**RESOLUTION NO. 2009-30**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MERCED, CALIFORNIA, RESCINDING RESOLUTION NO. 2000-47 AND ADOPTING A VALUES STATEMENT, ADOPTING RULES OF ORDER AND PROCEDURE FOR THE CONDUCT OF CITY COUNCIL MEETINGS, AND ADOPTING A CODE OF CONDUCT FOR CITY COUNCIL MEETINGS**

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

SECTION 1. RESCISSION OF RESOLUTION. Resolution No. 2000-47 is hereby rescinded.

## VALUES STATEMENT

SECTION 2. VALUES STATEMENT. The City Council of the City of Merced values the creation of an atmosphere at City Council meetings that encourages and fosters public input and involvement in the decision making process. The City Council believes that diversity in the community is a positive attribute that is reflected in those elected to represent the citizens of Merced.

It is the City Council's goal to be tolerant of different opinions, to show respect and concern on all issues, to demonstrate leadership by its actions, and to pledge support or disagreement without being disagreeable in our best effort to keep Merced a city where good things happen.

It is the objective of the City Council to establish the uniform procedures prescribed herein for the conduct of public hearings to ensure that all persons appearing before the City Council are treated fairly and equally.

All other Boards and Commissions of the City shall strive to comply with this Values Statement.

## RULES OF ORDER AND PROCEDURE

SECTION 3. POSTING OF AGENDAS. All agendas of the City Council meetings, and of the other Boards and Commissions of the City, shall be posted on or near the entrance to City Hall, located at 678 West 18th Street, Merced, California, at least seventy-two (72) hours prior to a regular or adjourned meeting, and at least twenty-four (24) hours for a special meeting. The City Clerk or Secretary of the Board or Commission shall prepare a certificate of posting for each such posting.

SECTION 4. CONTENTS OF AGENDA. Each agenda shall contain a brief, general description of each item to be transacted or discussed at the meeting.

SECTION 5. CITIZEN PARTICIPATION. In accordance with Charter Section 411 and these Rules, each agenda for a regularly scheduled City Council, Board, or Commission meeting shall provide an opportunity for members of the public to personally, or through counsel, address the City Council, Board, or Commission on items of interest to the public that are within the subject matter jurisdiction of the City Council, or respective Board or Commission. In accordance with Section 411 of the City Charter, at special or emergency meetings, grievances and comments shall be limited to the topic of the special or emergency meeting, unless waived by the City Council, Board, or Commission.

Unless less restrictive rules are adopted or are waived by the City Council, Board or Commission, the following rules shall apply:

1. Citizen participation shall take place at the opening of oral communications for non-agenda items and for a public hearing, or subsequent to the administrative staff report for an agenda item that calls for public comment, and shall be limited to five (5) minutes with no speaker given more than five (5) minutes to speak. In order to speak during oral communications, on an agenda item, or at a public hearing, a speaker must first complete a Request to Speak card and submit it to the City Clerk. The Request to Speak card must be submitted prior to oral communications, to the opening of the public hearing, or the calling of the agenda item. At the time for public comment, the Mayor or Chair shall ask the City Clerk or Secretary of the Board or Commission to read the names from the Request to Speak cards. The City Clerk or Secretary of the Board or Commission shall call three (3) to five (5) speakers at a time and base the order of the speakers on the order in which the Request to Speak cards were submitted.

If more than three (3) speakers desire to speak at a public hearing or on an agenda item, then the Mayor or Chairperson may limit each speaker to three (3) minutes at the discretion of the City Council, Board, or Commission.

Speakers shall be timed by the City Clerk or Secretary of the Board or Commission who shall inform speakers when their time has expired. As a courtesy to the City Council, Board, or Commission and other speakers, and those waiting to be heard on agenda items, speakers will not be allowed to continue beyond their allotted time.

2. For those agenda items where there is an applicant for a permit, license, or other entitlement, or the proposed revocation thereof, a spokesperson for the applicant, or the applicant themselves, shall be entitled to fifteen (15) minutes, including any time for rebuttal, and a spokesperson for any appellant or group opposing the application shall be entitled to fifteen (15) minutes, including any time for rebuttal. All other speakers commenting on the item shall be limited to five (5) minutes and shall be subject to the Request to Speak card procedure hereinbefore prescribed.

3. For oral communications, each speaker must complete and submit a Request to Speak card and shall be subject to the procedures hereinbefore prescribed. The City Council or respective Board or Commission may limit non-agenda items to thirty (30) minutes after which any additional speakers may speak on non-agenda items at the end of the scheduled business.

4. No public input needs to be heard on a subject not within the subject matter jurisdiction of the City Council or respective Board or Commission and the Mayor or Chair shall rule the speaker out of order.

5. Any non-agenda item that requires action shall be referred by the Mayor or Chairperson to the City Manager for a report. The City Council, Board, or Commission shall not discuss the item until a report is prepared and heard unless the item meets one of the exceptions contained in Government Code Section 54954.2(b).

SECTION 6. ACTING ON NON-AGENDA ITEMS. No action shall be taken on agenda items not posted in accordance with Government Code Section 54954.2 or 54956 unless the item meets one of the exceptions contained in Government Code Section 54954.2(b).

SECTION 7. PROCEDURE UPON DEMAND TO CURE ACTION ALLEGED TO VIOLATE THE BROWN ACT. Upon receipt of a demand to cure or correct an alleged violation of the Brown Act, Government Code Section 54950 *et seq.*, the following rules shall apply:

1. The item shall be considered in two parts at the next meeting of the City Council, Board, or Commission.

2. The City Council, Board, or Commission shall first consider whether or not to reconsider the matter in which an alleged violation of the Brown Act occurred. If the City Council, Board, or Commission determines to reconsider the matter, the City Council, Board, or Commission shall thereafter rehear the matter on the merits and determine whether or not to supersede or rescind the challenged action as of the effective date of the corrective action. In making any corrective action, all previous testimony, as well as any new testimony, shall be considered part of the record.

SECTION 8. PROCEDURE FOR AGENDA ITEMS.

1. The presiding officer shall be the Mayor for all matters before the City Council and the Chair of the Board or Commission for all matters before the Board or Commission. In the event of the absence or non-participation for any reason of the Mayor or Chair, the presiding officer shall be the member upon whom the chairmanship of a regular meeting of the body devolves in such event.

2. The order of presentation of evidence in each case shall be determined by the presiding officer in their discretion. The presiding officer shall rule out of order the presentation of abusive, profane, or unduly repetitive evidence.

3. Evidence shall not be required to be presented under oath or affirmation nor shall there be a right of cross-examination, except for any revocation hearing held pursuant to subsection 9 of this Section.

4. No proceeding need be conducted according to any technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence in a court of law.

5. Rulings on questions of order or procedure shall be made by the Mayor or Chair of the Board or Commission unless a specific rule to the contrary is provided by the Charter of the City of Merced, a statute applicable to charter cities, City Ordinance, or these rules. Such rulings on questions of order or procedure are subject to appeal to the entire City Council or Board or Commission by a Member of the City Council, Board, or Commission in which case a majority vote thereof shall conclusively govern and conclusively determine such question of order or procedure. *Robert's Rules of Order*, if used, shall only be used as a guide and is not conclusive authority on any question of order or procedure.

6. When a matter is contested and a request is filed in writing with the City Clerk at least forty-eight (48) hours before the hour set for the hearing, a record of any hearing or continued hearing subsequently held in the matter shall be made and duly preserved, provided that the City Clerk shall require a deposit in advance from the person making the request. A copy of such record shall be available at cost.

7. Administrative staff reports shall be made public prior to or at the beginning of the hearing and shall be a matter of public record.

8. The action or recommendation of the City Council, Board, or Commission shall appear in the minutes of the respective body prepared for the meeting. Such minutes shall be public records, which shall be open to inspection and available for copying at cost in accordance with rules applicable to public records generally.

9. The following additional rules shall apply to public hearings set for the purpose of determining whether a conditional use permit; variance; or any other entitlement, license, or permit shall be revoked and shall prevail over any of the foregoing rules inconsistent herewith.

A. Notice of revocation hearing shall be transmitted by certified mail at least ten (10) days before the hearing to the owner of the affected property at the address shown on the current records of the County Assessor.

B. The decision of the body before which the public hearing was held shall be sent to the affected property owner by certified mail at the address shown on the current records of the County Assessor within ten (10) days of the making of such decision.

SECTION 9. CITY COUNCIL MEETINGS.

1. Regular sessions of the City Council shall be held on the first and third Mondays of each month, holidays excepted, at the hour of 6:30 p.m., and adjourned and special meetings at such time as the City Council may order. The time between 6:30 p.m. and 7:00 p.m. shall be reserved for closed sessions with the regular agenda commencing at 7:00 p.m.

2. The proceedings of special City Council meetings shall be limited to the subjects set forth in the call therefore.

SECTION 10. POWERS AND DUTIES OF MAYOR.

1. The Mayor shall take the Chair at the hour appointed for the City Council to meet. The Mayor shall immediately call the members to order, and except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

2. The Mayor shall preserve order and decorum and shall decide all questions of order and procedure, subject to appeal, which appeal shall be decided without debate, except that the appellant may state the grounds upon which he/she bases his/her appeal.

SECTION 11. POWERS AND DUTIES OF MAYOR PRO TEMPORE. The Mayor Pro Tempore shall be selected by the City Council to act as presiding officer during the absence of the Mayor and said Mayor Pro Tempore shall serve at the pleasure of the City Council.

SECTION 12. ABSENCE OF MAYOR AND MAYOR PRO TEMPORE. In the absence of the Mayor and Mayor Pro Tempore, the Chair shall be occupied by one of the City Council Members present, selected alphabetically in rotation on an annual basis.

SECTION 13. ORDER OF BUSINESS.

1. The City Manager shall prepare or cause to be prepared and cause to be printed for each meeting a list in detail of all matters ready for consideration at the City Council, Board or Commission meetings; said list shall be known as the agenda and shall include all communications from other officers and boards, petitions and communications, reports, resolutions, ordinances, and any other

matters which have been presented to the City Council, Board, or Commission and which remain undetermined. In case any matters on the agenda of a particular meeting are not acted upon, they shall be continued upon the agenda of the next meeting and of each succeeding meeting in their order of introduction until finally disposed of by the City Council.

2. The business of regular meetings of the City Council, Board or Commission shall be transacted as far as practicable in the following order:

A. Study Session (if applicable)
B. Closed Session (if applicable)
C. Call to Order
D. Roll Call
E. Report Out of Closed Session (if applicable)
F. Ceremonial Matters (if applicable)
G. Written Petitions and Communications
H. Oral Communications
I. Redevelopment Agency Consent Calendar
J. City Council Consent Calendar
K. City Council/Redevelopment Agency Public Hearings
L. City Council and Redevelopment Agency Reports
M. Business from City Council and Redevelopment Agency
N. Adjournment

It is understood that matters set for public hearing shall be taken up at the hour set or as soon thereafter as possible.

3. The first item on the consent calendar shall be a motion that reads as follows:

> "To approve the reading by title of all Ordinances and Resolutions which appear on the public agenda. Said Ordinances and Resolutions which appear on the public agenda shall be determined to have been read by title and further reading waived pursuant to Merced City Charter Section 412."

## CODE OF CONDUCT

SECTION 14. RIGHTS AND DUTIES OF MEMBERS.

1. When a Member is about to speak they shall address the Mayor or Chair, and when two or more Members desire to speak at once, the Mayor or Chair shall name the Member who is to speak, and the Member shall confine himself/herself to the question under debate and avoid personalities.

2. Whenever the Mayor recognizes a Member desiring to speak that Member may initially address the City Council or question staff, an applicant or a witness for a period not to exceed five (5) minutes after which the Mayor shall recognize the next Member desiring to speak or question staff, an applicant, or a witness. Once all Members have had an initial five (5) minutes to speak on a matter, the Mayor shall allow a second and subsequent rounds of speaking and/or questioning by the City Council until the question is called or all Members have completed their speaking and/or questioning.

3. Every Member present when a question is put shall vote by signifying yes, no, or abstain either by voice vote or electronic means as appropriate.

4. No Member shall divulge information on any aspect of a "closed session" called under the provisions of the Ralph M. Brown Act of the State of California, except as required by law, nor shall the Member violate any confidences received as a result of their official office. (Merced Municipal Code Section 2.04.050).

5. Members shall conduct themselves in a proper manner at all times as befitting their official office and in accordance with the responsibility entrusted to them by the citizens of this community.

SECTION 15. DUTIES OF CITY CLERK.

1. The City Clerk, Assistant City Clerk, or Deputy City Clerk shall attend all meetings of the City Council (except closed sessions) and shall maintain a record of the proceedings of the City Council and shall record the ayes and noes upon all questions.

2. It shall be the duty of the City Clerk to keep a complete record of the proceedings of the City Council in the form of minutes.

3. The City Clerk shall keep an index of records convenient for reference of all ordinances, resolutions, petitions, and other matters introduced or presented to the City Council, together with a complete chronological record of all action taken thereon by the City Council.

4. The City Clerk shall notify all Members of the City Council of the time set for any special or adjourned meetings, and shall, at the request of the Mayor, call all meetings of special committees and notify parties interested in the matters pending before said special committee of the time and place of said meeting.

5. The City Clerk shall time all speakers and inform a speaker when the speaker's allotted time has expired.

6. The City Clerk shall collect the Request to Speak cards and read the names therefrom when called to by the Mayor or Chair.

SECTION 16. MISCELLANEOUS PROVISIONS. Except as herein otherwise provided, the proceedings of this City Council shall be governed by the City Charter, City Ordinances, statutes applicable to charter cities, and these rules, and it shall be the duty of the Mayor to adhere to and enforce such rules, as well as the rules herein set forth.

SECTION 17. VALIDITY OF ACTIONS. Violations of any of these rules shall not affect the validity of any action, inaction or recommendation regardless of whether taken by ordinance, resolution or motion, except upon specific allegation and proof of the procedural error complained of sufficient to demonstrate that such error was prejudicial and that by reason thereof the party complaining or appealing sustained and suffered substantial injury, and that a different result would have been probable if such error had not occurred or existed. There shall be no presumption that error is prejudicial or that injury was done if error is shown.

SECTION 18. IMPLEMENTATION. These Rules of Order and Procedure shall be implemented at the first meeting of the City Council, Board, or Commission occurring after July 1, 2009.

PASSED AND ADOPTED by the City Council of the City of Merced at a regular meeting held on the 4th day of May 2009, by the following vote:

AYES: Council Members: SANDERS, CORTEZ, GABRIAULT-ACOSTA, LOR, SPRIGGS, WOOTEN

NOES: Council Members: CARLISLE

ABSENT: Council Members: NONE

ABSTAIN: Council Members: NONE

APPROVED:

Ellie Whatson
Mayor

ATTEST:
CITY CLERK

BY: Janet Larrow
Assistant/Deputy City Clerk

(SEAL)

APPROVED AS TO FORM:

Gregory S. Dias 4/28/2009
City Attorney Date