



PERSONNEL RULES

January, 2008

Adopted by
City Council Resolution 6150
On January 23, 2008

TABLE OF CONTENTS

SECTION	TOPIC	PAGE
SECTION 1	PURPOSE AND COVERAGE	1
SECTION 2	DEFINITIONS	2
SECTION 3	GENERAL PROVISIONS	
	Appointing Authority	4
	Personnel Officer	4
	Amendment to Rules	4
	Violation of Rules	4
	Management Rights	5
SECTION 4	CLASSIFICATION PLAN	
	Classification Plan	7
	Classification Studies	7
	Classification Representation	7
SECTION 5	EMPLOYMENT STATUS	
	Probationary Employment Period	8
	Regular Employment Status	9
	Job Sharing	9
	Temporary Employment Status	9
SECTION 6	EMPLOYMENT APPLICATION, SELECTION, AND APPOINTMENTS	
	Recruitment	10
	Application	11
	Selection	12
	Appointment	13
SECTION 7	COMPENSATION PLAN	
	Assignment of Salaries	14
	Merit Increases	15
SECTION 8	PERFORMANCE EVALUATIONS	
	Performance Evaluations	16
	Frequency of Performance Evaluations	16
	Maintenance of Evaluations	17

SECTION	TOPIC	PAGE
SECTION 9	ATTENDANCE AND LEAVES	
	Attendance Requirements	18
	Administrative leave	18
	Sick Leave	18
	Other Leaves	18
	Leave of Absence without Pay	19
SECTION 10	NON-DISCIPLINARY PERSONNEL ACTIONS	
	Promotion	21
	Acting Positions/Out of Class Assignments	21
	Transfers or Demotion	21
	Resignation	22
	Job Abandonment	22
	Layoff	22
	Reemployment	24
	Reinstatement	24
SECTION 11	DISCIPLINARY ACTIONS	
	Grounds for Discipline	26
	Types of Discipline	27
	Procedures for Taking Discipline Action	27
	Right to Appeal Discipline	28
	Appeal Process	29
	Final Action by the City Manager	32
SECTION 12	PERSONNEL RECORDS AND REPORTS	
	Responsibility for Employee Records	33
	Changes in Personal Information	33
	Release of Personnel Information	33
	Employee Access to Employee Records	34

SECTION 1

PURPOSE AND COVERAGE

- 1.1 Purpose:** These Personnel Rules establish the personnel system for the City of Morgan Hill pursuant to Resolution No. 6150 adopted by the City Council of the City of Morgan Hill on January 23, 2008.
- 1.2 Coverage:** These rules shall apply to all City employees, except that nothing in these rules regarding disciplinable rights and disciplinary processes applies to those who serve in the following capacities:
- a. All Elected Officials and members of appointed Boards, Commissions, or Committees;
 - b. At-will employees as defined in section 2.4 of these rules; and
 - c. Persons engaged under contract.
- 1.3 Employment Contract Not Created:** Nothing in these Rules creates any contract of employment or right to continued employment, expressed or implied, for those who serve at-will, at the pleasure of the City Council, or by contract as listed in section 1.2 above.
- 1.4 Precedence of Rules:** If a provision of these rules conflicts with federal or state law, City ordinances or with any provision of an employment agreement or applicable collective bargaining agreement entered into by the City of Morgan Hill and a recognized employee organization, the provisions of federal or state law, City ordinances, or bargaining agreement shall be deemed to be controlling.

SECTION 2 DEFINITIONS

- 2.1 **Acting Position:** means a position held by an employee who is temporarily reclassified by the City Manager or his/her designee.
- 2.2 **Anniversary Date:** means the date on which an employee is assigned to a new job classification through appointment, promotion, demotion, transfer, or assigned to any classification as a result of reinstatement, or re-employment. Anniversary dates may be used to determine an employee's seniority as an employee and within the employee's current classification.
- 2.3 **Appointing Authority:** means the City Manager or his/her designee who the City has authorized to appoint individuals to employment positions with the City. However, the City Attorney shall be the appointing authority for his/her staff.
- 2.4 **At-Will Employee:** means an employee who serves at the will of the City Manager or at the will of the City Council and may be removed at any time without cause, notice, or right of appeal. At-will employees include City Manager, City Attorney, and Executive Management Employees as listed in the current City Council Management Resolution, temporary employees, and volunteers.
- 2.5 **Budgeted Position:** means an employment position which may be filled by a regular full-time or part-time city employee as reflected in the current City Budget adopted by the City Council. Nothing shall prevent the Appointing Authority from appointing temporary employees or contracting with other persons whom the Appointing Authority determines to be in the best interest of the City.
- 2.6 **Classification:** means a group of budgeted positions having duties and responsibilities sufficiently similar that the same job title, examples of duties, and minimum qualifications may be applied.
- 2.7 **Discipline:** means an action imposed by the City upon an employee for grounds listed in Section 11 of these rules, which results in a suspension without pay, reduction in pay, demotion, or termination.
- 2.8 **Employee:** means any person employed for wages by the City.
- 2.9 **Exempt Employee:** means an employee who meets one or more of the duties test exemptions from overtime under the FLSA and who is paid on a salary basis, meaning that he or she is compensated in a predetermined amount that is not reduced, regardless of the quality or quantity of work actually performed, except as required by the City's principles of public accountability for partial-day absences. Exempt Employees include those who have been assigned to job classifications recognized as Executive Management Group 1-A and Middle Management Group 1-B in the current City Council Resolution for Management, Professional and Confidential Employees.

- 2.10 Family Member:** means a person related to an employee by blood, marriage, or domestic partnership. Immediate family may have more restrictive meanings with regard to either eligibility for sick leave or FMLA leave as defined in pertinent City Administrative Policies.
- 2.11 Hire Date:** means the date upon which the employee is originally appointed as a probationary employee in a budgeted position.
- 2.12 Job Sharing:** means two or more part-time employees sharing a single full-time budgeted position.
- 2.13 Non-Exempt/Overtime Eligible Employee:** means an employee who is entitled to FLSA overtime, regardless of whether paid on a salary or hourly basis. An employee assigned to an FLSA-exempt position on an acting or temporary basis remains overtime-eligible.
- 2.14 Out of Class Assignment:** means an employee who is temporarily assigned to perform the duties of a higher classification, without actually being reclassified to that position.
- 2.15 Reemployment:** means an offer by the City to call back a former employee who was separated from employment due to layoff according to procedures listed in Section 10 of these rules.
- 2.16 Reinstatement:** means employment of a former employee who voluntarily separated from employment due to resignation or other non-disciplinary reason according to procedures listed in Section 10 of these rules.
- 2.17 Seniority with the City:** means the total amount of time an employee has served as a regular employee (including the probationary period), less any unpaid break in service of more than 30 days. Unpaid leaves such as family care leave, military leave, pregnancy disability leave, and other leave in excess of thirty days where employment status is protected by law are not considered a break in service when determining seniority.
- 2.18 Seniority within a Classification:** means the total amount of time an employee has served in each job classification (including the probationary period) less any unpaid break in service of more than 30 days. Unpaid leaves such as family care leave, military leave, pregnancy disability leave, and other leave in excess of thirty days where employment status is protected by law are not considered a break in service when determining seniority.
- 2.19 Separation:** means leaving city employment due to resignation, layoff, or other non-disciplinary reason.
- 2.20 Termination:** means leaving city employment due to disciplinary reasons.

SECTION 3 GENERAL PROVISIONS

- 3.1 Appointing Authority:** The City Manager or his/her designee shall be the Appointing Authority for the City. The City Attorney shall be the Appointing Authority for his/her staff.
- 3.2 Personnel Officer:** The Human Resources Director or his/her designee shall be the Personnel Officer. The duties of the Personnel Officer include but are not limited to:
- a. Prepare and administer the Classification Plan as required by Section 4 of these rules;
 - b. Conduct recruitment and selection for vacant budgeted positions including the publication of job announcements, the administration of appropriate examination and selection processes, and the certification of applicant's eligibility for employment;
 - c. Negotiate and administer the provisions of all applicable Memoranda of Understanding with recognized employee organizations and the applicable Resolution by the City Council for management, professional, and confidential employees;
 - d. Negotiate and administer employee benefit and workers compensation plans;
 - e. Coordinate applicable proceedings related to non-disciplinary and disciplinary personnel actions;
 - f. Develop and organize city-wide training and assist other Departments with personnel issues;
 - g. Maintain accurate personnel records as required in Section 12 of these rules;
 - h. Perform other duties as directed by the City Manager; and
 - i. Nothing shall preclude the Personnel Officer from recommending to the City Council that any one or more of these functions be performed under contract with a qualified person, agency or organization.
- 3.3 Amendment of these Rules:** Amendments to these Rules shall be made by the City Manager and shall become effective upon adoption by the City Council.
- 3.4 Violation of these Rules:** Violation of the provisions of these rules shall be grounds for rejection of applicants or disciplinary action of employees including, but not limited to suspension, reduction in pay, demotion, or termination.

3.5 Management Rights: The City retains the following rights under these rules:

- a. The City retains, solely and exclusively, all expressed and inherent rights and authority pursuant to law with respect to determining the level of, and manner in which, the City's activities are conducted, managed, and administered.
- b. The City shall retain the right to establish and maintain Citywide Administrative Policies and Procedures which shall be adopted by the City Manager. Each Department Director may establish Department Policies and Procedures for the administration of his/her department which are consistent with Citywide policies, subject to the approval of the City Manager.
- c. The City has the exclusive right and authority to assign and schedule work and/or overtime work as required in the manner most advantageous to the City.
- d. Every incidental duty connected with operations enumerated in job descriptions is not always specifically described; nevertheless, it is intended that all such duties shall be performed by the employee as directed.
- e. The City reserves the right to lay off personnel of the City at any time due to a lack of funds, lack of work or lack of need.

3.6 Equal Employment Opportunity and Discrimination: The City of Morgan Hill does not discriminate against qualified employees or applicants for employment on the basis of race, color, religion, gender, national origin, ancestry, citizenship, age, marital status, veteran status, physical or mental disability (as defined by the Americans with Disabilities Act and/or applicable state law), medical condition, sexual orientation, or any other basis protected by law. The City will afford equal employment opportunity to all qualified employees and applicants as to all terms and conditions of employment, including compensation, hiring, training, promotion, transfer, discipline, and termination.

3.7 Reasonable Accommodation: The City provides employment-related reasonable accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act.

- a. An employee who desires a reasonable accommodation in order to perform essential job functions should make such a request in writing to the Human Resources Director. The request must identify the job-related functions at issue; and the desired accommodation(s).
- b. Following receipt of the request, the Human Resources Director may require additional information, such as reasonable documentation of the existence of a disability.

- c. The City may require an employee to undergo a fitness for duty examination to determine whether the employee can perform the essential functions of the job with or without accommodation. The City may also require that a City-approved physician conduct the examination.
- d. After receipt of the results of a fitness for duty report and reasonable documentation of disability, the City will arrange for a discussion, in person or via telephone conference call, with the employee, and his or her representatives, if any. The purpose of the discussion is to work in good faith to fully discuss all feasible potential reasonable accommodations.
- e. The City determines, in its sole discretion, whether reasonable accommodation(s) can be made, and the type of accommodation(s) to provide. The City will not provide accommodation(s) that would pose an undue hardship upon City finances or operations, or that would endanger the health or safety of the applicant, employee or others. The City will inform the employee of its decision as to reasonable accommodation(s) in writing.

SECTION 4 CLASSIFICATION PLAN

- 4.1 The Plan:** The Personnel Officer shall maintain a classification plan which shall consist of the following components:
- a. A Classification File containing the job descriptions of all classifications. Job descriptions may include, but not be limited to job definitions, class characteristics, important and essential job functions, marginal/peripheral job functions, qualifications and job requirements, other qualifications, machine/tools/equipment used, physical demands, and environmental and atmospheric work conditions; and
 - b. An allocation list reflecting the number and departmental location of all budgeted positions included in the current adopted City Budget.
- 4.2 Classification Studies:** The Personnel Officer may initiate a study to determine the appropriateness of any budgeted position's classification at any time.
- 4.3 Change in Classifications:** When it is proposed by the Personnel Officer that a new classification be created, or an existing classification be changed or eliminated, the City Manager shall submit justification for approval of that action to the City Council.
- 4.4 Classification Representation:** The Personnel Officer shall maintain a list of which classifications are represented and governed by the Memorandum of Understanding of each of the recognized employee organizations.
- 4.5 Unrepresented Classifications:** The City has determined that certain classifications are exempt from representation by recognized employee organizations. They include:
- a. Management, professional, and confidential classifications listed in the City Council Resolution establishing salary ranges and benefits for those classifications;
 - b. Temporary employees who serve at the will of the City Manager; and
 - c. Contract employees who serve according to the terms of their contracts.

SECTION 5 EMPLOYMENT STATUS

- 5.1 Probationary Employment Period:** All original and promotional appointments to a budgeted position shall be subject to a probationary period prior to achieving regular employment status.
- 5.2 Length of Probationary Period:** All original and promotional appointments to a budgeted position shall serve a probationary period of 12 months of continuous service, without a break in service, in the classification to which they were appointed or promoted.
- a. If the probationary period is interrupted by any authorized leave for a period of time, then the employee's probationary period shall be extended by an equal period of time upon return to work.
 - b. The probationary period may be extended by the Department Director or Personnel Officer for a period not to exceed 6 months of continuous service if it serves the objectives of probationary employment. If the Department Director or Personnel Officer determines that the probationary period should be extended, the probationary employee shall be given written notice prior to the expiration of the original probationary period.
 - c. A Performance Evaluation shall be completed prior to the completion of probation which includes the recommendation of a supervisor or manager to be appointed to regular employee status.
- 5.3 Release from Employment during Initial-Probation:** During the initial probationary period, an employee may be released from employment at any time with or without cause and without right of appeal. The employee shall be given written notice of release from employment prior to the end of the probationary period, but is not entitled to notice of the reasons for release during probation, an opportunity to respond to reasons for release during probation, or right of appeal.
- 5.4 Release during Probation after Promotion:** If an employee fails to successfully complete the probationary period in a promotional position, the employee shall be entitled to return to the position and pay step held prior to the promotion only if there is a vacancy in the prior position. If there is no vacancy in the employee's previous classification, the employee may be assigned at the discretion of the City Manager to another vacant position for which the employee is qualified, nearest the employee's prior classification and pay range. Should no other vacant position for which the employee is qualified exist, the employee may be separated from employment and placed on a reemployment list. The employee is not entitled to notice of the reasons for release during probation, an opportunity to respond to reasons for release during probation, or right of appeal.

- 5.5 Regular Employment Status:** Employees who successfully complete their probationary period in a budgeted position shall become regular employees and shall be entitled to all the benefits provided by these rules and the current applicable Memorandum of Understanding. Regular employees may be classified as full-time or part-time employees.
- a. Regular full-time employees are those who are scheduled to regularly work a minimum of 80 hours each bi-weekly pay period.
 - b. Regular part-time employees are those who are scheduled to regularly work less than 80 hours each bi-weekly pay period. Benefits for regular part-time employees shall be determined as authorized in the applicable Memorandum of Understanding.
- 5.6 Job Sharing:** The City Manager, in consultation with the appropriate Department Director(s) and the Personnel Officer, may approve job sharing of a budgeted full time position if it is determined to be in the best interest of the city. In such cases, salary and benefits of the shared position shall be prorated between each employee to the extent reasonably possible, based upon the comparison of hours worked to 80 hours each bi-weekly pay period. In no case shall the total salary and sharable benefits of the shared position exceed the salary and benefits provided to a single full-time position of the same classification.
- 5.7 Temporary Employment Status:** Temporary employees may be appointed in certain circumstances that may include, but are not limited to, interim appointments, those hired for a limited term, special projects, excessive workloads, seasonal needs, police officer trainees, interns, or emergency situations.
- a. Temporary Employees serve at the will of the City Manager and may be removed at any time without cause, notice, or right of appeal.
 - b. Temporary Employees are not eligible for benefits except those mandated by law.

SECTION 6

EMPLOYMENT APPLICATION, SELECTION, AND APPOINTMENT PROCESS

- 6.1 Regular Employment:** Vacancies in budgeted positions may be filled by reemployment, reinstatement, promotion, transfer, demotion, an open, competitive recruitment process, or by direct appointment. The Appointing Authority shall decide in what manner the vacancy is to be filled subject to provisions of these rules and current applicable Memoranda of Understanding or Management Resolution.
- a. An open, competitive recruitment process may include any qualified applicant, including current city employees.
 - b. When the Appointing Authority finds that it is in the best interest of the City, regular positions may be filled by promotion of qualified current regular city employees resulting from an internal recruitment.
 - c. When the Appointing Authority finds that it is in the best interest of the City due to urgency or unique situations, regular positions may be filled by direct appointment without a competitive selection process.
 - d. When considering filling positions through reemployment or reinstatement, the Appointing Authority shall ensure that the former employee currently meets all qualifications and requirements of the position at the time of reemployment or reinstatement.
- 6.2 Recruitment:** Whenever a vacancy is to be filled through an internal recruitment or open, competitive selection process, the Personnel Officer shall publish appropriate job announcements advertising the position at least seven calendar days prior to the final filing date.
- a. Announcements shall be posted on the City website and may also be delivered to such colleges, universities, employment offices, organizations, and media as the Personnel Officer deems appropriate for the position, including but not limited to, those located in or serving minority populations.
 - b. Announcements of all open, competitive and promotional positions may also be posted at various City facilities for employee's review.
 - c. In addition, the Personnel Officer may also undertake whatever other recruitment activities, including continuous recruitment, which is deemed appropriate and desirable to fill a particular position in a way which meets the goal of obtaining the most qualified employee for service in Morgan Hill.
- 6.3 Announcements:** Job announcements may include but not be limited to:
- a. Title and compensation for the position;

- b. Nature of the position including essential duties;
- c. Job requirements, certifications and minimum qualifications;
- d. The closing date for the application, if one is established;
- e. Whether a medical and/or psychological examination will be required post-offer of employment;
- f. Summary of benefits available to employees within the announced classification;
- g. Notice of “agency shop” if the position is represented by AFSCME; and
- h. Such other information as is desirable in the discretion of the Personnel Officer.

6.4 Application Process: Applications for regular positions shall be made on forms provided by the City. In addition, the City may also require supplemental information as a part of the application as may be deemed appropriate. All applications must be completed in full and signed by the applicant.

- a. If a closing date is identified in the recruitment materials, applications must be submitted to and received by the Personnel Officer either in person, by mail, by Fax, or other available electronic means no later than the closing date and time listed on the job announcement.
- b. Applications submitted in person, by mail or by Fax must be signed by the applicant.
- c. Applications submitted by other electronic means are considered to include an electronic signature.
- d. If no closing date is specified in the recruitment materials, the application shall be deemed submitted at such date and time as a complete, signed application is received by the City.

6.5 Disqualification of Applications: The Personnel Officer may disqualify an applicant if the applicant:

- a. Fails to submit the employment application completely and legibly within the prescribed time limits;
- b. Has made false, deceptive, or fraudulent statements on the application;
- c. Lacks any of the requirements, certifications, or qualifications for the position involved;
- d. Is a relative of a City employee subject to the City’s policy regarding employment of relatives, and is prohibited from working for the City in this capacity;
- e. Is physically or mentally unable to perform the essential job functions, with or without reasonable accommodation;
- f. Is a current user of illicit drugs, even if medically prescribed;

- g. Has been convicted of a misdemeanor or a felony crime as prescribed by the Labor Code, including a “no contest” plea, that relates to the duties that the applicant would perform;
- h. Used or attempted to use political pressure or bribery to secure advantage in the selection process or appointment;
- i. Directly or indirectly obtained privileged or confidential information regarding selection process;
- j. Does not possess or has had his/her privilege to operate a motor vehicle in the State of California suspended or revoked, if driving is job related; or
- k. For any cause which in the judgment of the Personnel Officer would render the applicant unsuitable for the position, including a prior resignation from the City, termination from the City, or significant disciplinary action.

6.6 Notice of Disqualification of an Applicant: Whenever an applicant is disqualified, a notice of disqualification shall be mailed or electronically sent to the applicant by the Personnel Officer or his/her designee.

6.7 Application Screening: The Personnel Officer may screen submitted applications for qualifying purposes only, based on the applicants’ experience, education, training, and work history as related to a particular position. If the Personnel Officer determines that including all qualified applicants in the selection process would burden the city, the Personnel Officer may then choose those applicants whom are determined best qualified for the position to be included in the selection process in order to establish the best applicant pool for the position.

6.8 Selection Process: The selection process involves fairly testing the qualifications of applicants through any combination of aptitude tests, other written tests, personal interviews, performance tests, physical agility tests, work samples, medical tests, and current performance if the applicant is a current City employee, or other processes.

- a. The selection process for a given position shall be at the discretion of the Personnel Officer as deemed job related and necessary to determine the best qualified candidates.
- b. The Personnel Officer, in consultation with the Department Director, may prepare and administer or contract with any competent agency or individual to administer any part of the selection process as is deemed most appropriate.

6.9 Waiver of Responsibility: Applicants who take part in physical agility or demonstration tests will be required to sign a waiver of responsibility freeing the city of all liability arising from injury incurred during the tests.

- 6.10 Scoring and Qualifying:** Failure to meet established standards described in the job announcement or in any one part of the selection process may disqualify the applicant from subsequent parts of the process. An applicant's final standing in a given process shall be determined as either "qualified" or "not qualified." This shall be based on numerical scores of any tests requiring them and/or the assessment of raters regarding the applicant's ability to perform bona fide job duties, qualifications and requirements.
- 6.11 Final Applicant Pool:** The Personnel Officer shall prepare a final applicant pool consisting of an alphabetical list of applicant names that successfully completed an open, competitive or promotional selection. Notwithstanding any other provision of these rules, if there are fewer than three names in an applicant pool, the Personnel Officer may abolish the pool and fill the position(s) by any method permitted by these Personnel Rules.
- 6.12 Applicant Pool Duration:** Applicant Pools may remain in effect for up to 6 months. The Personnel Officer may extend the pool for up to one year if not exhausted or abolished. The Personnel Officer may abolish or extend the pool at any time prior to the expiration of the pool if it is determined to be in the best interest of the City to do so.
- 6.13 Removal of Names from an Applicant Pool:** The Personnel Officer shall remove the name of any applicant in an applicant pool at the written request of the applicant or if the applicant fails to respond to a notification of an opening within seven calendar days. It shall be the responsibility of the applicant to keep the Personnel Officer informed of his/her current address and telephone number.
- 6.14 Employment Offers and Post-Employment Offer Examinations:** After consultation with the Department Director, the Personnel Officer may extend a conditional employment offer to any applicant in the applicant pool who has been determined to be best qualified based on bona fide job duties and requirements of the position.
- a. Such offers are contingent upon the applicant successfully completing any post-employment offer examinations as the Personnel Officer may deem job related, appropriate and necessary for the specific position.
 - b. Applicants must accept or reject the conditional employment offer in writing to the Personnel Officer within seven calendar days of the offer.
- 6.15 Appointments:** The Appointing Authority shall make final appointments. After consultation with the Department Director, the Appointing Authority may appoint any applicant in the specified applicant pool.

The applicant accepting the appointment shall report to the Personnel Officer at the date and time designated by the Personnel Officer; otherwise the applicant shall be deemed to have declined the appointment.

SECTION 7 COMPENSATION PLAN

- 7.1 Compensation Plan:** The compensation plan and salary structure for each classification shall be established as follows:
- a. For regular employee classifications represented by recognized employee organizations, compensation shall be established with salary schedules in multiple steps as delineated in the applicable Memorandum of Understanding adopted by the City Council.
 - b. For regular employee management, professional and confidential classifications, compensation shall be established with salary ranges by resolution of the City Council.
 - c. For temporary employee classifications, salary ranges shall be established by resolution of the City Council.
 - d. For persons engaged under contract, compensation shall be established according to the terms of the contract.
- 7.2 Salary upon Original Appointment:** Upon original appointment to a classification as a City employee, the employee may be assigned either the first step in the salary schedule that is comprised of multiple salary steps, or the lowest salary in a salary range that contains no steps.
- a. The Department Director may assign a higher salary up to Step C in a salary schedule or the midpoint of a salary range based on the employee's qualifications and prior experience, provided that it is determined to be in the best interest of the City.
 - b. The Department Director may assign a salary higher than Step C or the midpoint in a salary range only if approved by the City Manager.
- 7.3 Salary upon Promotion or Reclassification:** Upon promotion or appointment to a new classification with a higher salary range, the employee shall be assigned a salary step in a salary schedule or salary within a salary range, which produces the equivalent of at least 5% above the employee's former salary. This provision, however, shall not result in a salary in excess of the highest salary for the new classification.
- 7.4 Salary upon Voluntary Demotion:** Upon voluntary demotion to a classification with a lower salary schedule or range, the employee, at the discretion of the Appointing Authority, may be assigned the salary step which the employee held in his/her former classification, or to a salary which is comparable to the salary held in his/her former classification provided it does not exceed the maximum salary for the new classification's salary range.

7.5 Reclassification and “Y” Rate: With approval of the Appointing Authority, an employee may be “Y” rated when his/her present salary exceeds the salary schedule or range assigned to the new classification to which he/she is being reclassified, or if his/her present classification is being assigned a new salary schedule or range.

When an employee is “Y” rated, his/her current salary will remain the same until the salary schedule or range assigned to the new classification exceeds the salary the employee earned at the establishment of the “Y” rate. The employee’s salary may then be increased to any higher level in the new salary schedule or range.

7.6 Eligibility for Merit Increases: An employee may be eligible to receive a merit increase at the discretion of the Department Director as follows:

- a. After the first six months after original appointment to a classification or promotional appointment to a new classification, provided the employee demonstrates overall performance above expectations or outstanding performance on his/her most recent performance evaluation.
- b. After the first 12 months after original appointment or promotional appointment to a new classification, whether or not a merit increase was granted after the first six months after original or promotional appointment to a classification.
- c. Thereafter, on the anniversary date of original appointment or the anniversary date of the employee’s promotion or reclassification.
- d. At any other time the Department Director, with the approval of the City Manager, determines a merit increase is warranted.
- e. In no case shall an employee be eligible for a merit increase which exceeds the maximum salary range of the employee’s classification.

7.7 Granting of Merit Increase: Merit increases may be granted at the discretion of the Department Director based on the following:

- a. A merit increase of one salary step in a salary schedule or up to a 5% increase in a salary range may be granted provided the employee demonstrates overall satisfactory performance on his/her most recent performance evaluation.
- b. A merit increase of greater than one salary step in a salary schedule or greater than 5% up to 10% in a salary range may be granted with approval of the City Manager, provided the employee demonstrates overall performance above expectations or outstanding performance on his/her most recent performance evaluation.

SECTION 8

PERFORMANCE EVALUATIONS

8.1 Performance Evaluations: Each employee shall be periodically evaluated based on job performance dimensions. Employee evaluations are an important tool used by supervisors, managers, and employees. They are necessary to justify salary increases or other personnel actions and are a resource upon which to base career advancement judgments. They are an equally valuable source of feedback, encouragement, and direction to the individual employee. Documenting good performance recognizes hard work, and pointing out development or improvement needs can guide solid performance and career advancement.

- a. Performance Evaluations shall be completed on evaluation forms determined by the Personnel Officer, or the City Manager.
- b. Employees shall be evaluated by their immediate supervisor and/or other supervisors or managers as appropriate. The supervisor shall discuss the evaluation with the employee, including the employee's strengths and weaknesses and overall performance.
- c. Both the supervisor and the employee shall sign the evaluation form to acknowledge its contents. An employee's signature does not necessarily mean that he/she fully endorses the contents of the evaluation.
- d. The employee may submit written comments regarding the evaluation or request to speak to the Department Director or Personnel Officer regarding the evaluation.
- e. The Department Director shall review the Performance Evaluation for accuracy and completeness. Once the Department Director has determined the evaluation is accurate and complete, he/she will sign it and forward it to the Personnel Officer in a timely fashion.
- f. Performance Evaluations shall not be subject to any grievance and/or appeal process.

8.2 Frequency of Performance Evaluations: Performance Evaluations shall be completed at a minimum after the first six months and the first 12 months an employee is assigned to his/her original classification or new classification, and should be completed annually thereafter. In addition:

- a. Performance Evaluations may be conducted more frequently at the discretion of the Department Director.
- b. Performance Evaluations should be completed prior to the date when an employee is eligible for a merit increase. However, if the employee's performance is such that a merit increase is not justified, a performance evaluation shall be completed prior to the date when an employee would otherwise be eligible for a merit increase.

- c. Performance Evaluations shall be completed prior to the completion of probation which includes the recommendation of a supervisor or manager to be appointed to regular employee status.

8.3 Maintenance of Evaluations: Performance Evaluations and any written employee responses to them shall be maintained in the employee's personnel file.

SECTION 9 ATTENDANCE AND LEAVES

- 9.1 Attendance Requirements:** Employees shall be in attendance for work in accordance with these rules, City policy regarding Alternative Work Schedules and the current applicable Memorandum of Understanding regarding hours of work, leave and related provisions. Department Directors or their designees are responsible to maintain employee attendance records which shall be transmitted to the Finance Department on approved forms.
- a. An authorized absence is defined as permission to be absent from duty for a specified purpose with the right to return before or upon the expiration of the leave period. Any unauthorized absences may be cause for disciplinary action, up to and including termination.
 - b. Except in extraordinary circumstances, employees who are unable to report for work at the beginning of their established shift shall notify their supervisor at least 30 minutes prior to the commencement of that shift, or at such time as indicated in any current applicable Memoranda of Understanding.
 - c. Failure to report to work for three consecutive work days (or shifts for which the employee is scheduled to work) without giving notice to the City will be considered a voluntary resignation of employment due to job abandonment as outlined in Section 10.7 of these rules.
- 9.2 Administrative Leave:** Whenever the Department Director or designee determines it is necessary to temporarily remove an employee from the workplace, he/she may place the employee on administrative leave with pay until the reason for the leave is resolved.
- 9.3 Sick Leave:** Sick leave is leave from duty which may be granted by the City because of illness, injury, exposure to contagious disease to the employee, the employee's immediate family requiring the employee's attendance, or medical, dental and optical appointments to the extent that such appointments cannot be scheduled outside the work day. The administration of sick leave shall be governed by City administrative policies.
- 9.4 Other Leaves:** The City shall grant leaves including, but not limited to, the following:
- a. The City shall comply with state and federal law and with applicable City Administrative Policies and Procedures with respect to absences and leaves granted in accordance with:
 - 1) The Americans with Disability Act;
 - 2) Family Care and Medical Leave Acts;
 - 3) Military Leave;
 - 4) Pregnancy Disability Leave;
 - 5) School Leave; and

- 6) Time off to Vote.
 - b. Holidays, vacations, and bereavement leave shall be governed by the terms of the applicable Memoranda of Understanding and Management Resolution.
 - c. Employees who are required to serve as jurors during the period that such service is required. Employees shall be paid the difference between their full salary and any payment received by them for jury duty, except travel pay.
 - d. Employees who are subpoenaed to appear in court in a matter regarding an event or transaction which they witnessed or investigated in the course of duty shall do so as part of their regular work duties. Employees subpoenaed to appear in court regarding a matter unrelated to their official capacity as an employee shall be permitted to either take time off without pay or they may use accrued personal leave, administrative leave, compensatory time off, or vacation.

9.5 Leaves of Absence without Pay: Upon the written request of an employee who has successfully completed probation, a leave of absence without pay may be granted by the City Manager at the recommendation of the Department Director. Employees shall not be entitled to a leave of absence as a matter of right.

- a. The request for a leave of absence without pay shall state the specific reason for the request, the date when the employee desires to begin the leave, and the probable date of return.
 - 1) Such leaves shall not be granted or used for the purpose of pursuing or accepting other employment.
 - 2) The City Manager may find it in the City's best interest to grant an employee a leave of absence without pay to temporarily provide services to another government agency. Leaves granted for this purpose shall not impact the employee's seniority regardless of the length of the leave.
- b. The City Manager may grant a leave of absence without pay for a specified period not to exceed one year. The City Manager may extend the term of the leave after re-examining the reasons for the leave of absence.
- c. Nothing contained in these rules shall limit or prevent the granting of a leave of absence without pay for an indefinite period of time to any employee who is injured on the job or has a serious illness, or mental or physical impairment, even though the employee does not meet the completion of probation requirement specified above.
- d. Employees who have been granted a leave of absence without pay are required to remain in contact with their designated Department supervisor or manager. At minimum, employees shall provide addresses, phone numbers, email address where they can be easily reached if necessary while on leave.

- e. Employees on a leave of absence without pay shall provide advanced written notice if he or she will be requesting additional unpaid time off from work.
- f. Failure of the employee to return to employment upon the termination of any authorized leave of absence without giving notice to the City will be considered a voluntary resignation of employment due to job abandonment as outlined in Section 10.7 of these rules.
- g. An authorized leave of absence without pay for a period of 30 days or less shall not be construed as a break in seniority or employment.
- h. An authorized leave of absence without pay for a period of greater than 30 days shall be considered a break in service, however the employee shall retain certain rights as follows:
 - 1) All seniority and leave credits shall be retained at the levels existing as of the effective date of the leave;
 - 2) Vacation credits, sick leave credits, increase in salary, all other paid leaves, holidays and fringe benefits and other similar benefits shall not accrue during the period of absence;
 - 3) The City shall not be required to maintain contributions toward group insurance or retirement coverage; and
 - 4) To the extent provided by state or federal law, employees shall be reinstated to their former position or to a comparable position for which the employee is qualified if the former position is abolished during the period of leave.

SECTION 10

NON-DISCIPLINARY PERSONNEL ACTIONS

10.1 Promotion: A regular employee may be promoted to a higher classification according to the process outlined in Section 6 of these rules. Upon promotion, the employee shall receive a new anniversary date and shall be required to serve a probationary period in that classification.

10.2 Appointment to an Acting Position or Out of Class Assignment: The Department Director or the Appointing Authority may appoint a regular employee to serve in an acting position or out of class assignment to perform duties of a higher classification than that which they are regularly employed. The employee shall be compensated in accordance with the applicable Memoranda of Understanding or City Council Resolution governing management, professional, and confidential employees, provided that the employee is assigned to the acting position or out of class assignment for a period of at least 15 consecutive work days or 120 consecutive work hours.

Time worked in an acting position or out of class assignment shall not earn credits toward seniority or the completion of probationary requirements in the higher class and does not change the employee's FLSA exemption status.

10.3 Voluntary Transfers and Demotions: A regular employee may apply for transfer or demotion to another vacant position in the same or lower classification for which the employee is qualified.

- a. Employees may initiate a request for transfer or demotion by submitting a written memo to the Personnel Officer.
- b. The Personnel Officer shall notify the appropriate Department Directors of the employee's request to transfer or demote.
- c. The employee may be transferred or demoted at the discretion of the Department Director for whom the employee now works and the Department Director for whom the employee wishes to work.
- d. Employees who are voluntarily transferred or demoted must serve a 12 month probationary period in the new position.

10.4 Temporary Modified (Light Duty) Work Assignment: Employees who are unable to perform the full scope of their normal job duties due to an injury or illness may be assigned, on a case by case basis, to temporary modified work assignments. Such assignments shall be consistent with their functional limitations in accordance with the procedures listed in the employee's current Memorandum of Understanding provided that:

- a. A temporary modified work assignment is available and may be accommodated without adverse consequences to the City or disruption in services or operations;
- b. The City may change regular days off and work hours while the employee is assigned to the temporary modified work assignment;
- c. No temporary modified work assignment shall extend for more than 90 days without the approval of the City Manager; and
- d. No temporary modified work assignment creates any employee entitlement to assignment in a light duty position.

10.5 Involuntary Transfers and Demotions: The City may elect to involuntarily transfer or demote an employee to another vacant position in the same or lower classification for non-disciplinary reasons such as reorganization, budgetary necessity, the good of the City, or if the employee is no longer qualified to perform the duties of the employee's current classification.

10.6 Resignation: Employees wishing to resign from employment may do so orally or in writing to their supervisor, Department Director, or the Appointing Authority. The resignation becomes final when first accepted by the supervisor, Department Director, or the Appointing Authority. Once a resignation has been accepted, it cannot be withdrawn.

10.7 Job Abandonment: An employee who fails to report to work for three consecutive work days (or shifts for which the employee is scheduled to work) without giving notice to the City will be considered a voluntary resignation of employment because of job abandonment, even if a coworker or supervisor covers the shift or otherwise arranges for coverage of the shift.

- a. The City shall send a registered letter to the employee's last known address of record notifying them of the City's intent to accept their voluntary resignation from employment due to job abandonment.
- b. The employee shall be reinstated provided the employee satisfactorily shows that his/her failure to report to work was the result of reasonable extenuating circumstances beyond the employee's control.
- c. Employees have no right of appeal if deemed to have resigned as a result of job abandonment.

10.8 Layoff: Layoffs may occur in one of two ways:

- a. The City Council may abolish any budgeted position due to a lack of funds, work, or need. Whenever it becomes necessary to abolish any budgeted position, the employee holding such position may be laid off or demoted without disciplinary action and without right of appeal; or

- b. The City Manager may determine that there are insufficient funds, work, or need to maintain an employee in a currently budgeted position. The budgeted position may be vacated without being abolished and the employee holding such position may be laid off or demoted without disciplinary action and without right of appeal.

10.9 Layoff Procedure: The layoff of employees resulting from the elimination or vacating of positions shall be governed by the following procedure:

- a. The order of layoff in the effected classification or classifications shall be:
 - 1. Temporary employees;
 - 2. Probationary employees; then
 - 3. Regular employees.
- b. Layoffs of regular employees shall be made from within the effected job classification in reverse order of seniority within that classification, including active military leave. Where seniority within classification is equal between two or more effected employees, the order of layoff shall be determined by the following means:
 - 1) Seniority in the City;
 - 2) If seniority in the City does not break the tie, seniority will be determined by an appropriate random means of selection (lot, coin flip, etc.).
- c. Probationary and regular employees who are scheduled to be laid off under this procedure shall receive at least twenty-one calendar days written notice to this effect.

10.10 Transfer or Demotion in Lieu of Layoff: In lieu of layoff, an employee may apply for transfer or demotion to a vacant position in the City which the City intends to fill and for which the employee is qualified. Such actions shall be governed by the terms of section 10.3 of these rules, and in no event shall result in an employee being placed in a classification carrying a higher maximum rate of pay. If two or more employees have requested transfer or demotion to the same vacant position and the City has determined they are both qualified to fill it, the more senior employee shall receive preference. For purposes of this section, total time in the City shall be utilized in determining seniority. If seniority in the City does not break the tie, seniority will be determined by an appropriate random means of selection (lot, coin flip, etc.)

10.11 Displacement of Employees in Lieu of Layoff: Within ten days from the date layoff notices are issued, an employee who would otherwise be laid off, and who has performed satisfactorily as reflected on their most recent performance evaluation, may elect to displace an employee in a classification carrying a lower or the same maximum rate of pay; provided, however, that the displacing employee must have held regular status in such classification and have greater time in the classification and directly related higher

classifications combined than the employee being displaced. (For example, related classifications would mean Utility Worker I, Utility Worker II, Senior Utility Worker; etc.)

- a. A probationary or regular employee displaced in accordance with this paragraph shall, in turn, be provided the same notice and “bumping” privilege as set forth in this paragraph.
- b. Regular and probationary personnel laid off in accordance with this Rule shall, unless they request otherwise, be placed on a reemployment list for three years.
- c. At the time of layoff, the employee’s name shall be removed from all promotional eligible pools, but at the employee’s request, shall be retained in an open-competitive pool subject to the provisions of Rule 6.12 through 6.14 of these Rules. If the employee is reemployed prior to the expiration of a promotional pool, they shall be reinstated to the pool.
- d. Prior to the effective date of layoff, the Department Director shall furnish the Personnel Officer a final evaluation of the employee’s performance.

10.12 Reemployment: The names of regular employees who have received a satisfactory or better performance evaluation for the twelve months prior to layoff, have completed their probationary period, and who have been laid off, shall be placed in a reemployment pool in the order of their seniority in the classification from highest to lowest for a period of three years. Vacant positions within a classification shall first be offered to former employees in the reemployment pool provided that the former employee remains qualified to perform the duties of the position.

If an employee is reemployed from such a pool, all service credits and sick leave accrued to the date of layoff shall be restored. In no event, however, shall the City be required to restore credits for vacation and sick leave paid out at the time of layoff.

10.13 Reinstatement: A regular employee who has resigned, or otherwise been voluntarily separated while in good standing, may be considered for reinstatement to a vacant position in the former employee’s classification within a period of one year provided that all of the following conditions are met:

- a. The employee was not separated due to job abandonment;
- b. The employee remains fully qualified to perform the duties of the position;
- c. The employee’s most recent evaluation demonstrated satisfactory overall performance; and
- d. The Department Director recommends and the Appointing Authority approves of the reinstatement.

10.14 Status of Reinstated Employee: The employee who is reinstated shall receive the same salary and/or step held at the time of resignation or separation, shall receive a new anniversary date upon reinstatement, and shall serve a new probationary period.

- a. If an employee is reinstated all service credits accrued to the date of resignation shall be restored. In no event, however, shall the City be required to restore credits for vacation and sick leave accrued or paid out at the time of resignation.

SECTION 11

DISCIPLINARY ACTIONS

11.1 Grounds for Discipline: A Department Director may discipline an employee on grounds that include but are not limited to:

- a. Fraud in securing employment or making a false statement on an application for employment.
- b. Dishonesty involving employment.
- c. Incompetence, including the inability to comply with the minimum standard of an employee's position for a significant period of time.
- d. Inefficiency, inattention, or inexcusable neglect of duty, including failure to perform duties required of an employee in his/her position.
- e. Willful violation of any provisions of state or federal law, City ordinances or resolutions, or any rules, regulations or policies established and published by the City, Departments, or Divisions.
- f. Willful disobedience and insubordination, a willful failure to submit to duly appointed and acting supervisors, willful failure to conform to duly established orders or direction of persons in a supervisory position, or insulting or demeaning the authority of a supervisor or manager.
- g. Making false or malicious statements concerning any employee, the City, or the City's policies or practices.
- h. Working overtime without authorization.
- i. Being under the influence of alcohol or a controlled substance while on duty, or being impaired by alcohol or a controlled substance while on duty to the extent that such impairment impacts the employee's ability to perform their job functions.
- j. Inexcusable absence without leave or excessive absenteeism.
- k. Abuse of sick leave including taking sick leave without a doctor's certificate when one is required, or misuse of sick leave as addressed in the City administrative policy regarding administration of sick leave.
- l. Discourteous treatment of the public or other employees.
- m. Improper or unauthorized use of City property or negligence in the care and handling of City property.

- n. Refusal to subscribe to any oath or affirmation which is required by law in connection with City employment.
- o. Any willful act or conduct taken in bad faith, either during or outside of duty hours, which is of a nature that it causes discredit to the City, or the employee's Department or Division.
- p. Unauthorized possession of weapons on City property.
- q. Participation in political activity which violates City policy.
- r. The conviction of a misdemeanor or felony. The record of conviction showing a plea or verdict of guilty, or a conviction showing a plea of "no contest" shall be conclusive evidence that a conviction occurred within the meaning of these rules.

11.2 Types of Discipline: The Department Director may impose discipline in the following forms:

- a. Suspension Without Pay - is a temporary separation from City service without pay for disciplinary purposes. FLSA-exempt employees may only be suspended in increments of one day periods.
- b. Reduction in Pay – is a decrease in salary paid to an employee for a fixed period of time for disciplinary purposes. FLSA-exempt employees are not subject to a reduction in pay.
- c. Demotion – is a reclassification of an employee to a position in another classification carrying a lower maximum rate of pay for disciplinary purposes.
- d. Termination – is the separation of an employee from City employment for disciplinary purposes.

11.3 Procedures for Taking Disciplinary Action: Except as provided for under Government Code sections 3300 – 3311, known as the Public Safety Officers Procedural Bill of Rights, the following procedure is established for taking disciplinary action at the level of suspension or greater.

11.4 Notice of Intent: Whenever a Department Director intends to suspend an employee without pay for one work day or more, reduce the employee in pay, demote the employee, or terminate the employee, the Department Director shall give the employee a written notice of discipline, either in person or by certified mail, which sets forth the following:

- a. The disciplinary action intended;
- b. The specific charges upon which the action is based;

- c. A summary of facts upon which the charges are based;
- d. A copy of all written materials, reports, or documents upon which the discipline is based;
- e. Notice of the employee's right to respond to the charges either orally or in writing to the Department Director;
- f. The date, time, and person before whom the employee may respond which must be at least five (5) working days from the date of the notice; and
- g. Notice that failure to respond at the time specified shall constitute a waiver of the right to respond prior to final discipline being imposed.

11.5 Response by the Employee: The employee shall have the right to respond to the Department Director orally or in writing. The employee shall have the right to be represented by an individual of his/her choosing at any meeting set by the Department Director to hear the employee's response. The employee's response will be considered before final action is taken.

11.6 Final Notice of Discipline: After consideration of the employee's response or the expiration of the employee's time to respond to the notice of intent, the Department Director shall either: (1) dismiss the notice of intent and take no disciplinary action against the employee; or (2) modify the intended disciplinary action; or (3) prepare and serve the final notice of disciplinary action upon the employee either in person or by certified mail. The final notice of disciplinary action shall include the following:

- a. The disciplinary action taken;
- b. The effective date of the disciplinary action;
- c. The specific charges upon which the action is based;
- d. A summary of facts upon which the charges are based;
- e. All of the written materials, reports, and documents upon which the disciplinary action is based; and
- f. An explanation of appeals procedures outlined in section 11.8.

11.7 Right to Appeal Discipline: The Employee has the right to appeal final disciplinary action to the City Manager. The appeals procedure described in these rules apply only to appeal of disciplinary action taken against regular employees. Disputes concerning these rules, any City or Department policies and procedures, and any applicable Memoranda of Understanding or City Council Resolution governing management, professional, and

confidential employees, where the dispute is within the scope of representation, shall be processed according to the grievance procedure set forth in the applicable Memoranda of Understanding and Resolution governing management, professional, and confidential employees.

11.8 Request for Hearing: Within seven working days after the final notice of suspension, reduction in pay, demotion or termination, the employee or his/her legal counsel or representative may file an appeal in writing to the City Manager. If, within the seven day appeal period, the employee does not file an appeal, the disciplinary action shall be considered final unless good cause for this failure is shown. The request for an appeal shall include the following:

- a. An admission or denial for each charge with an explanation why the charge is admitted or denied;
- b. A statement of any affirmative defenses;
- c. A statement that the employee disagrees with the penalty with an explanation of why the employee disagrees;
- d. A current address where the employee may be contacted; and
- e. A request for a hearing.

Failure to provide this information may result in the appeal not being processed.

11.9 Employee Relations Panel to Hear the Appeal: Upon receipt of the request for an appeal, the Personnel Officer shall constitute an Employee Relations Panel to hear the appeal. The purpose of the Panel is to review the basis for disciplinary action by the Department Director and make findings and recommendations to the City Manager regarding the misconduct charges that are the subject of the discipline. The Employee Relations Panel shall consist of:

- a. A City management official selected by the City Manager;
- b. An individual, who may be a City employee, selected by the appellant; provided that the selection of the individual shall not be a party or witness to the discipline or hearing, constitute a conflict of interest, nor subject an employee to any recriminations as a result of his/her participation; and
- c. A representative of the California State Mediation and Conciliation Service or an individual chosen by both parties who is knowledgeable in public sector labor relations who shall serve as the Chair of the panel. This individual may be chosen from any source likely to produce such an individual, including but not limited to a labor or management organization.

- 11.10 Scheduling a Hearing:** The Personnel Officer shall schedule a hearing before the Employee Relations Panel during regular established City business hours to the extent feasible. The hearing shall be set not less than fifteen working days or more than thirty days from the date of the filing of the appeal. All interested parties shall be notified in writing of the day, time, and place of the hearing at least ten working days prior to the hearing.
- 11.11 Private or Public Hearings:** All hearings shall be private; provided that the appellant may opt for a hearing open to the public. Any request for an open hearing shall be submitted to the Personnel Officer at least five working days prior to the hearing date or the hearing will be closed.
- 11.12 Submission of Hearing Documents to the Panel:** At least five working days prior to the date set for the hearing, the Personnel Officer shall provide the Panel with the Notice of Intent to Discipline, the Final Notice of Discipline, and any response from the appellant to these notices. The Panel shall not be provided any other supporting documents until the hearing.
- 11.13 Exhibits and Witness Lists:** Five days prior to the date set for the hearing, each party shall serve upon the other party and submit to the Personnel Officer, four copies of a list of all witnesses and a list and copy of all exhibits to be used by that party. The Panel shall be provided with copies of these documents at the hearing.
- 11.14 Record of Proceedings and Costs:** All disciplinary hearings may, at the discretion of either party or the Panel, be recorded by a court reporter. Any hearing which does not utilize a court reporter shall be recorded by audio tape. If a court reporter is requested by either party, that party shall pay the cost of the court reporter. If both parties request a court reporter, the cost will be split by both parties. If the Panel requests a court reporter, the City shall pay the cost of the reporter.

Employees of the City who are selected to the Panel or required to testify during working hours will be released with pay to appear at the hearing. Employees who are selected to the Panel or required to testify during non-working hours will be compensated for the time they actually testify, unless the City agrees to a different arrangement.

11.15 Conduct of the Hearing:

- a. The hearing shall be informal and the rules of evidence prescribed for duly constituted courts shall not apply, but hearing shall be conducted in a manner most conducive to determination of the truth.
- b. The City and the appellant may be represented by legal counsel or other designated representative.
- c. Any relevant evidence to the matter at hand may be admitted if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of

serious affairs. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence.

- d. Irrelevant and unduly repetitious evidence may be excluded by the Panel. The Panel shall determine relevancy, weight and credibility of testimony and evidence.
- e. Decisions made by the Panel shall not be invalidated by any informality of the proceedings.
- f. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing at the request of either party.
- g. All witnesses shall swear an oath to tell the truth for the record by the Chair of the Panel prior to offering testimony.
- h. Each party may cross examine the opposing witnesses on any matter relevant to the issues and each party has the right to impeach any witness regardless of which party first called him/her to testify.
- i. The Chair of the Panel reserves the right to control the proceedings, including but not limited to altering the order of witnesses, limiting redundant or irrelevant testimony, or by the direct questioning of witnesses.

11.16 Burden of Proof: In a disciplinary appeal, the City has the burden of proof by preponderance of the evidence.

11.17 Presentation of the Case: The hearing shall proceed in the following order unless the Panel directs otherwise for special reasons:

- a. The City, followed by the appellant, shall be permitted to make an opening statement.
- b. The representative of the City shall produce their evidence and witnesses.
- c. The appellant may then offer their evidence and witnesses.
- d. The City followed by the appellant may offer rebutting evidence.
- e. Closing arguments may be permitted at the discretion of the Panel with the City having the right to close the hearing by making the last argument.

11.18 Deliberation upon the Case: The Employee Relations Panel may choose to deliberate the case in public or adjourn to closed session to deliberate. The Board shall consider all oral and documentary evidence, the credibility of the witnesses, and other appropriate factors in reaching their findings and recommendations.

11.19 Written Findings and Recommendation of the Panel to the City Manager: The Panel is limited to finding whether misconduct occurred and may recommend the sustaining, modifying or rejecting of any or all of the charges filed against the appellant. The Panel may also find any aggravating or mitigating circumstances relating to any or all of the charges.

- a. The findings and recommendations of the Employee Relations Panel are advisory only to the City Manager.
- b. The Panel shall render their findings and recommendations in writing to the City Manager as soon after the conclusion of the hearing as possible, and in no event, later than 15 working days after the conclusion of the appeal hearing.
- c. Copies of the findings and recommendations shall be provided to the Department Director imposing the discipline, the appellant, and the Personnel Officer.

11.20 Final Action by the City Manager: The City Manager shall review the findings and recommendations of the Panel within ten days of their receipt. The City Manager may ratify, modify, or reject any of the recommendations of the Panel and shall then determine what final discipline, if any, is to be imposed. The decision of the City Manager is final.

- a. The decision shall be transmitted to the appellant, the Department Director, and the Personnel Officer.
- b. The decision shall be mailed to the employee with proof of service by mail that shows the date of service.
- c. Where the City Manager's decision modifies or reverses an action which resulted in a loss of pay, benefits or service credits to the employee, that decision shall serve to restore such losses.

11.21 Judicial Review: The City Manager's written findings and decision are final. There is no process for reconsideration. Pursuant to Code of Civil Procedures section 1094.6, the parties have 90 days from the date of the proof of service of mailing for the written findings and decision to appeal the decision to the Superior Court in and for the County of Santa Clara.

SECTION 12

RECORDS

- 12.1 Responsibility for Employee Records:** The Personnel Officer is responsible to maintain a personnel file and a separate confidential medical file for each employee. An employee's personnel file shall contain only material that is necessary and relevant to the administration of the City's personnel system. The files shall be maintained in accordance with Administrative Policy regarding Employee Records.
- 12.2 Notifying the City of Changes in Personal Information:** Each employee is responsible to promptly notify the Personnel Officer of any changes in relevant personal information, including:
- a. His/her legal name,
 - b. Marital or Domestic Partnership status,
 - c. Home Address and Mailing address,
 - d. Telephone number,
 - e. Information regarding persons to contact in an emergency,
 - f. Number and names of dependents or benefit beneficiaries.
- 12.3 Release of Information in Personnel Files:** Upon request, the City will release information about its employees to the public only to the extent required by the Public Records Act. This may include information regarding an employee's compensation and cost of benefits. The City will not disclose personnel information it considers would constitute an unwarranted invasion of personal privacy.
- 12.4 Medical Information:** Medical information is confidential in accordance with the Americans with Disability Act and the California Confidentiality of Medical Information Act. All medical information is maintained in a separate, confidential file.
- a. The City shall not disclose employee medical information, except to City management personnel with a legitimate personnel need, without prior written authorization from the employee, or except as required by law, subpoena, or Court order.
 - b. The City will only release the medical information that is identified in the employee's authorization.
- 12.5 Reference Checks:** All requests for reference checks or verification of employment from outside the City concerning any current or former employee must be referred to the Personnel Officer.

- a. Information will be released only if the employee signs an “Authorization to Release Employment Information” form.
- b. The City may provide information limited to include dates of employment, title of position held, and salary upon departure without such written authorization.

12.6 Employee Access to Personnel Files: An employee may inspect his/her own personnel file at reasonable times and at reasonable intervals to the extent defined in California Labor Code section 1198.5.

- a. Employees wishing to inspect their personnel file may do so by sending a request in advance to the Personnel Officer.
- b. Employees may have a representative review their personnel file if the employee provides prior written authorization.
- c. The Review must be done in the presence of the Personnel Officer.
- d. The Employee may request copies of any employment related document he/she has signed by sending a request to the Personnel Officer.
- e. Neither an employee nor an employee representative may have access to documents that pertain to pending investigations regarding the employee’s conduct or references and related information given in confidence as part of the City employment application or promotion.