. The City Council shall take such action regarding the impasse as it, in its discretion, deems appropriate and in the public interest. Any legislative action by the City Council on the impasse shall be final and binding.

Sec. 3. Costs of Impasse Procedures.

If after a reasonable period of time, representatives of the City and the exclusive employee organization fail to reach agreement, the City and the exclusive employee organization may together agree upon the appointment of a mediator mutually agreeable to the parties. Costs of mediation shall be divided one-half to the public agency and one-half to the exclusive employee organization as provided for and stated in California Government Code Section 3505.2.

**ARTICLE V -- MISCELLANEOUS PROVISIONS**

Sec. 1. Strikes and Work Action.

Nothing in this Resolution shall 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, sick-out, or other total or partial stoppage or slow down of work which is contrary to law or court order. In the event the employees engage in such actions contrary to law or court order, they may subject themselves to discipline up to and including termination, and may be deemed to have abandoned their employment; 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.

Sec. 2. Construction.

This Resolution shall be administered and construed as follows:

- a. Nothing in the Resolution shall 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, state, or City law.
- b. This Resolution shall be interpreted so as to carry out its purposes as set forth in Article I.

Sec. 3. Severability.

If any provision of this Resolution or its application is deemed invalid by a court of competent jurisdiction, the City Council intends that such invalidity will not affect the effectiveness of the remaining provisions or applications, and, to this end, the provisions of this Resolution are severable.

Sec. 4. Effective Date.

This Resolution becomes effective immediately upon adoption. Further, upon adoption, this Resolution revokes Resolution 2007-41.

PASSED AND ADOPTED this 13th day of July, 2010.

\_\_\_\_\_  
Mayor, City of Banning, California

APPROVED AS TO FORM  
AND LEGAL CONTENT:

\_\_\_\_\_  
Dave J. Aleshire, City Attorney  
Aleshire & Wynder, LLP

I, Marie Calderon, City Clerk of the City of Banning DO HEREBY CERTIFY that the foregoing Resolution was duly adopted by the City Council of the City of Banning at a Regular Meeting thereof held on July 13, 2010, by the following vote, to-wit.

AYES:  
NOES:  
ABSENT:

\_\_\_\_\_  
City Clerk, City of Banning, California

( S E A L )