

Resolution No. 2011-49

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF ORANGE
COVE ADOPTING NEW CITY OF ORANGE COVE PERSONNEL RULES
FOR THE CITY PERSONNEL SYSTEM**

WHEREAS, the City of Orange Cove has determined a need to review and update the City of Orange Cove Personnel Rules for the City Personnel System (hereafter also referenced as Personnel Rules); and

WHEREAS, the City desires to adopt new Personnel Rules; and

WHEREAS, the City has met the requirements of the Meyers-Milias-Brown Act as to consultation and meeting and conferring with employee organizations.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF ORANGE COVE, hereby resolves as follows:

Section 1. The City Council hereby adopts "City of Orange Cove Personnel Rules for the City Personnel System" as set forth in Exhibit A which is incorporated herein by reference

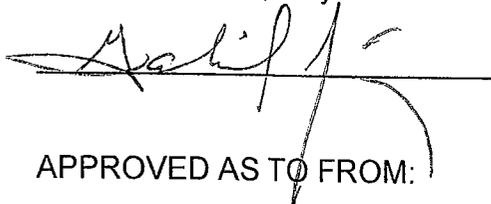
Section 2. All prior versions of the City's Personnel Rules and amendments thereto are hereby rescinded.

CLERK'S CERTIFICATION

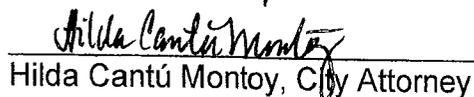
PASSED AND ADOPTED at a regular meeting of the City Council of the City of Orange Cove on the 12th day of December, 2011.

AYES: Mayor Gabriel Jimenez, Mayor Pro Tem Glenda Hill and Councilwoman Esther Gonzalez
NOES: None
ABSENT: Councilman Gilbert Garcia and Councilman Frank Martinez
ABSTAIN: None

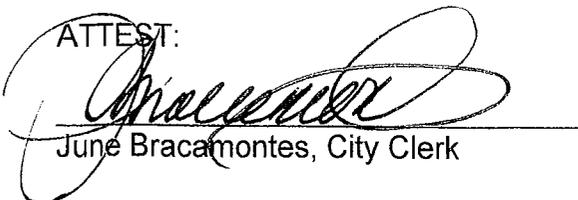
Gabriel Jimenez, Mayor



APPROVED AS TO FROM:


Hilda Cantú Montoy, City Attorney

ATTEST:


June Bracamontes, City Clerk

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CITY OF ORANGE COVE

PERSONNEL RULES FOR THE
CITY PERSONNEL SYSTEM

SECTION 1

INTRODUCTION AND PERSONNEL ADMINISTRATION

1.01 Purpose and Policy

These Personnel Rules set forth in detail those procedures which define the obligations, rights, privileges, benefits, and prohibitions associated with City service.

1.02 Rights of Employment

These Personnel Rules do not create any contract of employment, expressed or implied, or any rights in the nature of a contract.

1.03 Application

These Personnel Rules shall apply to all employees of the City unless a section or provision specifically excludes them. For employees who are employed pursuant to a written employment contract, where an express written provision of their employment contract is in direct conflict with a provision of these Personnel Rules, the employment contract shall prevail.

Any Department Head may, with the approval of the Personnel Officer, establish special rules to meet the needs of that department or any of its divisions if said rules and regulations are consistent with applicable state, federal and local law, the Personnel Rules as set forth herein, and any applicable Memorandum of Understanding.

1.04 Memorandum of Understanding ("MOU")

It is understood and agreed that, from time to time, amendments may be made to these Personnel Rules in order to conform with current Memoranda of Understanding ("MOU's") with recognized bargaining units, if any should exist.

Where an express written provision of an approved MOU, if any, is in conflict with a provision of these Personnel Rules, the MOU shall prevail unless the provision of these Personnel Rules has been negotiated more recently than the MOU.

1.05 The Personnel Officer

The City Manager is the Personnel Officer. The Personnel Officer shall have general control and supervision over employees, and shall also have the authority to control, order, and give directions to all Department Heads and to subordinate officers and employees of the City under his/her jurisdiction through their Department Heads.

The City Manager may delegate any of the powers and duties conferred upon him/her as Personnel Officer in these Personnel Rules to any other employee of the City, or may recommend to the City Council that such powers and duties be performed under contract.

1.06 Employment Constitutes Acceptance of Rules

In accepting employment with the City of Orange Cove, each employee agrees to be governed by and to comply with these Personnel Rules and any administrative procedures established by the City, and stipulates and agrees that he/she has read and understands all of these Personnel Rules, and additionally, all of the rules, regulations and directives of the department in which he/she is employed.

Upon accepting employment with the City of Orange Cove, each employee shall be given a copy of these Personnel Rules for which he/she will sign a receipt. The receipt will be made part of the personnel file of each employee.

1.07 Severability

If any provision of these Personnel Rules, or the application of such provision to any person or circumstance shall be held invalid, the remainder of these Personnel Rules or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and shall remain in full force and effect.

1.08 Management Rights

- A. The City shall retain, whether exercised or not, solely and exclusively, all express and inherent rights and authority pursuant to law with respect to determining the level of, and the manner in which, the City's activities are conducted, managed, and administered, and it is the exclusive right of the City to establish and maintain departmental rules and procedures for the administration of its departments.
- B. The City has the exclusive right and authority to schedule work and/or overtime work as required in the manner most advantageous to the City.
- C. 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.
- D. The City reserves the right to discipline or discharge employees as set forth in these Personnel Rules. The City reserves the right to layoff personnel of the City at any time as set forth in these Personnel Rules.
- E. The City shall determine assignments, and establish methods and processes by which assignments are performed.
- F. The City shall have the exclusive right to transfer employees within departments and to positions outside a department in a manner most advantageous to the City.
- G. The City shall have the authority, without prior meeting and conferring, to effect reorganizations and reallocation of work of the City.

- H. The City has the right, without prior meeting and conferring, to contract for matters relating to municipal operations, including contracting out bargaining unit work. The right of contracting or subcontracting is vested exclusively in the City.
- I. The inherent and express rights of the City, including those herein specifically referred to that are not expressly modified or restricted by a specific provision hereof, are not in any way, directly or indirectly, subject to meeting and conferring or the Grievance Procedure as described herein.

SECTION 2

DEFINITION OF TERMS

2.01 Administrative Leave

The temporary assignment of an employee to a status of leave with pay.

2.02 Advancement

A salary increase within the limits of a pay range established for a class.

2.03 At Will

“At Will” refers to any City employee who: (1) does not hold regular status; (2) serves at the pleasure of the City, the City Council or City Manager; and (3) may be dismissed at any time without cause and without the opportunity for grievance, hearing or appeal.

2.04 Business Day

A day in which City Hall is open and doing business with the public.

2.05 City

The City of Orange Cove and, where appropriate herein, refers to the City Council or any duly authorized City representative as defined in these Personnel Rules.

2.06 Class

All positions sufficiently similar in duties, authority, and responsibility, to permit grouping under a common title in a job application with equity of common standards of selection, transfer, demotion and salary.

2.07 Competitive Service

All positions of employment in the service of the City except those excluded by the Personnel Ordinance.

2.08 Continuous Service

Employment on a regular basis which is not interrupted by layoff, termination or leaves of absence without pay for a period in excess of one year, other than Military Leave.

2.09 Demotion

The movement of an employee from one class to another class having a lower maximum base rate of pay.

2.10 Discharge

Means a disciplinary action separating the employee from employment with the City.

2.11 Disciplinary Action

The discharge, demotion, reduction in pay, or suspension of a regular employee for punitive reasons.

2.12 Eligibility List

A list consisting of the names of applicants who passed the City's examination process for a particular position, arranged alphabetically.

2.13 Employment List

An Eligibility, Promotional or Re-Employment list.

2.14 Lay-Off

The abolishment of any position or employment in the competitive service by the City Council if necessary in the interest of economy or because the necessity for a position no longer exists.

2.15 Management Employee

Means an employee designated as such by the City Council.

2.16 Open-Competitive Examination

An examination for a particular class which is open to all persons meeting the qualifications for the class unless there are so many qualified applicants that the Personnel Officer determines that giving the examination to all qualified applicants would unnecessarily burden the City.

2.17 Permanent Part-Time Employee

Means an employee in the competitive service who has successfully completed the required probationary period and works at least 20 hours but less than 40 hours per week or the maximum hours scheduled by a department or a division on a regularly scheduled basis.

2.18 Personnel Ordinance

Chapter 2.40 of the Orange Cove Municipal Code which creates a personnel system for the City.

2.19 Position

A group of duties and responsibilities in the competitive service requiring the full-time or part-time employment of one person.

2.20 Probationary Period

The probationary period is part of the selection process. It is a time during which the City determines whether an employee's work performance or work-related behavior meets the required standards of the position.

2.21 Promotion

The movement of an employee from one class to another class having a higher maximum base rate of pay.

2.22 Promotional Examination

An examination for a particular class which is open only to employees in the competitive service meeting the qualifications for the class.

2.23 Promotional List

A list consisting of the names of employees in the competitive service who passed the City's promotional examination process for a particular position.

2.24 Provisional Appointment

The appointment of a person to a position on a temporary basis who possesses the minimum qualifications established for a particular class. In no instance shall a provisional appointment exceed six months.

2.25 Re-employment

The appointment of an employee who was laid off or demoted in lieu of lay off within the preceding twelve months to a position in the same class as his or her former position.

2.26 Re-employment List

A list consisting of the names of former City employees who have been laid off or demoted in lieu of lay off.

2.27 Regular Employee

Means a full-time or part-time employee in the competitive service who has successfully completed the required probationary period and has been retained as hereafter provided in these Personnel Rules.

2.28 Reinstatement

The restoration, without examination, of a former regular employee to a classification in which the employee formerly served as a regular non-probationary employee.

2.29 Resignation

Means the voluntary separation of an employee in good standing from employment with the City.

2.30 Seniority

Except as otherwise provided in these Personnel Rules or the Personnel Ordinance, seniority shall be the status attained by length of continuous service with the City, regardless of time in a position, time in department or time at a particular location. A probationary employee shall have no seniority until the employee has completed his/her probationary period. Upon completion of the probationary period, the employee will acquire seniority from the date of hire.

2.31 Shift

Means the hours an employee is assigned to work on a daily basis.

2.32 Suspension

The temporary separation from service of an employee without pay for disciplinary purposes.

2.33 Temporary Employee

An employee who is appointed to a non-regular position for a limited period of time.

2.34 Transfer

Means the reassignment of an employee from one position to another position which has the same class or comparable class.

2.35 Termination

The act of separation from employment with the City for any reason other than discharge.

SECTION 3

EMPLOYMENT POLICIES AND WORKING CONDITIONS

3.01 Equal Employment Opportunity

A. Purpose

To create a positive and nurturing work environment where the only limitations to an employee's success are his/her abilities and motivation to achieve.

B. Scope

This policy applies to all employees, applicants, contracted staff, volunteers, vendors and elected or appointed officials.

C. Policy

The City believes a strong commitment to Equal Employment Opportunity is more than a legal and moral obligation. It is sound business practice to realize the potential of every individual. In order to provide equal employment and advancement opportunities to all individuals, decisions are based upon: (1) individual merit, qualifications and competence as they relate to the particular position and (2) promotion of the principle of equal employment opportunity. Employment practices will not be influenced or affected by an applicant's or employee's race, ancestry, color, religion, sex, pregnancy, sexual orientation (including heterosexuality, homosexuality and bisexuality), gender identity, genetic characteristics, national origin, age, marital status, political affiliation, veterans' status, citizenship status, physical or mental disability (whether perceived or actual), medical condition or any other basis protected by law. This policy governs all aspects of employment, including selection, job assignment, compensation, counseling, discipline, termination, and access to benefits and training. The City will make reasonable accommodations for qualified individuals with known disabilities unless doing so would result in an undue hardship.

The City is committed to a results oriented management program aimed at achieving equal employment opportunity in all occupational levels of the City service. The Personnel Officer is the designated Equal Employment Opportunity Officer and is vested with responsibility and authority for the implementation and enforcement of this policy with Department Heads sharing the responsibility. The City will update and reaffirm this policy annually.

Any employee with questions and concerns about any type of unlawful discrimination in the workplace is strongly encouraged to bring these issues to the attention of their immediate supervisor or the Personnel Officer. Employees can raise concerns and make a report without fear of reprisal. Anyone found to be engaging in any type of unlawful discrimination will be subject to corrective action, up to and including termination of employment.

3.02 Americans with Disabilities

It is the policy of the City to provide 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. Request For Reasonable Accommodation

An employee who desires a reasonable accommodation shall make a request to the Personnel Officer, in writing, stating: (1) the job-related functions at issue; and (2) the desired accommodation(s). Following receipt of the request, the Personnel Officer may require additional information, such as reasonable documentation of the existence of a disability.

1. Fitness For Duty Exam

The City may require an employee to undergo a fitness for duty examination at the City's expense to determine whether the employee can perform the essential functions of the job with or without reasonable accommodations. The City may also require that a City-approved physician conduct the examination.

2. Interactive Process Determination

After receipt of reasonable documentation of disability and/or a fitness for duty report, the City will arrange for a discussion, in person or via telephone conference call with the applicant or employee and his/her representative(s), if any. The purpose of the discussion is to work in good faith to fully consider all feasible potential reasonable accommodations.

3. Case-by-Case Determination

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 employee or others. The City will inform the employee of its decision as to reasonable accommodation(s) in writing.

3.03 Harassment/Discrimination/Retaliation Prevention Policy

A. Purpose

It is the City's intent, and the purpose of this policy, to provide all employees, applicants, and contractors with an environment that is free from any form of discriminatory harassment, discrimination or retaliation as defined in this policy. This policy prohibits harassment or discrimination on the basis of any of the following classifications: an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), genetic characteristics, national origin,

ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age, medical condition and physical or mental disability (whether perceived or actual) or any other category protected by law. It is also the policy of the City to provide a procedure for investigating alleged harassment, discrimination and retaliation in violation of this policy. The protection from discrimination includes protection from retaliation for having taken action either as a complainant, or for assisting a complainant in taking action, or for acting as a witness or advocate on behalf of an employee in a legal or other proceeding to obtain a remedy for a breach of this policy.

B. Policy

The City has zero tolerance for any conduct that violates this policy. Conduct need not rise to the level of a violation of law in order to violate this policy. Instead, a single act can violate this policy and provide grounds for discipline or other appropriate sanctions. If you are in doubt as to whether or not any particular conduct may violate this policy, do not engage in the conduct, and seek guidance from a supervisor or the Personnel Officer.

C. Definitions

1. Protected Classifications

This policy prohibits harassment or discrimination because of an individual's protected classification(s). "Protected Classification" includes race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, citizenship status, uniformed service member status, marital status, pregnancy, age, genetic characteristics, medical condition and physical or mental disability (whether perceived or actual).

2. Policy Coverage

This policy prohibits elected officials, officers, employees and contractors from harassing or discriminating against applicants, officers, officials, employees and contractors because: (1) of an individual's protected classification; (2) of the perception of an individual's protected classification; or (3) the individual associates with a person who has or is perceived to have a protected classification.

3. Discrimination

This policy prohibits treating individuals differently because of the individual's protected classification as defined by this policy.

4. Harassment

Harassment means unsolicited words or conduct which subjectively and objectively offend another person. Harassment includes, but is not limited to, the following examples of behavior undertaken because of an individual's protected classification:

- a. *Verbal harassment*, such as epithets (nicknames and slang terms), derogatory or suggestive comments, propositioning, jokes or slurs, or graphic verbal commentaries about an individual's body on the basis of his/her protected classification. Verbal harassment includes comments on appearance and stories that tend to disparage those of a protected classification.
- b. *Visual forms of harassment*, such as derogatory posters, notices, bulletins, cartoons, drawings, sexually suggestive objects, or e-mails on the basis of a protected classification. Visual harassment includes mimicking the way someone walks or talks because of their protected classification.
- c. *Physical harassment*, such as assault, touching, impeding or blocking movement, grabbing, patting, leering, making express or implied job-related threats in return for submission to physical acts, taunting, or any physical interference with normal work or movement based on an individual's protected classification.
- d. *Sexual harassment*, such as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature or any of the above described conduct when:
 - i. Submission to such conduct is either an expressed or implied term or condition of an individual's employment;
 - ii. Submission to or rejection of such conduct is used as the basis for employment decisions affecting such individual; or
 - iii. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating a hostile, intimidating or offensive work environment.

By definition, sexual harassment is not within the course and scope of an individual's employment with the City.

D. Romantic and Sexual Relationships Between Supervisors and Subordinates

Romantic or sexual relationships between supervisors and subordinate employees are discouraged. There is an inherent imbalance of power and potential for exploitation in such relationships. The relationship may create an appearance of impropriety and lead to charges of favoritism by other employees. A welcome sexual relationship may change, with the result that sexual conduct that was once welcome becomes unwelcome and harassing.

E. Retaliation

Retaliation against a person (or his/her associates) who reports or provides information about harassment or discrimination is strictly prohibited. Any act of reprisal violates this policy and will result in appropriate disciplinary action. Examples of actions that might

be retaliation against a complainant, witness or other participant in the complaint process include: (1) singling a person out for harsher treatment; (2) lowering a performance evaluation; (3) failing to hire, failing to promote, withholding pay increases, assigning more onerous work, abolishing a position, demotion or discharge; or (4) real or implied threats of intimidation to prevent an individual from reporting harassment or discrimination.

Any act of retaliation will be treated as a separate and distinct incident, regardless of the outcome of the harassment or discrimination complaint.

F. Reporting Harassment, Discrimination or Retaliation

An applicant, employee, officer or contractor who feels he/she has been harassed, discriminated against or retaliated against in violation of this policy should report the conduct immediately as outlined below so that the complaint can be resolved.

All employees involved in the complaint process may be represented by a person of their choosing and at their own expense.

1. Object to the Conduct

Sometimes an individual is unaware that his/her conduct is offensive. The offensive behavior may be eliminated by simply informing the offender that the conduct or language in question is unwelcome and offensive and request that it be discontinued immediately. A person who believes he/she is being harassed, discriminated against or retaliated against is encouraged to use this process.

When the conduct in question continues after the offending person has been informed it is offensive, or if a person does not feel comfortable talking to the offending person directly, the employee should make a report in accordance with subsection 2 below or go directly to the formal reporting process.

2. Oral Report

If a person who believes that this policy has been violated does not want to confront the offending person, he/she should report the conduct to a supervisor, Department Head or any City management employee. Any supervisory or management employee who receives such a report must direct it to the Personnel Officer. The Personnel Officer will determine what level of investigation and response is necessary.

3. Written Process

An individual who believes this policy has been violated may provide a written complaint to a supervisor, Department Head or any City management employee who must direct the complaint to the Personnel Officer.

4. Option to Report to Outside Administrative Agencies

Applicants, employees, officers and contractors have the option to report harassment, discrimination, or retaliation to the California Department of Fair Employment and Housing (DFEH) or the U.S. Equal Employment Opportunity Commission (EEOC).

G. City's Response to Complaint of Harassment, Discrimination or Retaliation

1. Investigation

Upon receipt of a complaint of alleged harassment, discrimination or retaliation, the Personnel Officer will be responsible for coordinating a thorough investigation (unless he/she is named in the complaint). The Personnel Officer may coordinate the investigation with the complainant's Department Head and may hire an outside investigator if the City deems it appropriate. The type of investigation undertaken, and the party chosen to conduct the investigation will depend on the nature of the complaint made and will be determined by the Personnel Officer (unless he/she is named in the Complaint).

The Personnel Officer may take interim action to diffuse volatile circumstances.

The investigator will review the complaint allegations. The investigation will normally include interviews with the reporting individual, the accused, and any other person who is believed to have relevant knowledge concerning the allegations. The investigator will remind all witnesses to maintain the confidentiality of the interview and that retaliation against those who report alleged harassment or discrimination or who participate in the investigation is prohibited.

The City takes a proactive approach to potential policy violations and will conduct an investigation if its officers, supervisors, or managers become aware that harassment, discrimination or retaliation may be occurring, regardless of whether or not the recipient of the alleged action or a third party reports a potential violation.

2. Remedial and Disciplinary Action

If the investigator determines that the alleged conduct occurred and that the conduct violated this policy, the City will notify the complainant and perpetrator of the general conclusion(s) of the investigator and take effective remedial action that is designed to end the violation(s). Any employee or officer determined to have violated this policy will be subject to disciplinary action, up to and including termination. Disciplinary action may also be taken against any supervisor or manager who condones or ignores potential violations of this policy or who otherwise fails to take appropriate action to enforce this policy. Any official or contractor found to have violated this policy will be subject to appropriate sanctions.

3. Closure

At the conclusion of the investigation, the Personnel Officer will notify the complainant in general terms of the outcome of the investigation.

4. Confidentiality

Every possible effort will be made to assure the confidentiality of complaints made under this policy. Complete confidentiality cannot occur, however, due to the need to fully investigate potential policy violations and take effective remedial action. An individual who is interviewed during the course of an investigation is prohibited from discussing the substance of the interview, except as otherwise directed by a supervisor or the Personnel Officer. Any individual who discusses the content of an investigatory interview will be subject to discipline or other appropriate sanction. The City will not disclose a completed investigation report except as it deems necessary to support a disciplinary action, to take remedial action, to defend itself in adversarial proceedings, or to comply with the law or a court order.

H. Responsibilities of Employees, Management and Supervisory Employees

1. Employees

In order to establish and maintain a professional working environment, while at the same time preventing harassment, discrimination, and retaliation, employees are expected to:

- Set an example of acceptable conduct by not participating in or provoking behavior that violates this policy. Try not to be angry or insulted if an individual tells you that your behavior is offensive. People have different ethical values and standards and may be offended by behavior you think is proper. Tell the individual you did not realize your behavior was offensive, and immediately cease the conduct.
- Let fellow employees know when you consider their behavior offensive. The City hires people from a wide variety of backgrounds and an individual may not realize behavior he/she thinks is proper could be seen by others as offensive.
- Report harassment, discrimination or retaliation as quickly as possible, whether the employee is the target of the conduct or a witness.
- If an employee witnesses harassment, he/she should tell the individual being harassed that the City has a policy prohibiting such behavior, and that he/she can demand that the harasser cease the behavior.
- Maintain confidentiality as required by this policy.

- Fully cooperate with the City's investigation of complaints made under this policy.

2. Managers and Supervisors

In addition to the responsibilities listed above, managers and supervisors are responsible for the following:

- Implementing this policy by taking all complaints seriously and modeling behavior that is consistent with this policy.
- Directing all complaints to the Personnel Officer.
- Taking positive steps to eliminate any form of harassment, discrimination or retaliation observed or brought to his/her attention.
- Making sure no Department Head, supervisor or other employee retaliates through any act of intimidation, restraint, coercion or discrimination.
- Monitoring the work environment and taking appropriate action to stop potential policy violations.
- Following up with those who have complained to ensure the behavior complained of has ceased.
- Informing complainants of their option to contact the DFEH or EEOC regarding a potential policy violation.

3.04 Workplace Security

A. Policy

The City is committed to providing a safe and secure workplace for employees and the public. The City will not tolerate acts or threats of violence in the workplace. The workplace includes any location where City business is conducted, including vehicles and parking lots. Any violation of this policy may lead to criminal prosecution, and/or disciplinary action up to and including termination.

B. Prohibited Behavior

1. Employees are prohibited from engaging in or promoting acts of intimidation, violence, threats, coercion, assault and/or abusive behavior toward any person while in the course of City employment. The City has zero tolerance for any conduct that resembles workplace violence, even if it was intended to be harmless, humorous, a prank, blowing off steam, or venting.
2. Employees engaged in City business are prohibited from carrying weapons in violation of any law or this policy unless weapons are required for

performance of the job. Employees who have legal authority to carry a weapon shall notify the Department Head in writing of what type of weapon is being carried. Employees who have legal authority to carry weapons violate this policy if they: accidentally discharge or lose their weapon; use, threaten to use, or display the weapon for a job related reason; or violate any law related to carrying a legal weapon while engaged in City business.

C. Definitions

1. Workplace Violence

Any conduct that causes an individual to reasonably fear for his/her personal safety or the safety of his/her family, friends, and/or property. Specific examples of workplace violence include, but are not limited to, the following:

- a. Threats or acts of physical harm directed toward an individual or his/her family, friends, associates, or property.
- b. The destruction of, or threat of destruction of City property or another employee's property.
- c. Harassing or threatening phone calls.
- d. Surveillance.
- e. Stalking.
- f. Possession of offensive or defensive weapons (firearms, illegal knives, clubs, mace, pepper spray, tear gas, etc.) unless specifically required or authorized and approved by the Personnel Officer. Weapons are defined as firearms, chemical sprays, clubs or batons, and knives, and any other device, tool, chemical agent or implement that can cause bodily harm if used as a weapon or displayed in such a manner to cause harm or threaten a person with harm.

D. Incident Reporting Procedures

1. Employees must immediately report workplace violence to their supervisor or Department Head. The supervisor or Department Head must report the matter to the Personnel Officer.
2. The Personnel Officer will document the incident, including employee names(s), date/time, location, incident description, witness names and statements, description of unidentified parties, description of the act(s) and/or behavior arising from the incident, action taken, and provide any other relevant information regarding the incident.
3. The Personnel Officer will take appropriate steps to provide security, such as:

- a. Placing the employee alleged to have engaged in workplace violence on administrative leave pending investigation;
- b. Asking any threatening or potentially violent person to leave the site; or
- c. Immediately contacting an appropriate law enforcement agency.

E. Investigation

The Personnel Officer will see that reported violations of this policy are investigated as necessary.

F. Management Responsibility

Each Department Head has authority to enforce this policy by:

1. Training supervisors and subordinates about their responsibilities under this policy;
2. Assuring that reports of workplace violence are documented in an accurate and timely manner;
3. Notifying the Personnel Officer and/or law enforcement authorities of any incidents;
4. Making all reasonable efforts to maintain a safe and secure workplace; and
5. Maintaining records and following up on workplace violence reports.

G. Follow-Up and Disciplinary Procedures

An employee found to be in violation of this policy will be subject to disciplinary action up to and including termination of employment. The City may also direct that an employee submit to a fitness for duty examination. In addition, employees found to be in violation of this policy may be subject to criminal prosecution.

3.05 Drug and Alcohol Free Workplace Policy

A. Policy

1. The manufacture, distribution, dispensation, possession, or use of alcohol or any controlled substance is prohibited in both City workplaces and wherever City business is performed.
2. City employees are prohibited from working or being subject to call in if impaired by alcohol or any controlled substance.
3. An employee must notify his/her supervisor before beginning work when taking medications or drugs which could interfere with the safe and effective

performance of duties or operation of City equipment. If there is a question regarding an employee's ability to perform assigned duties safely and effectively while using prescribed medications, the City may require medical clearance.

4. Compliance with this policy is a condition of City employment. Disciplinary action will be taken against those who violate this policy.
5. Employees who hold safety-sensitive positions are subject to requirements contained in this policy as well as the U.S. Department of Transportation ("DOT") regulations regarding drug and alcohol programs and testing.

B. Scope of Policy

This policy applies to all City employees when they are on City property or when performing City-related business elsewhere.

C. Searches

In order to promote a safe, productive and efficient workplace, the City has the right to search and inspect all City property, including but not limited to lockers, storage areas, furniture, City vehicles, and other places under the common control of the City, or joint control of the City and employees. No employee has any expectation of privacy in any City building, property, or communications system.

D. Drug and Alcohol Testing

Except as provided otherwise in a memorandum of understanding, or as modified for employees who are required to participate in the City's federally mandated commercial drivers license holders drug/alcohol testing education program, the City has discretion to test a current employee for alcohol or drugs in the following instances:

1. Reasonable Suspicion Testing

The City may require a blood test, urinalysis, or other drug and/or alcohol screening of those persons reasonably suspected of using or being under the influence of a drug or alcohol at work. Testing must be approved by the Personnel Officer, the Department Head, or a designee.

"Reasonable suspicion" is based on objective factors, such as behavior, speech, body odor, appearance, or other evidence of recent drug or alcohol use which would lead a reasonable person to believe that the employee is under the influence of drugs or alcohol. In order to receive authority to test, the supervisor must record the factors that support reasonable suspicion and discuss the matter with the Personnel Officer or Department Head. If there is a reasonable suspicion of drug or alcohol abuse, the employee will be relieved from duty and placed on paid leave until the test results are received.

2. Post-Accident Testing

The City may require alcohol or drug screening following any work-related accident or any violation of safety precautions or standards, whether or not an injury resulted from the accident or violation, provided that the "reasonable suspicion" factors described above are present.

3. Random Drug and Alcohol Testing For Safety-Sensitive Positions

Employees working in safety-sensitive positions will be subjected to randomly selected, unannounced testing. The random selection will be by a scientifically valid method. Each safety-sensitive employee will have an equal chance of being tested each time selections are made. Safety-sensitive employees will be tested either just before departure, or during duty, or just after the safety-sensitive employee has ceased performing his/her duty.

E. Employee's Responsibilities

A City employee must:

1. Not report to work or be on standby or on-call status while his/her ability to perform job duties is impaired due to on or off duty alcohol or drug use;
2. Not possess or use controlled substances (illegal drugs or prescription drugs without a prescription) at any time, or use alcohol at any time while on City property or while on duty for the City at any location;
3. Not directly or through a third party manufacture, sell, distribute, dispense, or provide controlled substances to any person, including any employee, at any time, or manufacture, sell, distribute, dispense or provide alcohol to any employee while either or both are on duty;
4. Notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or nonprescription, which may interfere with the safe and effective performance of duties or operation of City equipment;
5. Notify the Department Head of any criminal conviction for a drug violation that occurred in the workplace within no more than five days after such conviction;
6. Notify a supervisor immediately of facts or reasonable suspicions when he/she observes behavior or other evidence that a fellow employee poses a risk to the health and safety of the employee or others; and
7. Consent to drug or alcohol testing and searches.

F. Management Employee Responsibilities

City management employees must:

1. Notify the state or federal granting agency which has funded the work or program, if any, of any criminal drug statute convictions for a violation that occurred at a site where work is/was being done with a specific grant or contract;
2. Record factors supporting "reasonable suspicion" as defined in subsection D(1) above and consult with other management staff in order to determine whether there is reasonable suspicion to test an employee as described by this policy;
3. Take appropriate disciplinary action for any criminal drug statute conviction that occurred in a City workplace, up to and including termination, or require that the convicted employee participate satisfactorily in a drug abuse assistance or rehabilitation program as a condition for returning to duty; and
4. Take appropriate disciplinary action for any violation of this policy.

G. Drug-Free Awareness Program

The following is the City's drug-free awareness program:

1. Distribution of a brochure on the dangers of drug abuse to each City employee and volunteer; and
2. Notification to each City employee and volunteer of the availability of counseling and treatment of drug-related problems through the City's Employee Assistance Program provider.

3.06 Conflicts of Interest/Outside Employment

Employees are expected to devote their full time, attention, and efforts to their work during hours of duty as City employees. An employee shall not engage in any employment, activity, or enterprise which is clearly inconsistent, incompatible, in conflict with, or inimical to his/her duties as a City employee. Employees are not permitted to participate in the following activities during or outside of working hours:

- A. Activities involving the use, for private gain or advantage, of City time, facilities, equipment, and supplies, or the employee's ID card, uniform, prestige, or influence of one's City office or employment.
- B. Activities involving receipt or acceptance by the employee of any money or other consideration from anyone other than the City for the performance of an act which the employee would be required or expected to render in the regular course of his/her City employment or as a part of his/her duties as a City employee.

- C. Activities involving the performance of an act other than in his/her capacity as a City employee, which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by such employee or the department by which the employee is employed.
- D. Activities involving conditions or factors which would probably, directly or indirectly, lessen the efficiency of the employee in his/her regular City employment or conditions in which there is a substantial danger of injury or illness to the employee.
- E. Activities involving use or access to confidential information available by virtue of City employment for private gain or advantage or providing confidential information to persons to whom issuance of this information has not been authorized.
- F. Use of City-owned equipment, cars, trucks, instruments, tools, supplies, machines, or any other item which is the property of the City in conjunction with outside employment or any activity for compensation. In addition, no employee shall allow any unauthorized person to rent, borrow, or use any of the items discussed above.
- G. Any activity that is contrary to existing state or federal conflict of interest laws.
- H. Any violations of this policy respecting outside employment or activity and use of City property shall constitute sufficient grounds for disciplinary action, up to and including termination.

3.07 Employee Political Activities

The political activities of City employees shall conform to pertinent provisions of state law.

3.08 Request for Assistance from Private Citizen

Under no circumstances shall a City employee request or authorize a private individual to assist in any manner in the performance of the employee's job functions or duties, except for volunteers or law enforcement personnel engaged in an emergency.

3.09 Gifts or Payments

Employees of the City are prohibited from:

1. Accepting any gift or gratuity in their professional capacities, including but not limited to, money, service, favors, discounts, promises and/or objects of value from any person, firm, corporation or other governmental entity.
2. Using their official position with the City to solicit special privileges for themselves or others, including discounts on goods or services.

Tokens of appreciation or modest gifts given in appreciation for services rendered such as flowers, candy, homemade foods and similar items may be accepted on behalf of the entire affected City Department subject to the employee immediately notifying his/her supervisor and placing the item in a common area of the employee's Department to be shared and/or appreciated by all Department employees.

3.10 Personal Conduct

Employees may not engage in off-duty conduct which violates the Conflicts of Interest/Outside Employment Policy in these Personnel Rules, undermines the employee's or the City's credibility with the public, or impacts the employee's job performance.

3.11 Smoking

Smoking shall not be permitted inside any workplace, meeting room, classroom, or restroom of any City facility, or within twenty (20) feet of main entrances, exits, and operable windows of any City building. Smoking shall not be permitted in any City vehicle.

3.12 Dress and Grooming Standards

The professional atmosphere and the image of the City is maintained, in part, by the image that employees present to the public. Employees of the City are required to dress appropriately for the jobs they are performing. Failure to follow the dress standards contained in this section shall be grounds for discipline.

1. All clothing must be neat, clean and in good repair.
2. Prescribed uniforms and safety equipment must be worn when required.
3. Footwear must be appropriate for the work environment and functions or duties being performed.
4. Hair must be neat, clean and well groomed.
5. Beards, mustaches and sideburns must be maintained in a neat and well-groomed fashion.
6. Reasonably-sized jewelry is acceptable except in areas where it constitutes a health or safety hazard.
7. Good personal hygiene is required.
8. Dress must be appropriate to the work setting, particularly if the employee deals with the public.

3.13 Tattoo and Piercing Policy

A. Tattoos

1. No tattoos are allowed anywhere on the head, face, or neck.
2. Any visible tattoos cannot be obscene, sexually explicit, discriminatory as to sex, race, religion, or national origin, extremist, and/or gang-related.
3. No visible tattoos shall be larger than 4 by 6 inches.
4. Any non-conforming tattoos must be covered with clothing or a bandage while at work.
5. If an employee has a question about how the tattoo policy applies to him/her, the matter should be immediately raised with his/her supervisor for consideration and determination.

B. Piercings

1. No objects, articles, jewelry or ornamentation of any kind shall be attached to or through the skin if visible on any body part including the tongue or any part of the mouth except that an employee may wear one set of reasonably-sized earrings in the ear lobes.
2. Any non-conforming piercing shall be removed, covered with a bandage, or replaced with a clear plastic spacer.
3. If an employee has a question about how the piercing policy is applicable to him/her, the matter should be immediately raised with his/her supervisor for consideration and determination.

3.14 Communication and Technology Policy

A. Purpose

The City provides a variety of electronic communication resources such as telephones, cellular telephones, computers, facsimile machines, pagers, electronic mail (e-mail) systems, and internet access for employees whose job performance would effectively be enhanced by the use of such technologies. The challenge is making maximum use of the benefits of such resources, meeting legal requirements for access to information, and providing adequate protection for proprietary information. This policy governs access to and the appropriate and effective use of City-provided electronic communication resources at all times, including work and non-work time, by City employees, consultants and/or contractors.

B. Scope

This policy applies to all users of electronic communication resources of City owned, leased or managed networks, equipment or services.

C. Policy

The City is the legal owner and operator of all electronic communication resources owned, leased or managed by the City.

The City recognizes that principles of shared governance, freedom of speech, and privacy hold important implications for the use of electronic communication resources. This policy reflects these principles within the context of the City's legal, management and other obligations.

The City's electronic communication resources may be monitored and searched at any time and for any reason. Messages sent or received on City equipment including cellular telephones may be saved and reviewed by others. As a result, City employees have no expectation of privacy in the messages sent or received on City property or equipment.

1. Personal Use of Electronic Communication Resources

Employee access to and use of electronic communication resources is intended for business-related purposes. Limited and reasonable use of these tools for occasional employee personal purposes is permitted, provided that such use:

- a. Is kept to a minimum and limited to break times or non-work hours;
- b. Does not have any impact upon other City employees or operations;
- c. Is not abusive, illegal or inappropriate; and
- d. Does not result in any additional costs or loss of time or resources for the City.

2. Inappropriate and Prohibited Uses of Electronic Communication Resources

Inappropriate use of the City's communication systems may result in discipline, up to and including termination. The following are examples of inappropriate and prohibited uses of the City's communications systems:

- a. Exposing others, either intentionally or unintentionally, to material which is offensive, obscene or in poor taste;
- b. Any use that would be offensive to a reasonable person because it involves an individual's race, religion, color, sex, gender identity, sexual orientation (including heterosexuality, homosexuality and bisexuality), ethnic or national origin, ancestry, citizenship status, uniformed service member status, marital status, family relationship, pregnancy, age, medical condition, genetic

characteristics, and physical or mental disability (whether perceived or actual);

- c. Communication of confidential City information to unauthorized individuals within or outside the City;
- d. Sending messages with content that conflicts with any City policies, rules or applicable laws;
- e. Unauthorized attempts to access City data or systems;
- f. Theft or unauthorized copying of electronic files or data;
- g. Initiating or sustaining chain letters, and
- h. Intentionally misrepresenting one's identity for improper or illegal acts.

3. **Standards of Excellence in the use of Electronic Communication Resources**

All employees are expected to adhere to the Standards of Excellence in the Use of Electronic Communication Resources Policy ("Standards of Excellence Policy") set forth below as it relates to the use of electronic communication resources and to follow all federal and state statutes related to the use of electronic communication resources. This Standards of Excellence Policy applies to all electronic communication resources as well as to other forms of communication and activity.

a. **Standards of Excellence Policy**

- i. All electronic communication messages and voice mail messages should acknowledge recipients if additional time is required for a complete response. Telephone messages should be updated to reflect your status as "out of the office," "on vacation," etc.
- ii. Electronic mail should adhere to the same standards of conduct as any other form of mail. Respect others you contact electronically by avoiding distasteful, inflammatory, harassing or otherwise unacceptable comments. Harassment of any form will not be tolerated.
- iii. Respect the privacy of others and their accounts. Do not access or intercept files or data of others without permission. Do not use the password of others or access files under false identity.
- iv. Electronic communication resources may be subject to the California Public Records Act and therefore subject to disclosure.
- v. Remember that you are responsible for all activity involving your account. Keep your account secure and private. Do not use identifying data or

common words as a password. Your password should be difficult to crack or otherwise guess either by individuals or by sophisticated computer programs.

- vi. The City is the custodian of a wide array of personal and financial data and only those with authorization may access, communicate or use confidential information for official City purposes.

3.15 Use of City Property and Equipment

City property is to be used only for conducting City business unless otherwise authorized. City property includes, but is not limited to: telephones, cellular telephones, desks, computers (including hardware and software), file cabinets, lockers, communications stored or transmitted on City property (such as email and voicemail), vehicles and any other property used by City employees in their work.

Employees do not have a reasonable expectation of privacy in City property or equipment. Every City employee is required to adhere to all City rules and policies while on City property or using City property or equipment.

SECTION 4

EMPLOYMENT, SELECTION AND APPOINTMENT

4.01 Announcement

All examinations for classes in the competitive service shall be publicized by such methods as the Personnel Officer deems appropriate. Special recruiting shall be conducted, if necessary, to ensure that all segments of the community are aware of the forthcoming examinations. The announcements shall specify the title and pay of the class for which the examination is announced; the nature of the work to be performed; preparation desirable for the performance of the work of the class; the manner of making application; and other pertinent information.

4.02 Application Form

Applications shall be made as prescribed on the examination announcement. Application forms shall require information covering training, experience, education and other pertinent information. All applications must be completed in full and signed by the person applying. Incomplete or unsigned applications are subject to rejection by the City.

4.03 Selection Criteria and Ineligibility or Disqualifications

A. Selection Techniques

The selection techniques that will be used for any particular position are solely within the discretion of the Personnel Officer.

B. Grounds for Rejection of An Application for Employment

The Personnel Officer may reject an application for employment if the applicant:

1. Lacks of any of the requirements, certifications or qualifications established for the position;
2. Is a current user of illegal drugs;
3. Has made false statements of any material fact, or practiced any deception or fraud on the application or declarations;
4. Has had his/her privilege to operate a motor vehicle in the State of California suspended or revoked if driving is required for the position sought;
5. Failed to submit the employment application correctly or within the prescribed time limits;
6. Is physically or mentally unable to perform the essential functions of the job with or without reasonable accommodation;

7. Used or attempted to use political pressure or bribery to secure an advantage in the application process;
8. Directly or indirectly obtained confidential information regarding examinations;
9. Is a relative or romantic partner of an employee and is subject to the Employment of Relatives Policy in these Personnel Rules.
10. For any material cause which in the judgment of the Personnel Officer would render the applicant unsuitable for the position, including a prior resignation from the City or a significant disciplinary action.

C. Criminal Conduct – Ineligibility for Employment

Conviction, including pleas of guilty and nolo contendere, of a felony shall be prima facie disqualification of an applicant for employment; provided, however that the Personnel Officer may disregard such conviction if it is found and determined that mitigating circumstances exist. In making such determination, the Personnel Officer shall consider the following factors:

1. the class, including sensitivity, to which the person is applying or being certified and whether the class is unrelated to the conviction;
2. the nature and seriousness of the offense;
3. the circumstances surrounding the conviction;
4. the length of time elapsed since the conviction;
5. the age of the person at the time of conviction;
6. the presence or absence of rehabilitations or effort at rehabilitation;
7. contributing social or environmental conditions.

An applicant who is disqualified for employment under this section may appeal the determination of disqualification. Such appeal shall be in writing and filed with the Personnel Officer within ten (10) days of the date of the notice of disqualification. The Personnel Officer shall hear and determine the appeal within ninety (90) days after it is filed. The determination of the Personnel Officer on the appeal is final.

Notwithstanding the foregoing, an applicant for a peace officer position shall be disqualified, without right of appeal, from employment if the applicant shall have been convicted of a felony.

4.04 Examination Process

The selection techniques used in the examination process shall be impartial and relate to those subjects which, in the opinion of the Personnel Officer, fairly measure the relative

capacities of the persons examined to execute the duties and responsibilities of the class to which they seek to be appointed. Examinations shall consist of selection techniques which will test fairly the qualifications of candidates such as, but not necessarily limited to, achievement and aptitude tests, other written tests, personal interview, performance test, physical agility tests, psychological tests, successful completion of prescribed training, or any combination of these or other tests. The probationary period shall be considered as a portion of the examination process. Examinations shall be designed to provide equal opportunity to all candidates by being based on an analysis of the essential requirements of the class, covering only factors related to such requirements.

A. Promotional Examinations

Promotional examinations may be conducted whenever, in the opinion of the Personnel Officer, the needs of the service require. Promotional examinations may include any of the selection techniques mentioned in this subsection 4.04, or any combination of them. Only regular or probationary employees who meet the requirements set forth in the promotional examination announcement may compete in promotional examinations.

B. Open-Competitive Examinations

Open-competitive examinations may be administered periodically for a single class as the needs of the service required. Names shall be placed on employment lists, and shall remain on such lists, as prescribed in subsection 4.05 of these Personnel Rules.

C. Conduct of Examinations

The City Council may contract with any competent agency or individual for the preparing and/or administering of examinations. In the absence of such contract, the Personnel Officer shall see that such duties are performed. The Personnel Officer shall arrange for the use of public buildings and equipment for the conduct of examinations.

D. Scoring Examinations and Qualifying Scores

1. In the event that an examination is given as part of the selection process, a candidate's scores shall be the average of his/her scores on each competitive part of the examination, weighed as shown in the examination announcement. Failure in one part of the examination, or failure to meet established standards described in the job announcement, may be grounds for declaring such applicant as failing in the entire examination or as disqualified for subsequent parts of an examination.
2. The Personnel Officer may, at his/her discretion, include as a part of the examination, tests which are qualifying only.

E. Notification of Examination Results and Review of Papers

Each candidate in an examination shall be given notice of the results thereof, and if successful, of the final earned score and/or rank on the employment list.

All candidates shall have the right to inspect their own test answer sheet within five (5) working days after the service of notice of his/her examination results. Any error in computation, if called to the attention of the Personnel Officer within this period, shall be corrected. Such corrections shall not, however, require invalidation of appointments previously made.

4.05 Employment Lists

A. Eligibility Lists

1. Preparation

Within a reasonable time after successful completion of all phases of the City's recruitment process the Personnel Officer shall prepare and keep available an Eligibility List consisting of the names of applicants, in alphabetical order, who passed the subject open-competitive examination. This list shall become effective upon its certification by the Personnel Officer. If there are less than three (3) names on the Eligibility List, the Personnel Officer may declare the list void and fill the position(s) by any method permitted in these Personnel Rules, including, but not limited to, undertaking new recruiting or testing procedures.

2. Duration

Eligibility Lists may remain in effect for six (6) months after the last administration of the examination, unless the list is exhausted, or unless the list is extended prior to expiration by the Personnel Officer. The Personnel Officer may extend any such list for additional periods, but in no event shall an Eligibility List remain in effect for more than one (1) year.

B. Promotional Lists

Promotional lists shall remain in effect for one (1) year, unless the list is exhausted or abolished by the Personnel Officers.

C. Re-Employment Lists

1. Employees who are demoted as a result of a layoff will have their names placed on appropriate Re-Employment Lists in order of seniority. Vacant positions within these employees' prior classifications and for which they are qualified will first be offered to employees on this list.
2. The names of probationary and regular employees who have been laid off may be placed on appropriate Re-Employment Lists in order of total continuous cumulative time served in probationary and regular status. Such names may remain thereon for one (1) year unless such persons are rehired sooner.
3. When a Re-Employment List is to be used to fill vacancies, the Personnel Officer shall certify at the top of such list the number of names equal the number of

vacancies to be filled and shall appoint such persons to fill the vacancies. Any person who is selected from the list to fill the vacancy and refuses the assignment will be removed from the list without right of hearing, grievance or appeal.

D. Removal of Names From Employment Lists

Persons may be removed from Eligibility, Re-Employment or Promotional Lists for the following reasons:

1. The eligible person requests in writing that his/her name be removed;
2. The eligible person fails to respond to notices or other documents mailed to his/her last known address; or
3. A current City employee whose name is on a Promotional List resigns from City service.

It will be the responsibility of such persons to keep the Personnel Officer informed of his/her current address and telephone number. Any such person whose name is removed from an Employment List shall be notified of the same by written notice mailed to his/her last known address.

4.06 The Filling of Vacancies

A. Method

1. If a class vacancy in the competitive service needs to be filled, the respective Department Head shall notify the Personnel Officer as required by the Personnel Ordinance and these Personnel Rules.
2. If a Re-Employment List is not available for the vacant class, the Personnel Officer shall have the right to decide whether to fill the vacancy by reinstatement, transfer, demotion, or appointment from an Eligibility or Promotional List certified by the Personnel Officer as set forth in these Personnel Rules.
3. In the absence of acceptable persons eligible for appointment in the manner herein described, provisional appointments may be made in accordance with the Personnel Ordinance and these Personnel Rules.
4. The positions of Department Head and higher will normally be filled by direct appointment by the City Manager. The City Manager is appointed by the City Council.
5. Nothing in these Personnel Rules shall require the Personnel Officer to fill any vacancy in the competitive service which may occur. The Personnel Officer has the discretion to recommend to the City Council that a vacant position be eliminated. The Personnel Officer may also recommend to the City Council that an alternative position or positions be created in place and instead of the vacant

position. However, nothing within these Personnel Rules shall require the City to replace any vacant position with any alternative position or positions.

B. Certification of Eligibility or Promotional Lists

If it is not possible to fill the class vacancy by Re-employment or the Personnel Officer does not consider it in the City's best interest to fill the class vacancy by reinstatement, transfer or demotion, certifications shall be made from an appropriate Employment List, provided eligible applicants are available.

When the Personnel Officer requests a vacancy be filed by appointment from an Eligibility or Promotional List, he/she should certify from the specified list the names of all individuals willing to accept appointment. Whenever there are fewer than three (3) individuals willing to accept appointment from an Eligibility or Promotional List, the Personnel Officer may make an appointment from among such eligible applicants or may decide to establish a new list. If the Personnel Officer decides to establish a new Employment list, a new examination shall be held in accordance with these Personnel Rules.

C. Appointment From Certified Employment List

The Personnel Officer shall make appointments from among the top three (3) candidates on the relevant certified Employment List. The person accepting appointment shall report to the Personnel Officer or the Personnel Officer's designated representative for processing on or before the date of appointment. If the applicant accepts the appointment and reports for duty within such period of time as the Personnel Officer shall prescribe, the applicant shall be deemed to be appointed; otherwise, such individual shall be deemed to have declined the appointment.

D. Provisional Appointments

In the absence of individuals eligible or willing to accept appointment from any of the Employment Lists, a provisional appointment may be made by the Personnel Officer. The person who is provisionally appointed to fill the class vacancy shall meet the training and experience requirements for the position.

Provisional appointments may be made during the period of suspension of any employee or pending final action on proceedings to review suspension, demotion, or discharge of a employee.

Provisional appointments may also be made under other circumstances that the Personnel Officer deems to be for the good of the City's competitive service.

A provisional appointee may be removed at any time without rights to any grievance, hearing or appeal.

A provisional appointee shall accrue the same benefits as probationary employees. If a provisional appointee is selected for a full-time position with the City, the time served as

a provisional appointee shall be counted as time toward the fulfillment of the required probationary period.

4.07 Employment of Relatives and Romantic Partners

For the purposes of this subsection 4.07, "romantic partner" shall mean two people who are legally married, two people who are registered domestic partners, as that term is defined by California Law, Family Code section 297 *et seq.*, or two people who are cohabitating in a romantic relationship.

Any romantic partner or relative within the third degree of kinship, of any City Councilmember or Department Head, shall not be appointed to any position, whether full or part-time on the City payroll. Appointments to commissions, committees and boards are excluded from this section.

Any romantic partner or relative within the third degree of kinship, of any full-time or permanent part-time employee, shall not be appointed to any position, whether full-time or part time, in the same department in which the related employee works.

Any romantic partnership formed in violation of this section shall result in the resignation, termination or transfer of one of the romantic partners. The choice as to which of the romantic partners shall resign, be terminated or be transferred shall be made by the romantic partners. Notwithstanding any provision in these Personnel Rules, any such resignation, termination or transfer is not considered to be disciplinary and is not subject to any grievance, hearing or appeal.

4.08 Minimum Employment Age

All persons who are selected for regular or provisional employment by the City must be at least eighteen (18) years of age. All persons who are selected for temporary employment by the City must be at least fifteen (15) years of age. Applicants may be asked to provide proof of age. Persons employed under the age of (18) must provide a valid work permit and may not be assigned to hazardous duties as defined by state and federal law.

4.09 Fitness For Duty Examinations

After a conditional offer of employment has been extended to an applicant, the City may, in compliance with all applicable laws, require the applicant to submit to a fitness for duty examination prior to conferring appointment, as set out in subsection 9.04 of these Personnel Rules.

SECTION 5

TRANSFER, PROMOTION, DEMOTION, SUSPENSION AND REINSTATEMENT

5.01 Transfer

No person shall be transferred to a position for which that person does not possess the minimum qualifications. Upon approval by the Personnel Officer, an employee may be transferred at any time from one position to another position in a comparable class. For transfer purposes, a comparable class is one with the same maximum salary, involves the performance of similar duties and requires substantially the same basic qualifications.

If the transfer involves a change from one class to another, Department Heads must consent thereto unless the Personnel Officer provides otherwise. Transfer shall not be used to effectuate a promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided in the Personnel Ordinance or these Personnel Rules.

5.02 Promotion

Insofar as consistent with the best interest of the City all vacancies in the competitive service shall be filled by promotion from within the competitive service, after a promotional examination has been given and a Promotional List established.

If, in the opinion of the Personnel Officer, it is in the best interests of the City, a vacancy in the position may be filled by an open competitive examination instead of promotional examination, in which case the Personnel Officer shall arrange for an open-competitive examination and for the preparation and certification of an Eligibility List.

5.03 Demotion

The Personnel Officer may demote an employee whose ability to perform the required duties falls below standard, or for disciplinary purposes. Upon request of the employee, and with the consent of the Personnel Officer, demotion may be made to a vacant position. No employee shall be demoted to a position for which he/she does not possess the minimum qualifications. Disciplinary demotion action shall be in accordance with these Personnel Rules.

5.04 Suspension

The Personnel Officer may suspend an employee from a position at any time for a disciplinary purpose. Suspension without pay shall not exceed thirty (30) calendar days, nor shall any employee be penalized by suspension for more than thirty (30) calendar days in any fiscal year. Intended suspension action shall be reported immediately to the Personnel Officer, and shall be taken in accordance with the Personnel Rules.

5.05 Reinstatement

With the approval of the Personnel Officer, any regular employee or probationary employee who has completed at least six (6) months of service and who has resigned with a good record may be reinstated within two (2) years of the effective date of resignation, to a vacant position in the same or comparable class. Upon reinstatement, the employee shall be subject to the probationary period prescribed for the class.

No credit for former employment shall be granted in computing salary, vacation, sick leave, or other benefits except on the specific recommendation of the Personnel Officer at time of reinstatement.

SECTION 6

PERFORMANCE EVALUATIONS, PROBATIONARY PERIOD AND SENIORITY

6.01 Performance Evaluations

A. Policy

It is the policy of the City that regular reports be made as to the efficiency, competency, conduct and merit of its employees. To this end, it is declared to be the responsibility of the Personnel Officer, the Department Heads and their subordinate supervisors that these reports be made. It is also declared that it is the responsibility of the Personnel Officer to provide and prescribe the forms and procedures to be used in such reports of performance and to assist in the training of supervisory personnel of the City so that the program of performance reporting will be carried on in a sound and effective manner.

B. Schedule

1. Probationary Employees

Performance evaluation reports shall be prepared and a copy submitted to the Personnel Officer every three (3) months for probationary employees.

2. Regular Employees

Each year a performance evaluation report for regular employees shall be prepared within thirty (30) days prior to the employee's salary anniversary date. A copy shall be submitted to the Personnel Officer.

In addition, a report may be prepared at any time by request of the employee or at the discretion of the employee's supervisor.

C. Authority to Make Reports

The Personnel Officer shall have the authority to make reports of performance, however, he/she may delegate such authority to subordinate supervisors who are most familiar with the work of the employee to be evaluated. The Personnel Officer shall review and approve all performance evaluations of personnel under his/her jurisdiction.

D. Review with Employee

Each performance evaluation shall be thoroughly discussed with the employee to point out areas of successful performance and areas that need improvement. The employee shall also be encouraged to comment regarding his/her work performance, either in a written statement attached to the report or orally. The employee shall sign the performance report to acknowledge that he/she is aware of its content and has discussed

the report with the evaluator. The employee's signature does not necessarily mean that he/she fully agrees with the content of the report.

E. Distribution of Reports

Reports shall be prepared and a copy shall be given to the employee. The reports shall also be placed in the subject department's file, and provided to the Personnel Officer for retention in the employee's personnel file.

F. Effects of Improvement Needed or Unsatisfactory Ratings

Any employee who receives an overall "unsatisfactory" or "improvement needed" rating will not be eligible to participate in any promotional examination until a satisfactory rating is established.

An overall "unsatisfactory" rating shall result in the withholding of any step increases for which the employee may be eligible.

An overall "improvement needed" rating may result in withholding any step increase upon the recommendation of the Personnel Officer.

When an employee receives an overall "improvement needed" or "unsatisfactory" rating, he/she shall be re-evaluated within three (3) months to document performance. If the employee's performance has improved to such an extent that the Personnel Officer believes it is justified to grant the employee a step increase that was previously withheld, the improvement shall be indicated on the report and the Personnel Officer may specifically recommend the restoration of any step increase which had been withheld, effective the first day of the pay period following the date of the report. The employee's salary anniversary date shall thereafter be the date of the increase.

6.02 Probationary Period

A. Regular Appointment Following Probationary Period

All original and promotional appointments shall be tentative and subject to a probationary period of not less than six (6) months of actual service to be determined for each class by the Personnel Officer. The Personnel Officer may extend such probationary period up to six (6) additional months. The Personnel Officer shall notify the subject probationary employee, two weeks prior to the termination of any probationary period. If the service of the probationary employee has been satisfactory to the Personnel Officer, then he/she shall file a statement in writing to such effect and stating that the retention of such employee in the service is recommended. If such a statement is not filed, the employee will be deemed to be unsatisfactory and his/her employment terminated at the expiration of the probationary period. Where a statement of satisfactory service has not been filed notice of the termination shall be served on the terminated employee by the Personnel Officer after the expiration of the probationary period.

B. Objective of Probationary Period

The probationary period shall be regarded as a part of the selection process. It is a time during which the City determines whether work performance or work-related behavior meets the required standards of the position.

C. Rejection of Probationary Employee

During the probationary period, an employee may be rejected at any time by the Personnel Officer without the right of grievance, appeal or hearing. Notification of rejection by the Personnel Officer shall be served on the subject probationary employee.

D. Rejection Following Promotion

Any employee rejected during the probationary period following a promotional appointment, or at the conclusion of such probationary period by reason of failure of the Personnel Officer to file a statement that the employee's services have been satisfactory, shall be reinstated to the position from which the employee was promoted in the manner provided in the Personnel Ordinance and these Personnel Rules for positions in the competitive service. If there is no vacancy in such position, the employee may request to be placed on a Re-Employment List.

6.03 Seniority

A. Qualification

1. A probationary employee shall have no seniority until the employee has completed his/her probationary period. Upon completion of the probationary period, the employee will acquire seniority from the date of hire.
2. Whenever more than one person is appointed to the same class on the same day, the seniority of each individual will be equal.

B. Loss of Seniority

Seniority shall not be broken by vacations, sick time, any authorized leave of absence, or call to military service.

All seniority rights shall be lost by an employee if he/she:

1. Leaves City service.
2. Is terminated.
3. Does not return to work when being recalled after a layoff.
4. Is laid off for one (1) year without being recalled.

SECTION 7

CLASSIFICATION

7.01 Preparation of Plan

All positions in the City competitive service shall be grouped into classes. Each class shall include those positions substantially similar in duties, authority and character of work to require similar standards of education, experience, abilities, and personal traits. The specifications shall include, but not limited to, a list of typical duties and a statement of the minimum qualifications required for appointment.

7.02 Administration and Maintenance of Classification Plan

The Personnel Officer or his/her delegate, shall be responsible for the administration and maintenance of the Classification Plan. At least annually, the Personnel Officer shall direct a review of the existing Classification Plan to ensure that it is effectively maintained and that it reflects any significant changes in duties and responsibilities of positions. Such a review may involve only selected classes or the entire Classification Plan.

7.03 Reclassification

Positions, the assigned duties of which have been materially changed by the City so as to necessitate reclassification, whether new or already created, shall be reclassified by the Personnel Officer to a more appropriate class. Reclassifications shall become effective after approval of the Personnel Officer.

7.04 Interpretation of Job Descriptions

Job descriptions are intended to be descriptive and explanatory and not restrictive. They should not be construed as limiting the assignment of duties and responsibilities to any position or modifying the power of any Department Head to assign, direct and control the work of employees under his/her supervision. The use of a particular illustration as to duties should not be interpreted to exclude others not mentioned, nor shall any specific omission necessarily mean that such duty is not included.

7.05 Pay Schedule Conformance

No position shall be assigned a salary not in conformance with the pay schedule found in the compensation plan unless the pay schedule for the position is amended with the approval of the City Council.

SECTION 8

COMPENSATION

8.01 Administration and Review of the Compensation Plan

From time to time, the Personnel Officer may recommend to the City Council an appropriate salary range for each class. When the salary range for a class is changed by the City Council, all employees whose positions are affected shall be adjusted to the corresponding salary step in the new range, unless an alternate agreement is reached.

8.02 Compensation Plan Steps

The basic salary range for all classifications shall consist of salary steps ranging from 1 to 5.

A. Step Increases

Step increases are not automatic, but are merit-based and shall be granted for continued improvement and increased service value of an employee, and other pertinent factors as determined by the employee's Department Head and the Personnel Officer. Step increases shall be made only upon the recommendation of the Department Head concerned, and with the approval of the Personnel Officer.

Nothing herein prohibits the granting of a step increase to an employee at any time.

No step increase shall be made so as to exceed any maximum rate established in the Classification and Compensation Plan for the class to which the employee's position is assigned.

1. **Salary Step 1** shall be paid at initial employment and may be paid after six months of employment in ranges having an entry level step, where the employee has demonstrated satisfactory job progress and normally increasing productivity and upon recommendation of the Department Head and approval of the Personnel Officer.
2. **Salary Step 2** may be paid after six months at Salary Step 1 or after one year at Salary Step 1, in ranges having an entry level step where the employee has demonstrated satisfactory job progress and normally increasing productivity and upon recommendation of the Department Head and approval of the Personnel Officer.
3. **Salary Step 3** may be paid upon completion of one year of employment in Salary Step 2 where the employee has demonstrated satisfactory job progress and productivity and upon recommendation of the Department Head and approval of the Personnel Officer.

4. **Salary Step 4** may be paid upon completion of one year of employment in Salary Step 3 where the employee has demonstrated satisfactory job progress and productivity and upon recommendation of the Department Head and approval of the Personnel Officer.
5. **Salary Step 5** may be paid upon completion of one year employment in Salary Step 4 where the employee has demonstrated satisfactory job progress and productivity and upon the recommendation of the Department Head and approval of the Personnel Officer.

B. Special Salary Adjustments

A Department Head may recommend to raise a regular employee to a higher range than his/her base range in recognition of meritorious service, advanced education beyond the requirements of the position he/she holds and other extraordinary attributes related to his/her public service. Such increased compensation is subject to the approval of the Personnel Officer and the availability of budgeted monies.

C. Personnel Officer Discretion

In any case where rigid adherence to the foregoing principles related to salary adjustment would cause a manifest injustice, the Personnel Officer, on recommendation of the Department Head, may make such order relating thereto as in its discretion is proper.

8.03 Application of Salary Ranges and Plan Steps

A. Appointment

Initial appointments shall normally be at the first step of the appropriate salary range. The Personnel Officer may, at his/her sole discretion, make an appointment to a position at an appropriate higher salary step when it is difficult to acquire qualified personnel at the starting salary, or when the education or experience of a proposed employee justifies a beginning salary in excess of the first salary step.

B. Promotion

Any employee who is promoted to a position in a class with a higher salary range shall be placed on the step in the new higher range which is at least equal to an advancement of a full step over the step he held in his former range in the basic salary schedule. An employee thus promoted is therefore assigned to a new salary anniversary date effective on the date of promotion. An employee who, on his/her salary anniversary date, is promoted to a class with a higher salary range shall first receive any within range increase to which he/she is entitled, and then the higher step as provided in this section.

C. Transfer

Any employee who is transferred from one position to another position in the same class, or to another position in the same class, or to another position in a class having the same salary range, shall be compensated at the same step in the salary range as he/she previously received and his/her salary anniversary date shall not change.

D. Re-Employment

An employee re-employed at any step above step "1" may be advanced to the next higher step in his/her range no sooner than one year from the anniversary date of his re-employment.

E. Permanent Part-Time Employees

Permanent part-time employees shall be paid the hourly equivalent of the monthly salary paid to a full-time employee in the classification to which they are assigned. After completing the number of hours equivalent to full-time employment in each step, a permanent part-time employee may be eligible to advance to the next step in the salary range for the class to which he/she is assigned.

F. Temporary Employees

Temporary employees shall be paid an hourly rate, established by the Personnel Officer, that is appropriate for the work to be performed and within the amounts budgeted for temporary employee salaries.

G. Demotion

Any employee who is demoted to a position in a class with a lower salary range shall have his/her salary reduced to the salary step in the range for the lower class which is:

1. If a disciplinary demotion, to any designated salary step in the lower range which is at least one step less than that received in the salary range for the class from which demoted. A new anniversary date shall be established on the basis of the demotion.
2. If a non-disciplinary demotion, to that salary in the dollar amount he/she would have received in that lower class if his/her services had been continuous in said lower class. He/she shall retain his/her current anniversary date.

H. Reinstatement

An employee who resigned in good standing may, within two (2) years of such resignation and upon recommendation of the Personnel Officer, be reinstated in a position in the class in which he/she previously had served. Upon such reinstatement, his/her compensation shall be not more than that paid at the step in the salary range

he/she received prior to his/her separation and his/her anniversary date shall be based upon the date of reinstatement.

I. Compensation on Change in Range Assignment

Whenever a class is reassigned to either a higher or lower salary range by the City Council, the salary of each incumbent in such class on the date the reassignment is effective shall be adjusted to the step in the new range that corresponds to the step he/she was receiving in the former range and he/she shall retain the same salary anniversary date. When a salary range reassignment becomes effective on the same date as an employee's salary anniversary date, he/she shall first receive any salary range increase to which he/she is entitled and then receive the corresponding step adjustment.

J. Compensation on Position Reclassification

The salary of an employee in a position that is reclassified shall be determined as follows:

1. If the position is reclassified to a class with the same salary range as the previous class and if the incumbent is appointed to the reclassified position, the salary rate and the salary anniversary date of the employee shall not change. This provision shall also apply to a change of class title.
2. If the position is reclassified to a class with a higher salary range than the previous class, and if the incumbent is appointed to the reclassified position, then the salary of such employee shall be governed by subsection 8.03(B) above.
3. If the position is reclassified to a class with a lower salary range than the previous class, and if the incumbent is appointed to the reclassified position, his/her salary shall not change. If his/her salary is greater than the maximum step of the lower salary range, his/her salary shall be "Y" rated until such time as any general cost-of-living increase, inequity adjustment, or other salary increase results in a monthly salary appropriate for the class. The employee's salary anniversary date shall not change and he/she shall not be required to serve a new probationary period.

8.04 Compensation For Working on Holidays

Any employee, other than Police Department employees, who work on a shift basis and whose regular schedule requires him/her to work on a holiday, shall be paid at the rate of time-and one-half the hourly equivalent of his/her salary at the discretion of the Department Head.

8.05 Overtime

A. Prior Approval Required

Except as otherwise provided in these Personnel Rules, overtime shall only be worked at the request of the Department Head. If the employee is part of the Police Department

shift personnel, any overtime must be approved by the Police Chief. Working overtime without advance approval is grounds for discipline. Overtime-eligible employees who are directed to work overtime must do so.

B. Computation and Compensation

1. Police Department Employees

Nonexempt sworn personnel in the Police Department shall receive compensation subject to the approval of the Police Chief at the rate of time and one half for all hours worked in excess of 86 hours in any fourteen day work cycle.

2. Non-Police Department Employees

Subject to the prior approval of the Personnel Officer, employees other than shift personnel in the Police Department, excluding Management employees, shall be compensated in cash or compensatory time off ("CTO") at the rate of time-and-one half for all hours in excess of 40 hours actually worked in any seven day work cycle. Holidays shall count as hours actually worked.

C. Compensatory Time Off Limit

For those employees who are eligible to receive earned overtime in the form of compensatory time off ("CTO"), the maximum allowable hours that may be contained in an employee's compensatory time off bank is 80 hours.

8.06 Appointment to an Acting Position or Out of Class Assignment

The Department Head or the Personnel Officer may assign a regular employee to serve temporarily in an out of class assignment or acting position to perform duties of a higher classification than that which he/she is regularly employed. Any appointment to an out of class assignment or acting position must be done in writing.

A. Out of Class Pay

To be eligible for the additional compensation, the employee must first work an entire, completed, full work shift for 10 consecutive workdays in the higher class within any 30 day period. Once this qualification is satisfied, no additional requalification will be required.

1. Temporary assignments out of class shall be recorded only in full-shift units. An employee working out of class for less than one full shift will not be credited with working out of class service time.
2. To qualify for out of class pay, an employee must be assuming substantially the full range of duties and responsibilities of the higher-level position.

3. Time worked in a higher class shall not earn credits toward the completion of probationary requirements in the higher class.
4. An employee who has qualified under these provisions will be compensated at the minimum rate established for the higher class for each completed work shift served in the higher class after 10 days have been completed. In the event of overlapping salary ranges, a one step differential shall be paid for out of class assignments. The higher rate of pay shall be used in computing overtime when authorized overtime is served in a non-exempt, out of class work assignment. The overtime rate shall be the rate established by the overtime regulations that apply to the higher class.
5. Time worked in an 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 or bargaining unit status.

B. Acting Pay

1. Employees who are assigned to and actually perform the duties of a position with a higher salary classification than that in which they are regularly employed will receive the compensation specified for the position to which they are assigned, if performing the duties thereof for a period of fifteen (15) or more consecutive workdays.
2. The increased compensation will be at such step within the higher class as will accord such employee an increase of at least five percent (5%) over his or her current regular compensation.
3. Time worked in an acting position 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 or bargaining unit status.

SECTION 9

GENERAL EMPLOYMENT POLICIES

9.01 Attendance

Employees shall be in attendance at their work in accordance with the rules regarding hours of work, holidays, and leaves. All departments shall keep daily attendance records of employees which shall be reported to the Personnel Officer in the form and on the dates he shall specify. Failure on the part of an employee, absent without leave, to return to duty within 24 hours after notice to return shall be cause for discharge, pursuant to these Personnel Rules. The depositing in the United States mail of a first class letter, postage paid, addressed to the employee's last known place of address, shall be reasonable notice.

9.02 Hours of Work

Daily hours of work (or shifts) for employees within departments shall be assigned by Department Heads as required to meet the operational requirements of said department.

- a. No authorization may be made for an employee to work less than scheduled work week without direct proportionate decrease in compensation.
- b. A foreseeable absence or deviation from regular working hours desired by an employee shall, in advance, be cleared through the office of the Personnel Officer, and such absences shall be noted on the employee's time sheet.

9.03 Exceptions to Standard Work Periods

The Personnel Officer is hereby authorized to designate other work periods and working hours for employees when, in his/her sole discretion, the best interest of the City may be served by such adjustment.

9.04 Fitness For Duty Examinations

A. Conditional Offer of Employment Examinations

After a conditional offer of employment has been extended to an applicant, the City may, in compliance with all applicable laws, require the applicant to submit to a fitness for duty examination prior to conferring appointment.

B. Current Employee Examinations

The Personnel Officer may require an employee to submit to a fitness for duty examination to determine if the employee is able to perform the essential functions of his/her job when: 1) the employee appears to be unable to perform or has difficulty performing one or more essential functions of his/her job; and 2) there is reason to question the employee's ability to safely or efficiently complete work duties.

C. Role of Health Care Provider

A City-selected health care provider will examine the employee at City expense. The City will provide the health care provider with a letter requesting a fitness for duty examination and a written description of the essential functions of the employee's job. The health care provider will examine the employee and provide the City with non-confidential information regarding whether: 1) the employee is fit to perform essential job functions; and 2) the employee's continued employment poses a threat to the health and safety of him/herself or others. Should the health care provider exceed the scope of the City's request and provide confidential health information, the City will return the report to the health care provider and request another report that includes only the non-confidential fitness for duty information that the City has requested.

D. Medical Information

During the course of a fitness for duty examination, the City will not seek or use information regarding an employee's medical history, diagnoses, or course of treatment without an employee's written authorization.

E. Medical Information from the Employee's Health Care Provider

An employee may submit confidential medical information to the City from his/her personal health care provider. If the employee provides written authorization, the Personnel Officer will submit the information that the employee provides to the City-paid health care provider who conducts the examination. If this information is submitted after a fitness for duty assessment is made, the Personnel Officer will request that the City-paid health care provider determine whether the information alters the original assessment.

F. Interactive Process Discussion

After receipt of both the health care provider's fitness for duty report, and the analysis of the employee's personal health care information (if any) the Personnel Officer will arrange for a discussion or discussions, in person or via conference telephone call, with the employee and his/her representatives, (if any). The purpose of the discussions will be in good faith to fully discuss all feasible potential reasonable accommodations. During the discussions, the Personnel Officer will also discuss, if relevant, alternate available jobs for which the employee is qualified, or whether the employee qualifies for disability retirement or family and medical care leave.

G. Determination

After the discussions, the Personnel Officer will review the information received, and determine if there is a reasonable accommodation that would enable the employee to perform essential job functions, or if the accommodations would pose an undue hardship on City finances or operations. The Personnel Officer will inform the employee of his/her determination. The Personnel Officer will use his/her discretion based upon the particular facts of each case.

9.05 Personnel Records

The Personnel Officer shall maintain a personnel file for each employee who is part of the City's competitive service. This personnel file shall include records regarding the employee's name, title of position held, the department to which assigned, salary, changes in employment status, and such other information as may be considered pertinent by the Personnel Officer. Personnel files are City property, and access to the information they contain is restricted.

A. Inspection by Employee

An employee may inspect his/her personnel file at reasonable times and at reasonable intervals. An employee who wishes to review his/her file should contact the City Manager's office to arrange an appointment. The review must be done in the presence of an employee of the City Manager's office or designee. The employee will have access to all contents of the file except: (1) records relating to the investigation of a possible criminal offense; (2) letters of reference; and (3) ratings, reports, or records that were obtained prior to the employee's employment, prepared by identifiable examination committee members, or obtained in connection with a promotional examination. An employee must initial and indicate the date he/she reviewed the file, with such information to be recorded on the upper left-hand side of the personnel file folder. On request, an employee is entitled to receive a copy of any employment-related document he/she has signed. An employee who wishes to receive such a copy should contact the Personnel Officer's Office.

B. Inspection by Third Party

In the event an employee wishes to have another person/representative inspect his/her personnel file, the employee must provide the person/representative with written authorization. The Personnel Officer's Office will notify the employee of the date, time and place of the inspection in writing. It is the employee's responsibility to notify the person to whom the employee has given written authorization of the date, time and place of the inspection. Under no circumstances is the employee and/or the employee's designee permitted to add or remove any document or other item from the employee's personnel file during the inspection.

9.06 Change of Status Report

Every appointment, transfer, promotion, demotion, change of salary rate, or any other temporary or permanent change in status of employees shall be reported to the Personnel Officer in such manner as he may prescribe.

SECTION 10

EMPLOYEE BENEFITS

10.01 Vacation Leave

Vacation leave may be taken as it accrues. The dates of vacation leave may be selected by the employee who shall give at least thirty days notice and shall be approved by the Department Head who shall consider the wishes of the employee and the needs of the City.

A. Vacation Accrual

Each full-time regular and probationary employee shall accrue vacation leave with pay as follows:

Employee Group	Hours of Vacation Accrued
Misc. & Police	1-5 yrs. service= 96 hrs./12 days
	6-10 yrs. service=120 hrs./15 days
	11-15 yrs. service=144 hrs./18 days
	16 yrs. service or more = 192 hrs./24 days

Vacation time accrues from the date of hire at biweekly rates consistent with the above schedule.

B. Maximum Accrual

Vacation time may not exceed the following maximum amounts beyond an employee's anniversary date each year:

Miscellaneous & Police Employees

With 1-5 yrs. service - 200 hrs.

With 6-9 yrs. service - 240 hrs.

With 10+ yrs. service - 280 hrs.

One month before an employee's anniversary date, the Department Head shall review the number of hours accrued by the employee. If the amount exceeds the limits specified above, the employee shall take the vacation in excess of the limit. If any employee has accrued vacation beyond the limit under any circumstances other than the City's restrictions due to service demands, he or she will forfeit such time in excess of the limit.

C. Vacation for Permanent Part-time Employees

Permanent part-time employees as defined in these Personnel Rules shall also receive holidays, vacations, sick leave and other similar time off benefits at a ratio determined by the actual number of hours worked.

D. Payment of Accrued Vacation Time

Any employee who has worked a continuous 12 month period of time or more, who is about to terminate his/her employment, and who has unused vacation time on record, shall be paid for such vacation time in his/her final paycheck. When termination is caused by death of the employee, payment shall be made to the employee's designated beneficiary.

E. Holidays Within Vacation Leave

If a holiday falls within a scheduled vacation period, 8 additional hours of vacation shall be granted except for Police Department Personnel on a shift schedule.

10.02 Paid Holidays

A. Recognized Holidays

The following holidays shall be observed by the City of Orange Cove with respect to all employees of the City, except shift employees of the Police Department.

1. New Year's Day - January 1
2. Washington's Birthday
3. Friday before Easter
4. Memorial Day
5. Independence Day
6. Labor Day - 1st Monday in September
7. Veteran's Day
8. Thanksgiving Day
9. Day after Thanksgiving
10. Christmas Day
11. Half-day on Christmas Eve and half day on New Year's Eve
12. Cesar Chavez (March 31st)

B. Holidays Falling on a Weekend

For those employees whose normal work week begins on Monday, when a holiday falls on a Sunday, the following Monday shall be deemed to be the holiday in lieu of the day observed. If a holiday falls on a Saturday in the case of employees whose normal work week ends on Friday, the preceding Friday shall be deemed to be the holiday in lieu of the day observed.

C. Police Department Employees

Shift employees may be paid one day's salary at time and one half in lieu of a day off for ten holidays. Actual days off may be granted in lieu of pay if departmental scheduling permits and if authorized by the Chief of Police.

10.03 Sick Leave

A. Accrual of Sick Leave

Every full-time, regular and probationary employee shall accrue sick leave time at the rate of 8 hours per month. Permanent part-time employees accrue sick leave at a ratio determined by the actual number of hours worked.

Sick leave with pay can only be granted by the recommendation of the Personnel Officer of the employee, in the case of disabilities due to illness, injury, or pregnancy.

B. Evidence of Illness

The Personnel Officer may require evidence in the form of a physician's certificate, or otherwise, of the adequacy of the reason for an employee's absence during the time for which sick leave was requested.

C. Penalty for Sick Leave Abuse

When in the judgment of the Personnel Officer, the employee's reasons for being absent because of alleged sickness are inadequate, he/she shall indicate on the payroll time report that the absence was without leave and without pay.

In addition, the Personnel Officer may impose such disciplinary action as in his/her discretion seems warranted, following procedures set forth in these Personnel Rules.

D. Sick Leave and Temporary Disability

A City employee who is entitled to temporary disability indemnity under the State Labor Code may elect to take that number of hours or portions of hours of his/her accumulated

sick leave, or his/her accumulated vacation, as when added to the disability indemnity will result in a payment to the employee of his/her full salary. When accumulated sick leave, or vacation, or both, are exhausted, the employee is still entitled to receive disability indemnity.

E. Sick Leave for Dependent Care

A regular employee may use a maximum of three (3) days of sick leave per fiscal year for the care of relatives who are ill, injured or pregnant and who are living in the employee's household.

F. Illness While on Vacation

An employee who becomes ill while on vacation may have such period of illness charged to his/her accumulated sick leave instead of to vacation, provided that:

1. Immediately upon return to duty, the employee submits to the Personnel Officer a written request for sick leave and a written statement is signed by the employee's physician stating the nature and dates of the illness;
2. The Personnel Officer approves the granting of such sick leave.

G. Holiday During Sick Leave

Observed holidays occurring during sick leave shall not be counted as a day of sick leave.

H. Payment for Unused Sick Leave

Upon death, retirement for disability or for service or layoff, but not if dismissed or terminated for cause, each employee will receive payment for unused accumulated sick leave, at his/her final rate of pay as follows:

Years of Service	Percentage of Unused Sick Leave Paid
After 1 year	5%
After 2 years	10%
After 3 years	15%
After 4 years	20%
After 5 years	25%
After 10 years	35%

But in no event shall the total amount of this payment exceed \$2,500. This payment shall be in a lump sum in the employee's final payroll check.

10.04 Bereavement Leave

Whenever any employee is compelled to be absent from duty by reason of the death, or critical illness where death appears to be imminent, of an immediate family member of the employee (current spouse, registered domestic partner, child, parent, legal guardian, brother, sister, grandparent, or grandchild; or mother-, father-, sister-, brother-, son-, or daughter –in-law), such person shall be entitled to a maximum of 24 hours absence with pay, as to each such instance of death or critical illness, up to a maximum of 48 hours per year.

In instances involving extraordinary circumstances, an additional 48 hours may be granted, upon approval of the Department Head, with the provision that such time will be deducted from accumulated sick leave.

Employees are eligible for bereavement leave after serving six months of full-time employment with the City.

10.05 Disability Benefit Leave

The purpose of this program is to provide a percentage of base salary to employees who are disabled from all employment, and who have filed for and are waiting approval of a disability retirement from the Public Employee's Retirement System.

A. Eligibility

All employees who have five years service or more under the Public Employees' Retirement System and who have exhausted their accumulated sick leave and vacation benefits may be eligible for disability benefits hereunder.

B. Amount of Benefits

An eligible employee will receive a monthly benefit which is approximately equivalent to the benefit the employee would receive when disability retirement becomes effective.

The Personnel Officer will obtain an estimate from the Public Employees' Retirement System as to what benefit the employee is entitled and will recommend the amount of the benefit. The benefit will commence on the first day of the payroll period following the last day of sick leave or vacation available to the employee. The disability benefit will cease on the last day on the City payroll before the effective date of the disability retirement.

If the employee is receiving disability benefits from another source, the City's disability benefit will be not greater than the difference between the benefit provided by the other source and the anticipated benefit provided by the other source and the anticipated benefit under the Public Employees' Retirement System.

C. Status of the Employee

The eligible employee will be considered to be on disability leave and will not accrue any other benefits provided by the City.

D. Determination

The Personnel Officer shall establish rules and regulations for the determination of whether an employee is disabled from all employment.

10.06 Disability Insurance

The City shall assume the total cost of premium of Disability Insurance through the State Disability Plan.

10.07 Workers Compensation

The following procedures have been established to cover employees injured on the job.

- A. Employees are required to immediately report any job related injury to their supervisor, or as soon after the injury as is practicable but in no event later than twenty four (24) hours after the injury occurs.
- B. In the event an employee receives temporary disability payments from Workers' Compensation, the City will continue salary payments to the employee in an amount which, when added to the temporary disability payments, will provide the employee with his/her full salary.
- C. The supervisor shall periodically review the status of the employee and the employee should keep his/her supervisor apprised of his/her return to work status.

10.08 Health Insurance Benefits.

The City shall pay 100 percent of the cost of a health insurance premium for the current City Health Plan for all full time employees and their family members.

10.09 Public Employees Retirement System.

The City shall make the mandated contribution to miscellaneous, management, and police officers for retirement.

10.10 Uniform Allowance

Uniform allowance shall be paid to Police Officers. All other employees of the public works department shall have uniforms furnished to them and the City shall assume the uniform cost.

10.11 Education Reimbursement Program

The purpose of this program shall be the reimbursement for tuition and book expenses to employees attending classes on their own time which are to the direct benefit of the individual employee and the City.

A. Eligibility

All regular employees shall be eligible for reimbursement under this program. Employees who have not completed their probationary period may also be eligible for reimbursement under this program if the job performance of such employees, as indicated by the Department Head, appears to show promise of completing the probationary period.

In order to be eligible for reimbursement, the employee must still be employed by the City upon completion of the course and at the time he applies for reimbursement. All textbooks and materials related to the approved course are the property of the employee. A "C" average or above must be maintained.

B. Procedure

The Department Head will determine what type of courses will be allowed for reimbursement prior to commitment by the employee. Courses considered by the Department Heads for reimbursement shall be designed to directly improve the knowledge of the employee in the public service which will improve performance and enhance advancement opportunities.

The Department Head may recommend reimbursement upon the successful completion of college or professional conference courses. The employees are limited to a maximum payment as set by resolution per fiscal year per person and the availability of budgeted monies.

SECTION 11

LEAVE OF ABSENCE PROVISIONS

11.01 Leave of Absence Without Pay

- A. Upon the request of the employee, a leave of absence without pay may be granted by the Personnel Officer on a case-by-case basis for reasons including, but not limited to, depletion of accumulated sick leave. The Personnel Officer shall, at his/her sole discretion, make such a determination. Such leave is not a right but a privilege.
- B. A request for leave of absence without pay must be made by the employee, in writing, to the respective Department Head with a copy to Personnel Officer. This request shall state specifically the reason for the request, the date when the employee desires to begin the leave, and the probable date of return.
- C. Employees on authorized leave of absence without pay may not extend such leave beyond ninety (90) days without express approval of the City Manager. Employees are required to submit an additional written request for extension of a leave of absence without pay.
- D. Leave of absence without pay is not a break in service or employment, and rights accrued at the time the leave is granted are retained by the employee; however, vacation credits, sick leave credits, increases in salary, all other paid leaves, holidays and fringe benefits and other similar benefits shall not accrue to a person granted such leave during the period of absence. During the period of such leaves, all service and leave credits shall be retained at the levels existing as of the effective date of the leave.
- E. While on an approved leave of absence without pay, the City is not required to maintain contributions toward group insurance or retirement coverage.
- F. Failure of an employee on an approved leave of absence without pay to report to work promptly at its expiration, or within three (3) business days after receiving notice to return to duty will, except under extraordinary circumstances, constitute the employee's separation from City employment.

11.02 Pregnancy Disability Leave

An employee who is disabled because of pregnancy, childbirth, or a related medical condition is entitled to an unpaid pregnancy disability leave for up to four (4) months.

A. Notice and Certification Requirements

- 1. Requests for pregnancy disability leave should be submitted in writing as soon as the employee determines with reasonable certainty the date and intended duration of the pregnancy disability leave. Pregnancy disability leave must be approved by the Personnel Officer before the leave begins. The request must be supported by

a written certification from the attending physician stating that the employee is disabled from working by pregnancy, childbirth or a related medical condition. The certification must state the expected duration of the disability and the expected date of return to work.

2. All leaves must be confirmed in writing, have an agreed-upon specific date of return, and be submitted to the Personnel Officer prior to being taken. Requests for an extension of leave must be submitted in writing to the Personnel Officer prior to the agreed date of return and must be supported by a written certification of the attending physician that the employee continues to be disabled by pregnancy, childbirth, or a related medical condition.

B. Compensation During Leave

Pregnancy disability leaves are without pay. However, the employee may first use accrued sick leave, vacation leave, and then any other accrued paid time off during the leave.

C. Benefits During Leave

1. An employee on pregnancy disability leave may receive any group health insurance coverage that was provided before the leave on the same terms as provided to other employees who become disabled off-duty, if: 1) the employee is eligible for concurrent family and medical care leave; and 2) the employee has not already exhausted this twelve (12) week group health insurance coverage benefit in the current family and medical care leave eligibility period. The City may recover premiums it paid to maintain health coverage, as provided by the family and medical leave laws, if an employee does not return to work following pregnancy disability leave.
2. An employee on pregnancy disability leave who is not eligible to receive group health insurance coverage as described above may receive health insurance coverage in conjunction with COBRA guidelines by making monthly premium payments to the City. The City will not pay for fringe benefits for employees during Pregnancy Disability Leave.
3. Sick and Vacation Leave Accrual: Sick leave and vacation leave do not accrue while an employee is on unpaid pregnancy disability leave.

D. Reinstatement

1. Upon the expiration of pregnancy leave and the City's receipt of a written statement from the health care provider that the employee is fit to return to duty, the employee will be reinstated to her original or an equivalent position, so long as it was not eliminated for a legitimate business reason during the leave.
2. If the employee's original position is no longer available, the employee will be assigned to an open position that is substantially similar in job content, status,

pay, promotional opportunities, and geographic location as the employee's original position, provided that such a comparable position is available.

3. If upon return from leave an employee is unable to perform the essential functions of her job because of a physical or mental disability, the City will initiate an interactive process with the employee in order to identify a potential reasonable accommodation.
4. An employee who fails to return to work after the termination of her leave loses her reinstatement rights.

11.03 Family and Medical Care Leave

A. Statement of Policy

To the extent not already provided for under current leave policies and provisions, the City will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA") and the regulations of the California Family Rights Act ("CFRA"). Unless otherwise provided by this policy, "leave" under this policy shall mean leave pursuant to the FMLA and CFRA.

B. Definitions

1. "**Twelve-Month Period**" means a rolling twelve (12) month period measured backward from the date leave is taken and continuous with each additional leave day taken.
2. "**Single twelve-month period**" means a twelve (12) month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends twelve months after that date.
3. "**Child**" means a child under the age of eighteen (18) years of age, or eighteen (18) years of age or older who is incapable of self care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes, a biological, adopted, foster or step-child. A child is "incapable of self care" if he/she requires active assistance or supervision to provide daily self care in three or more of the activities of daily living or instrumental activities of daily living -- such as, caring for grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

4. **“Parent”** means the biological, adoptive, step or foster parent of an employee, or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
5. **“Spouse”** means a husband or wife as defined or recognized under California state law for purposes of marriage.
6. **“Domestic Partner,”** as defined by Family Code §§ 297 and 299.2, shall have the same meaning as “Spouse” for purposes of CFRA Leave.
7. **“Serious health condition”** means an illness, injury impairment, or physical or mental condition that involves:
 - a. Inpatient Care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or
 - b. Continuing treatment by a health care provider: A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:
 - i. A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three full consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - Treatment two or more times within thirty (30) days of the first day of incapacity, unless extenuating circumstances exist by a health care provider, by a nurse, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider. The first in-person treatment visit must take place within seven (7) days of the first day of incapacity; or
 - Treatment by a health care provider on at least one occasion which must take place within seven days of the first day of incapacity and results in a regimen of continuing treatment under the supervision of the health care provider. This includes for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over the counter and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

- ii. Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave, but not CFRA leave. Under California law, an employee disabled by pregnancy is entitled to pregnancy disability leave).
- iii. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - Requires periodic visits (defined as at least twice a year) for treatment by a health care provider or by a nurse;
 - Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for such incapacity qualify for leave even if the absence lasts only one day.
- iv. A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.
- v. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than three (3) consecutive calendar days in the absence of medical intervention or treatment.

8. **“Health Care Provider”** means:

- a. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;
- b. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treat or supervise treatment of a serious health condition;
- c. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct a subluxation as demonstrated by x-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California law;

- d. Nurse practitioners and nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under California law and who are performing within the scope of their practice as defined under California law;
 - e. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and
 - f. Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.
9. **“Active Duty or Call to Active Duty Status”** means a duty under a call or order to active duty (or notification of an impending call or order to active duty) in a foreign country for members of any branch of the Armed Forces, including reserve components and the National Guard.
10. **“Covered Servicemember”** means a current member of the Armed Forces, including a member of the National Guard or Reserves, or a veteran who was a member of the Armed Forces at any time in the last five (5) years, who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list for a serious injury sustained in the line of duty, or for a serious injury or illness that existed before active duty, but was aggravated by the servicemember's actions in the line of duty.
11. **“Next of Kin of a Covered Servicemember”** means the nearest blood relative other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his/her nearest blood relative for purposes of military caregiver leave under the FMLA.
12. **“Serious Injury or Illness”** means an injury or illness incurred by a covered servicemember in the line of duty on active duty, or an injury or illness that existed before active duty, but was aggravated by the servicemember's actions in the line of duty, that may render the servicemember medically unfit to perform the duties of the member's office, grade, rank, or rating.

C. Reasons For Leave

Leave is only permitted for the following reasons:

- 1. The birth of a child or to care for a newborn of an employee;
- 2. The placement of a child with an employee in connection with the adoption or foster care of a child;

3. Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition;
4. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position;
5. Leave for a "qualifying exigency" may be taken arising out of the fact that an employee's spouse, son, daughter, or parent is on active duty or call to active duty status in a foreign country from any branch of the Armed Forces (under the FMLA only, not the CFRA); or
6. Leave to care for a spouse, son, daughter, parent, or "next of kin" servicemember of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty, or an injury or illness that existed before active duty, but was aggravated by the servicemember's actions in the line of duty (this leave can run up to twenty-six (26) weeks of unpaid leave during a single twelve (12) month period) (under the FMLA only, not the CFRA).

D. Employees Eligible For Leave

An employee is eligible for leave if the employee:

1. Has been employed for at least twelve (12) months; and
2. Has been employed for at least one-thousand two-hundred fifty (1,250) hours during the twelve (12) month period immediately preceding the commencement of the leave.

E. Amount of Leave

Eligible employees are entitled to a total of twelve (12) workweeks (or twenty-six (26) weeks to care for a covered servicemember) of leave during any twelve (12) month period. Where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

1. Minimum Duration of Leave

If leave is requested for the birth, adoption or foster care placement of a child of the employee, leave must be concluded within one (1) year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two (2) weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one (1) day, but less than two (2) weeks duration on any two (2) occasions.

If leave is requested to care for a child, parent, spouse or the employee himself/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

2. Spouses Both Employed By the City

In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to twelve (12) workweeks during any twelve (12) month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave).

In any case in which a husband and wife both employed by the City are entitled to leave, the aggregate number of workweeks of leave to which both may be entitled may be limited to twenty-six (26) workweeks during any twelve (12) month period if leave is taken to care for a covered servicemember.

Except as noted above, this limitation does not apply to any other type of leave under this policy.

F. Employee Benefits While on Leave

Leave under this policy is unpaid. While on leave, employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job. If an employee elects to maintain insurance coverage while on family care leave and there is normally a payroll deduction, the employee may authorize a payroll deduction or pay premiums in advance in accordance with the requirements necessary to maintain coverage.

Your coverage on a particular plan may be dropped if you are more than thirty (30) days late in making a premium payment. However, you will receive a notice at least fifteen (15) days before coverage is to cease, advising you that you will be dropped if your premium payment is not paid by a certain date. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave.

If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition of the employee or his/her family member which would entitle the employee to leave, or because of circumstances beyond the employee's control. The City shall have the right to recover premiums through deduction from any sums due the City (e.g. unpaid wages, vacation pay, etc.).

G. Substitution of Paid Accrued Leaves

While on leave under this policy, as set forth herein, an employee may elect to concurrently use paid accrued leaves. Similarly, the City may require an employee to

concurrently use paid accrued leaves after requesting FMLA and/or CFRA leave, and may also require an employee to use family and medical care leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying.

1. Employee's Right To Use Paid Accrued Leaves Concurrently With Family Leave

Where an employee has earned or accrued paid vacation, administrative leave, compensatory time off ("CTO"), or sick leave, that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this policy.

As for sick leave, an employee is entitled to use sick leave concurrently with leave under this policy if:

- a. The leave is for the employee's own serious health condition; or
- b. The leave is needed to care for a parent, spouse, child, or domestic partner with a serious health condition, and would be permitted as sick leave under the City's sick leave policy.

2. The City's Right To Require An Employee to Use Paid Leave When Using FMLA/CFRA Leave

Employees must exhaust their accrued leaves concurrently with FMLA/CFRA leave to the same extent that employees have the right to use their accrued leaves concurrently with FMLA/CFRA leave, with two exceptions:

- a. Employees are required to use accrued CTO earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and
- b. Employees will only be required to use sick leave concurrently with FMLA/CFRA leave if the leave is for the employee's own serious health condition.

3. The City's Right to Require an Employee to Exhaust FMLA/CFRA Leave Concurrently With Other Leaves

If an employee takes a leave of absence for any reason which is FMLA/CFRA-qualifying, the City may designate that non-FMLA/CFRA leave as running concurrently with the employee's twelve (12) week FMLA/CFRA leave entitlement. The only exception is for peace officers and firefighters who are on leave pursuant to Labor Code § 4850.

4. The City's and Employee's Rights if an Employee Requests Accrued Leave Without Mentioning Either the FMLA or CFRA

If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA-qualifying purpose, the City may

not ask the employee if the leave is for a FMLA/CFRA-qualifying purpose. However, if the City denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA-qualifying purpose, the City may inquire further into the reason for the absence. If the reason is FMLA/CFRA-qualifying, the City may require the employee to exhaust accrued leave as described above.

H. Medical Certification

Employees who request leave for their own serious health condition or to care for a child, parent or a spouse who has a serious health condition must provide written certification from the health care provider of the individual requiring care if requested by the City.

If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.

Employees who request leave to care for a covered servicemember who is a child, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness.

The first time an employee requests leave because of a qualifying exigency, an employer may require the employee to provide a copy of the covered military member's active duty orders or other documentation issued by the military which indicates that the covered military member is on active duty or call to active duty status in support of a contingency operation, and the dates of the covered military member's active duty service. A copy of new active duty orders or similar documentation shall be provided to the employer if the need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different covered military member.

1. Time To Provide A Certification

When an employee's leave is foreseeable and at least thirty (30) days' notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the City within the time frame requested by the City (which must allow at least fifteen (15) calendar days after the employer's request), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.

2. Consequences For Failure To Provide An Adequate Or Timely Certification

If an employee provides an incomplete medical certification, the employee will be given a reasonable opportunity to cure any such deficiency.

However, if an employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA/CFRA leave until the required certification is provided.

3. Second and Third Medical Opinions

If the City has reason to doubt the validity of a certification, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinions when there is a second or third medical opinion sought.

4. Intermittent Leave Or Leave On A Reduced Leave Schedule

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can best be accomplished through an intermittent or reduced leave schedule.

I. Employee Notice of Leave

Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. Except for qualifying exigency leave, if leave is foreseeable, at least thirty (30) days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. Such notice may be orally given. If the City determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the City may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.

For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable.

J. Reinstatement Upon Return From Leave

1. Right To Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the

reinstatement date differs from the original agreement of the employee and the City, the employee will be reinstated within two (2) business days, where feasible, after the employee notifies the employer of his/her readiness to return.

2. Employee's Obligation To Periodically Report On His/Her Condition

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

3. Fitness For Duty Certification

As a condition of reinstatement of an employee whose leave was due to the employee's own serious health condition which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

4. Reinstatement of "Key Employees"

The City may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid ten (10) percent of all employed by the City within seventy-five (75) miles of the work site) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City, and the employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

K. Required Forms

Employees must fill out the following applicable forms in connection with leave under this policy:

1. "Request For Family or Medical Leave Form" prepared by the City to be eligible for leave.
2. Medical certification -- either for the employee's own serious health condition or for the serious health condition of a child, parent, spouse or domestic partner.
3. Authorization for payroll deductions for benefit plan coverage continuation; and
4. Fitness-for-duty to return from leave form.

11.04 Jury Duty and Court Leave

A. Purpose

The City considers jury duty to be an important civic responsibility. Having loyal, conscientious, honest citizens serving on our juries is a basic and essential element of our

American system of justice. Therefore, it shall be the policy of the City to encourage jury service by its employees.

B. Scope

This policy applies to all regular full-time employees called to jury duty.

C. Policy

Every employee of the City who is called or required to serve as a trial juror shall be entitled to be absent from duties with the City during the period of such service or while necessarily being present in court as a result of such call. No deductions shall be made from the salary of an employee while on jury duty if he/she has waived or remitted to the City the fee for jury duty. If he/she has not so waived, or remitted the jury fee, he/she shall be paid only for the time actually worked in his/her regular position. An employee accepted for jury duty shall immediately notify his/her Department Head in writing whether or not he/she waives or remits jury fee to the City.

11.05 Time Off to Vote

If an employee who is not overtime exempt does not have sufficient time outside of working hours to vote in a statewide election, the employee may take up to two hours off without loss of pay at the beginning or end of the day. Prior approval by the employee's supervisor 48 hours before the leave for this time off is required.

11.06 Military Leave

Military leave shall be granted in accordance with the provisions of state and federal law. An employee requesting leave for this purpose shall provide the City Manager's office, whenever possible, with a copy of the military orders specifying the dates, site and purpose of the activity or mission. Within the limits of such orders, the Department Head and Personnel Officer may determine when the leave is to be taken and may modify the employee's work schedule to accommodate the request for leave.

11.07 School Related Leave

Any employee who is a parent, guardian or grandparent having custody of one or more children in kindergarten or grades one (1) through twelve (12) or attending a licensed day care facility shall be allowed up to forty (40) hours each school year, not to exceed eight (8) hours in any calendar month of the school year, without pay, to participate in activities of the school of their child. The employee must provide reasonable advance notice of the planned absence. The employee may be required to use vacation and/or CTO to cover the absence. The City may require the employee to provide documentation from the school as verification that the employee participated in school activities on a specific date and at a particular time. If both parents, guardians or grandparents having custody work for the agency at the same work site, only the first parent requesting will be entitled to leave under this provision.

11.08 Time Off For Victims of Violent Crimes or Domestic Abuse

An employee who has been a victim of a violent crime or domestic violence may take time off to: 1) appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding; 2) seek medical or psychological assistance; or 3) participate in safety planning to protect against further assaults.

An affected employee must give the City reasonable notice that he/she is required to be absent for a purpose stated above. In cases of unscheduled or emergency court appearances or other emergency circumstances, the affected employee must, within a reasonable time after the appearance, provide the City with written proof that the absence was required for any of the above reasons. Leave under this section is unpaid unless the employee uses vacation or accrued time off.

SECTION 12

LAYOFF POLICY AND PROCEDURE

12.01 Statement of Intent

Whenever, in the judgment of the City Council, it becomes necessary to abolish any position of employment in the competitive service in the interest of economy or because the necessity for a position no longer exists, the employee holding such position of employment may be laid off or demoted in lieu of layoff without taking disciplinary action and without the right of appeal.

12.02 Notification

Any employee who is to be laid off shall be given, whenever possible, at least 14 calendar days prior notice.

12.03 Vacancy and Demotion In Lieu of Layoff

Except as otherwise provided, whenever there is a reduction in the workforce, the Personnel Officer shall first demote the affected employee to a vacancy, if any, in a lower class for which the employee who is the latest to be laid off in accordance with subsection 12.07 is qualified. All persons so demoted shall have their names placed on the Re-employment List.

12.04 Employee Rights

An employee affected by layoff shall have the right to displace an employee in the same department who has less seniority in a lower class in the same class series or in a lower class in which the affected employee once had permanent status. For the purpose of this section and subsection 12.05, seniority includes all periods of full-time service at or above the class level where layoff is to occur.

12.05 Seniority

In order to retreat to a former or lower class, an employee must have more seniority than at least one of the incumbents in the retreat class and request displacement action in writing to the Personnel Officer within five (5) working days of receipt of notice of layoff.

Employees retreating to a lower or similar class shall be placed at the salary step representing the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.

Employees retreating to a lower or similar class shall serve a probationary period in the new class unless they have previously successfully completed a probationary period in the class or a class in the class series.

12.06 Order of Layoff

The order of layoff of employees shall be established by the Personnel Officer on the recommendation of the Department Head involved. The Department Head shall take into consideration on-the-job performance and length of service of employees in preparing a recommended layoff list; provided however, that no regular or probationary employee shall be laid off from his/her position in any department while any emergency, temporary or provisional employee is serving in the same class in that department.

In each class, employees shall be laid off according to employment status in the following order: emergency, temporary, provisional, probationary, and regular.

A. Emergency, Temporary, Provisional and Probationary Employees

Except as otherwise provided herein, emergency, temporary, provisional, and probationary employees shall be laid off according to the needs of the City as determined by the Personnel Officer.

B. Regular Employees

In any case where there are two or more regular employees in the class from which the layoff is to be made, such employees shall be laid off on the basis of the last evaluation rating in the class, providing such rating has been on file at least 30 days and no more than 12 months prior to layoff as follows:

- First, all employees having ratings of "required improvement,"
- Second, all employees having ratings of "effective - meets standard,"
- Third all employees having ratings of "exceeds standards."

Employees within each category shall be laid off in inverse order of seniority in City service.

12.07 Re-employment List

The names of persons laid off or demoted in lieu of layoff in accordance with these Personnel Rules shall be placed upon a Re-employment List. Except as otherwise provided in these Personnel Rules or the Personnel Ordinance, Re-employment Lists from different departments or made at different times for the same class shall be combined into a single list. Such list shall be used by the Personnel Officer when a vacancy arises in the same or lower class before certification is made from an Eligibility List.

12.08 Duration of Re-employment List

Names of persons laid off shall be carried on a re-employment list for one year, except that persons appointed to permanent positions of the same level as those which were laid

off, shall, upon such appointment, be dropped from the list. Persons reemployed in a lower class, or on a temporary basis, shall remain on the list for the higher position for one year.

12.09 Re-employment of Regular and Probationary Employees

The names of regular and probationary employees laid off or demoted in lieu of layoff shall be placed upon Re-employment Lists for one (1) year for those classes requiring basically the same qualifications, duties and responsibilities of the class from which layoff or demotion in lieu of layoff was made.

Persons whose names are placed on Re-employment Lists in accordance with this subsection, and who are re-employed within the prescribed period, shall be regarded as having been on leave of absence during this period of absence and entitled to all benefits accruing from such leave.

SECTION 13

SEPARATION FROM THE SERVICE

13.01 Discharge

An employee in the competitive service may be discharged at any time by the Personnel Officer. Disciplinary discharge action shall be taken in accordance with these Personnel Rules.

13.02 Resignation

An employee in the competitive service in good standing shall file with the Personnel Officer a written resignation stating the effective date and reasons for leaving at least two weeks before leaving the service, unless such time limit is waived by the Personnel Officer. A statement as to the resigned employee's service performance and other department information shall be forwarded to the Personnel Officer. Failure to give notice as required by this section shall be cause for denying future employment by the City.

SECTION 14

DISCIPLINARY PROCEDURE AND APPEAL PROCESS

14.01 Disciplinary Action – General

Unless otherwise specified by an applicable MOU, the following constitutes the City's policy regarding disciplinary actions:

The following categories of persons can be terminated at will and have no rights to receive a Notice of Intent or to any of the pre- or post-disciplinary processes or procedures provided in this Section: (1) Temporary employees; (2) Provisional employees; (3) Probationary employees; (4) Any person who serves pursuant to a contract; and (5) Any person who is designated "at-will" in any City policy, document, acknowledgement, resolution or ordinance, including Mid-Management employees. In addition, any regular employee who is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) is not subject to any disciplinary penalty which is inconsistent with his/her FLSA overtime-exempt status. These procedures shall not apply to a layoff, or a reduction in pay which is part of a reclassification action, reorganization or layoff.

14.02 Causes for Disciplinary Action

Regular employees may be counseled, admonished, reprimanded, suspended, demoted, discharged or incur a reduction in pay for, including but not limited to, any of the following causes of discipline:

1. Fraud or misrepresentation, whether intentional or negligent, in securing appointment, securing promotion, maintaining employment or in the performance of job duties;
2. Neglect of duty;
3. Insubordination or insulting or demeaning the authority of a supervisor or manager;
4. Unsatisfactory job performance;
5. Dishonesty, including but not limited to the dissemination of false information to a Department Head, City Manager, City Council member or other City or governmental body concerning City affairs;
6. Inefficiency;
7. Violation of the City's Drug Free Workplace Policy, including refusal to consent to drug or alcohol testing and/or searches;

8. Excessive absenteeism and/or tardiness as defined by the employee's Department Head, these Personnel Rules, or an applicable MOU;
9. Use of disability leave in a manner not authorized or provided for pursuant to these Personnel Rules;
10. Making any false statement, omission or misrepresentation of a material fact;
11. Absence without authorized leave;
12. Malfeasance or misconduct, which shall be deemed to include, but shall not be limited to, the following acts or omissions:
 - a. Conviction of a felony. "Conviction" shall be construed to be a determination of guilt by the accused by a court, including a plea of guilty or nolo contendere, regardless of sentence, grant of probation, or otherwise;
 - b. The damaging of City property, equipment, or vehicles, or the waste of City supplies through negligence or misconduct.
13. Discourteous treatment of the public or other employees;
14. Unapproved outside employment or activity that violates City policy, or other enterprise that constitutes a conflict of interest with service to the City;
15. Violation of OSHA Safety Standards or City safety policies and/or procedures;
16. Loss, misuse or unauthorized use of any City property, including but not limited to: physical property, tools, equipment, communication systems, City vehicles or intellectual property;
17. Violation of any department rule, City policy, City regulation, ordinance or resolution;
18. Any conduct that impairs, disrupts, or causes discredit to the City, the employee's City employment, the public service, or other City employees' employment;
19. Violation of the City's or a department's confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity;
20. Refusal to take or subscribe to any oath or affirmation which is required by law in connection with employment;
21. Failure to maintain and continuously fulfill requirements of the employee's position as listed in the employee's job description;
22. Theft;

23. Mishandling of public funds;
24. Falsifying any City record;
25. Failure to cooperate with supervisors or fellow employees;
26. Violation of the City's Harassment/Discrimination/Retaliation Prevention Policy;
27. Violation of the City's Workplace Security Policy;
28. Altering, falsifying or tampering with time records, or recording time on another employee's time record;
29. Working overtime without prior authorization or refusing to work assigned overtime; and
30. Carrying firearms or other dangerous weapons on City premises at any time, unless authorized to do so.

14.03 Types of Disciplinary Action

As used in this section, "disciplinary action" shall mean any of the following and may be taken singularly or in combination:

- A. **Counseling or Oral Warning.** A counseling or oral warning will not be placed in an employee's personnel file except as part of a regular or special performance evaluation of the employee on which the employee is given an opportunity to respond. A counseling or oral warning or a performance evaluation report is not subject to appeal.
- B. **Written Reprimand.** A written reprimand shall be provided to an employee prior to being placed in the employee's personnel file. The employee shall have the right to have a written rebuttal attached to the written reprimand in the employee's personnel file if the rebuttal is submitted to the City Manager's office within 10 days of the date the written reprimand was received. A written reprimand is not subject to appeal.
- C. **Reduction in Pay.** An employee's pay may be reduced for cause. A reduction in pay for disciplinary purposes may take one of two forms: 1) a decrease in salary to a lower step within the salary range; or (2) a decrease in salary paid to an employee for a fixed period of time. Documents related to a reduction in pay shall become part of the employee's personnel file when the discipline becomes final. An employee subject to a reduction in pay will receive prior written notice and the opportunity to appeal in accordance with this disciplinary appeal process.
- D. **Demotion.** An employee may be demoted from his/her position for cause. Documents related to a demotion shall become part of the employee's personnel file when the discipline is final. An employee subject to a demotion will receive prior

written notice and the opportunity to appeal in accordance with this disciplinary appeal process.

- E. **Suspension.** An employee may be suspended from his/her position without pay for cause. Documents related to a suspension shall become part of the employee's personnel file when the discipline is final. During suspension, vacation and sick leave shall not accrue. However, health, dental and life insurance shall remain in effect. An employee subject to suspension will receive prior written notice and the opportunity to appeal in accordance with this disciplinary appeal process.
- F. **Discharge.** An employee may be discharged from his/her position for cause. Documents related to discharge shall become a part of an employee's personnel file when the discipline becomes final. An employee subject to discharge will receive prior written notice and the opportunity to appeal in accordance with this disciplinary appeal process.

14.04 Administrative Leave With Pay

The City may place an employee on administrative leave with pay pending investigation of misconduct, potential disciplinary action, or for any other reason that the Personnel Officer, in his/her sole discretion, believes warrants such leave. Administrative leave with pay shall not, in and of itself, be considered a disciplinary action and is not subject to any grievance, hearing or appeal procedure.

14.05 Notice of Intended Disciplinary Action

In cases of proposed suspensions, demotions, reductions in pay or discharges (hereinafter referred to as "Significant Discipline"), the proposed disciplinary action shall be served on the employee personally or by mail, at last known address on file in the City Manager's office. The written notice of intended disciplinary action shall include:

1. The level of discipline intended to be imposed;
2. The specific charges upon which the intended discipline is based;
3. A summary of the facts upon which the intended discipline is based;
4. A copy of all written materials, reports, or documents upon which the intended discipline is based;
5. Notice of the employee's right to respond to the charges either in writing or orally, at the option of the employee. The employee shall be advised that he/she has seven (7) days within which to file a written response or request, in writing, a predisciplinary conference;
6. Notice of the employee's right to have a representative of his/her choice at the conference, should he/she choose to respond orally; and

7. Notice that the failure to respond at the time specified shall constitute a waiver of the right to respond prior to the imposition of discipline.

14.06 Employee's Response and the Predisciplinary (Skelly) Conference

If the employee requests an opportunity to respond orally, the conference must be scheduled at least ten (10) days after the date of the Notice. The conference will be an informal meeting with the Department Head or designee, at which the employee has an opportunity to rebut the charges against him/her and present any mitigating circumstances. The Department Head or designee will consider the employee's presentation before any final disciplinary action.

The employee's failure to make an oral response at the arranged conference time, or the employee's failure to cause his/her written response to be delivered by the date and time specified in the notice, constitutes a waiver of the employee's right to respond prior to the imposition of the discipline. In that case, the proposed disciplinary action will be imposed on the date specified.

14.07 Final Notice of Discipline

Within ten (10) days of the predisciplinary conference or within ten (10) days of the receipt of the employee's timely written response, the Department Head or his/her designee will: (1) dismiss the notice of intent and take no disciplinary action against the employee; (2) modify the intended disciplinary action; or (3) impose the intended disciplinary action. In any event, the Department Head will prepare and provide the employee with a notice that contains the following:

- A. The level of discipline, if any, to be imposed;
- B. The effective date of the discipline;
- C. The specific charges upon which the discipline is based;
- D. A summary of the facts upon which the charges are based;
- E. A copy of all written materials, reports, or documents upon which the discipline is based; and
- F. A statement of the employee's right to appeal.

14.08 Right of Appeal

If Significant Discipline is imposed on an employee following a predisciplinary hearing or after the employee submits a written response to the charges against him/her, the employee shall have the right to appeal the Significant Discipline in accordance with the procedures set forth herein.

An employee who chooses to waive the right to a predisciplinary hearing or the right to respond to the charges in writing, however, allows the discipline to be imposed as stated in the Final Notice of Discipline and shall not have a right to appeal the discipline.

A. Appeal and Request for Hearing

The employee shall give written notice to the City Manager's office of his/her request to appeal the disciplinary action within ten (10) days after the employee receives the Final Notice of Discipline. The appeal shall include the following:

1. An admission or denial of each charge with an explanation of why the charge is admitted or denied;
2. A statement of any affirmative defenses;
3. A statement that the employee disagrees with the penalty with an explanation of the employee's position;
4. The employee's current mailing address; and
5. A request for a hearing.

An employee's failure to file an appeal within the ten (10) day period shall waive his/her right to a hearing and the Significant Discipline imposed by the Final Notice of Discipline shall be deemed final.

B. Discipline Remains in Effect

If the employee requests an appeal of disciplinary action, it shall not prevent the discipline from being served or imposed prior to the appeal hearing.

C. Selection of a Hearing Officer

An appeal of a Final Notice of Disciplinary Action imposing Significant Discipline shall be heard by an independent Hearing Officer. Within five (5) business days of receiving an employee's appeal demanding a hearing the City Manager shall request a list of neutrals from the State Mediation and Conciliation Service (SMCS). Not later than three (3) business days after receiving the list from SMCS, the City Manager and the employee or his/her authorized representative shall meet to select the Hearing Officer utilizing the alternate strike method. The party striking first shall be determined by the toss of a coin. In the event the person selected as the Hearing Officer is unavailable to commence the hearing process within three (3) weeks of the date of selection, the parties shall request another name from the SMCS and shall proceed to select the Hearing Officer in the same manner provided above.

D. Costs

All costs for the services of the Hearing Officer, including, but not limited to, per diem expenses, travel and subsistence shall be shared equally by the employee's Union/Bargaining Association and the City. Any cost incurred to obtain the use of a hearing room shall be shared equally by the employee's Union/Bargaining Association and the City. All other costs shall be borne by the party incurring them.

E. Scheduling of Hearing

The Hearing Officer shall set the date, time and place of the hearing (such place shall be on City premises) and give not less than ten (10) business days' notice of such date, time and place to the employee or his/her authorized representative, the Personnel Officer and the City Manager, by certified United States Mail, postage prepaid.

F. Hearing Procedure

The Hearing Officer shall regulate the conduct of the hearing process.

1. Right to Representation

- a. The employee may be represented at the appeal hearing by a representative of his/her choice who may or may not be an attorney.
- b. The City may be represented by a representative of its choice who may or may not be an attorney.

2. Witnesses

Both the employee and the City shall have the right to call and cross-examine witnesses at the hearing, subject to the following:

- a. The employee and the City shall provide each other and the Hearing Officer with a list of all witnesses (except rebuttal witnesses) intended to be called at the hearing no later than five (5) days prior to the hearing;
- b. All witnesses shall testify under oath;
- c. The Hearing Officer has authority to issue subpoenas at the request of either party prior to the commencement of the hearing. After the commencement of the hearing, subpoenas shall be issued by the Hearing Officer only for good cause. Each party is responsible for serving his/her/its own subpoenas.

3. Exhibits

Both the employee and the City shall have the right to present documentary and tangible evidence at the hearing, subject to the following:

- a. The employee and the City shall provide each other and the Hearing Officer with an exhibit list and a copy of all exhibits (except rebuttal exhibits) intended to be introduced at the hearing no later than five (5) days prior to the hearing.

4. Conduct of Hearing

- a. The Hearing Officer shall preside over the hearing and has the discretion to conduct the proceedings and allow admission of evidence based upon such rules of procedure and evidence as the hearing officer shall choose. In no event shall the Hearing Officer impose rules of procedure or evidence more stringent than the California Rules of Civil Procedure or the California Rules of Evidence.
- b. Irrelevant and unduly repetitious evidence may be excluded.
- c. The hearing shall be recorded by an electronic process.
- d. The Hearing Officer shall determine the relevancy, weight and credibility of testimony and evidence. The Hearing Officer shall neither add to, detract from, nor modify the language of the City's Personnel Rules or policies in considering any issue properly before him/her. The Hearing Officer shall expressly confine himself/herself to the precise issues submitted and shall not have the authority to consider any issue not so submitted. Decisions made by the Hearing Officer shall not be invalidated by any informality in the proceedings.
- e. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.
- f. During the hearing, the City shall have the burden of proof and production that the discipline as imposed was correct based upon a preponderance of the evidence.
- g. The hearing shall proceed in the following order unless the Hearing Officer directs otherwise:
 - i. The City shall be permitted to make an opening statement.
 - ii. The employee shall be permitted to make an opening statement.

- iii. The City shall produce its evidence.
- iv. The employee shall produce his/her evidence.
- v. The City, followed by the employee, may offer rebuttal evidence.
- vi. Closing arguments of no more than twenty (20) minutes may be permitted at the discretion of the Hearing Officer. The City shall have the right to argue first, the employee may argue second, and the City may reserve a portion of its argument time for rebuttal.

G. Written Findings and Decision

Within thirty (30) days following the close of the appeal hearing, the Hearing Officer shall issue a written Notice of Decision. The Notice of Decision shall specify the following:

1. Whether the discipline imposed is upheld, reduced, or voided; and
2. The grounds upon which the decision is made.

The Notice of Decision and a copy of this Disciplinary Procedure and Appeal Process policy shall be mailed to the employee or the employee's representative by first-class mail, postage prepaid, including a copy of a proof of service.

If any portion of the discipline is reduced or voided, the employee shall be entitled to corresponding back wages and/or benefits lost, if any.

The decision of the Hearing Officer shall be final and binding unless an action or proceeding is commenced in a court of competent jurisdiction to determine the validity of the decision as set forth below.

H. Judicial Review

Judicial review of any decision of the Hearing Officer may be had pursuant to Section 1094.5 of the California Code of Civil Procedure only if a petition for writ of mandate is filed within the applicable time limits. Pursuant to Section 1094.6 of the California Code of Civil Procedure, the employee must file the petition in a court of competent jurisdiction within ninety (90) days after the Notice of Decision is mailed to the employee or will otherwise be considered to have waived the right to do so.

I. Waiver

An employee who chooses not to exercise his/her right to appeal a Final Notice of Discipline imposing Significant Discipline consistent with the terms and conditions of this Section 14 shall be barred from appealing the imposition of such discipline in

superior or district court for failure to exhaust administrative remedies. This shall include any employee who chooses to prematurely terminate appeal proceedings before the Hearing Officer has issued the Notice of Decision.

SECTION 15

GRIEVANCE PROCEDURE

15.01 Grievance Procedure

Unless otherwise specified in an applicable MOU, if any, the following is the City's grievance procedure for City employees.

15.02 Matters Subject to Grievance Procedures

A grievance shall be a claim, filed by an employee on his/her own behalf, contending that the City has violated or misapplied an obligation expressed and written in the Personnel Ordinance or these Personnel Rules. The act or omission that is the subject of the employee's grievance shall not have occurred more than ten (10) days prior to filing of the grievance.

15.03 Step 1: Informal Grievance – Supervisor

The employee may bring a grievance to the attention of his/her immediate supervisor at the earliest possible date, but in no event later than ten (10) days from either the date of the alleged action that caused the grievance, or the date the employee should reasonably have become aware of such action.

The employee shall inform his/her immediate supervisor that he/she wishes to discuss an informal grievance. At that time, the supervisor shall set a date and time for the informal grievance discussion. During this informal grievance discussion, the supervisor and the employee shall discuss and attempt resolution of the grievance. Every effort shall be made to resolve a grievance through discussion between the employee and his/her immediate supervisor. If the employee does not make himself/herself available for discussion during the informal grievance process, the grievance shall be considered abandoned.

The supervisor will give the employee an oral reply within ten (10) days after the informal grievance discussion. If the employee does not feel that the grievance has been satisfactorily resolved at the informal grievance level, he/she may, within specified time limits, file a formal grievance.

15.04 Step 2: Formal Grievance – Department Head

If the employee is not in agreement with the decision rendered in the informal grievance procedure, he or she shall have the right to present a formal grievance, in writing, to the Department Head within ten (10) days of the employee receiving his/her supervisor's oral reply.

The written grievance shall be submitted to the Department Head and must identify all of the following:

1. How the grievant is/was adversely affected by a specific act or omission which gave rise to the alleged violation, misinterpretation, or misapplication of the Personnel Ordinance or these Personnel Rules;
2. The specific provision of the Personnel Ordinance or these Personnel Rules that was allegedly violated, misinterpreted, or misapplied;
3. The date or dates on which the violation, misinterpretation, or misapplication allegedly occurred;
4. The documents, witnesses or other evidence that support the grievance;
5. The desired solution or remedy;
6. The signature and identification of the grievant;
7. The person, if any, the grievant has chosen to be his/her representative;
8. The date that the informal grievance was taken to the grievant's supervisor;
9. The date(s) of the informal grievance discussion(s) with the supervisor;
and
10. A brief summary of the outcome of the informal grievance discussion(s) with the supervisor.

No grievance will be accepted for processing until all of the information listed above is provided. The Department Head or his/her designee may, in his/her discretion, schedule a meeting with the grievant for the purpose of giving the parties an opportunity to resolve the grievance. If the Department Head or his/her designee decides to schedule a meeting with the grievant, such meeting shall be scheduled for no later than seven (7) days after the Department Head receives the completed formal written grievance.

If the grievance is not resolved by way of meeting between the grievant and the Department Head, the Department Head, or his/her designee, shall investigate the grievance within fifteen (15) days of receiving a completed formal written grievance.

The Department Head or his/her designee shall give a written answer to the grievant within twenty-one (21) days of receipt of the completed formal written grievance.

15.05 Step 3: Formal Grievance – Personnel Officer

If the employee does not agree with the written answer provided by the Department Head, he/she may, within ten (10) regular work days from the receipt of such answer, file a written appeal to the Personnel Officer. Included with the employee's appeal shall be copies of the Step 2 formal written grievance and related response. Failure of the

employee to take further action within ten (10) regular work days after receipt of the decision of the Department Head will constitute withdrawal of the grievance.

The Personnel Officer may, in his/her discretion, schedule a meeting with the grievant to discuss the matter. If the Personnel Officer decides to schedule a meeting with the grievant, any such meeting shall be scheduled for no later than seven (7) days after the Personnel Officer receives the written appeal.

If the grievance is not resolved by way of meeting between the grievant and the Personnel Officer, the Personnel Officer or his/her designee shall consider the facts and conduct an investigation if he/she deems one necessary, within fifteen (15) days of receipt of the written appeal.

The Personnel Officer or his/her designee shall give a written answer to the grievant within twenty-one (21) days of receipt of the Step 3 written appeal.

The decision of the Personnel Officer shall be final and binding. The Personnel Officer's decision will be limited as follows:

1. The decision shall neither add to, detract from, nor modify the language of the Personnel Ordinance or these Personnel Rules.
2. The decision shall be confined to the precise issue(s) the grievance had raised and the grievant has submitted.
3. Any monetary award in favor of the grievant may not exceed wages or benefits that the grievant has actually lost, if any, as a result of the matters alleged in the grievance. In no event shall any grievance award include any compensatory damages or attorneys' fees.

15.06 Extension of Time Limitations

Any or all of the time limitations mentioned above that make reference to filing and response may be extended by mutual agreement between the employee and the City.

SECTION 16

VIOLATIONS

16.01 Violation of Rules

Violation of the provisions of these Personnel Rules shall be grounds for rejection, suspension, demotion, dismissal, or other disciplinary action.

City of Orange Cove

**ACKNOWLEDGEMENT OF RECEIPT OF
PERSONNEL RULES AND REGULATIONS**

This is to acknowledge that I have received a copy of the City of Orange Cove's Personnel Rules for the City Personnel System dated _____, and I understand that it contains important information on the City's policies and my obligations and responsibilities as an employee. I acknowledge that I am expected to read, understand, and adhere to City policies and will familiarize myself with the provisions in these Personnel Rules.

I understand that I am governed by the provisions in these Personnel Rules and that it may be necessary for the City to make revisions to these Personnel Rules. When this happens, the City will make these changes through established processes and advise employees of material changes within a reasonable time period.

Employee's Signature

Date

This document shall be signed by the employee and placed in the employee's personnel file.