

CITY OF MILLBRAE  
PERSONNEL RULES AND REGULATIONS

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## PERSONNEL RULES AND REGULATIONS

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## RULE I. PURPOSE

These Rules and Regulations are established in accordance with Title II, Chapter 3, Section 3 of the Municipal Code which constitutes the Personnel Ordinance of the City.

These Rules and Regulations are intended to implement the personnel system established by means of the Ordinance and to insure that the basic principles and objectives embodied therein are fulfilled, to wit:

1. The establishment of an equitable and uniform procedure for dealing with personnel matters.
2. The recruitment to the City service of the most competent personnel available.
3. The assurance that appointments of personnel shall be based upon merit and fitness.

## RULE 2. COVERAGE

These Rules and Regulations shall apply only to personnel holding positions in the Classified Service unless a broader coverage is expressly extended by a specific provision contained herein.

The Classified Service shall consist of all permanent full-time and permanent part-time positions except:

1. The City Administrator and Secretary to the City Administrator.
2. The City Attorney and City Clerk.
3. All department heads and such other management classifications as may be designated by the City Council.
4. All elected officials and members of appointive boards, commissions and committees.
5. All temporary personnel whether employed directly by the City or retained under contract for services.
6. All volunteer personnel.
7. Permanent part-time positions funded for less than 1U40 hours in a fiscal year.

All personnel excluded from the Classified Service as provided above shall comprise the Exempt Service.

Nothing herein shall preclude the City Council, upon recommendation of the City Administrator, from extending a provision or provisions of these Rules to all or certain categories of Exempt personnel. Such action shall constitute an amendment to these Rules and shall be effected pursuant to Rule 3.01.

## **RULE 3. GENERAL PROVISIONS**

### **3.01 AMENDMENTS TO RULES**

Amendments to these Rules shall be presented by the City Administrator to the City Council.

### **3.02 FAIR EMPLOYMENT**

No recruitment, examination or personnel transaction shall be conducted in a manner that would serve to violate applicable State and Federal law regarding fair employment.

### **3.03 OUTSIDE EMPLOYMENT**

City employees shall not carry on, concurrently with their public employment, any other employment, business or undertaking which conflicts or interferes with their City employment.

With prior approval of the City Administrator, a department may establish specific regulations governing this subject provided that they are consistent with the provisions of this Rule.

### **3.04 POLITICAL ACTIVITIES**

The political activities of City employees shall be governed by the provisions of applicable State and Federal law.

### **3.05 MEMORANDA OF UNDERSTANDING**

Any current provision of a memorandum of understanding approved and formally adopted by the City Council which may conflict with any personnel rule, shall automatically supersede such rule as it applies to the group of employees covered by that memorandum of understanding.

### **3.06 INTENT**

It is the intent of these Rules and Regulations to be consistent with applicable law and judicial interpretations.

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#### **RULE 4. PERSONNEL OFFICER**

The City Administrator shall be the Personnel Officer. In this capacity, the City Administrator, or his designated representative, shall be responsible for administering all matters relating to the City's personnel system and these Rules and Regulations.

The Personnel Officer is empowered to recommend to the City Council that any one or more functions under the personnel system be performed under contract by a qualified person, agency or organization.

## RULE 5. PERSONNEL BOARD

### 5.01 COMPOSITION AND TERM

The Personnel Board shall consist of five members appointed by the City Council. Such appointments shall be for three-year terms and incumbents may be reappointed for successive terms. A majority vote of the City Council shall be required to appoint or remove a member of the Personnel Board. Vacancies occurring during the term of a member shall be filled by majority vote of the City Council for the remaining period of the term.

No individual shall be appointed to the Personnel Board who holds any Classified or Exempt position with the City; nor shall any member of the Board accept such a position during his term or within a period of one year following service as a Board member.

### 5.02 DUTIES

The duties of the Personnel Board shall be to:

1. Conduct hearings submitted in accordance with Rule 15 of these Regulations.
2. Conduct hearings and make recommendations on matters of personnel administration as may be requested by the City Council.
3. Consider and make recommendations on matters of personnel administration when requested by the City Administrator.

### 5.03 MEETINGS

The Personnel Board shall meet not less than quarterly to conduct its functions. Meetings of the Board may be called by the Chairperson or by the City Council depending upon the business to be conducted. Three Board members shall constitute a quorum for the transaction of business.

### 5.04 CONDUCT OF HEARINGS

Hearings of appeals conducted pursuant to item 1 of Rule 5.02 shall be closed unless an open hearing is requested by the employee, and the rules of evidence shall not apply. Parties to the appeal may have legal counsel and the attendance of witnesses. The employee shall also be entitled to the presence of a representative from the employee organization representing his classification.

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## RULE 6. DEFINITIONS

6.01 ALLOCATION: The assignment of a position to its proper job classification in accordance with its duties and levels of responsibility.

6.02 APPOINTING AUTHORITY: The City Administrator.

6.03 APPOINTMENT: The offer and acceptance of a position in the Classified Service pursuant to Rule 11 of these Regulations.

### 6.04 APPOINTMENTS:

- a. Original - The initial appointment of an employee to a position in the Classified Service.
- b. Promotional - A subsequent appointment of an employee to a position in a higher classification in the Classified Service.
- c. Temporary - The appointment of an eligible or, where no employment list exists, a qualified person to fill a position in the Classified Service for a limited period of time, but not to exceed 1,040 hours in a fiscal year unless extended by the City Council.

The City Council may extend the period for any temporary appointment for not more than thirty (30) days by any one action.

6.05 CANDIDATE: An applicant accepted for participation in the examination process.

6.06 CERTIFICATION: The submission of names of eligibles from an appropriate list or lists to a department head by the Personnel Officer.

6.07 CITY: The City of Millbrae.

6.08 CLASS: A group of positions having duties and levels of responsibility sufficiently similar that the same job title, examples of duties, minimum qualifications, methods of selection and compensation may be applied.

6.09 CLASS SPECIFICATION: Title official description of a job classification including: title; a statement of duties and levels of responsibility; and standards of employment such as desired training, experience, knowledges, skills and abilities.

6.10 CLASSIFIED SERVICE: Those positions or classes of positions set forth in Rule 2 of these Regulations.

6.11 DAYS: Calendar days unless otherwise indicated.

6.12 DEMOTION: A change of status of an employee from a position in one classification to a position in another carrying a lower maximum rate of pay.

6.13 DISCHARGE/DISMISSAL: Removal of an employee from City employment.

6.14 ELIGIBLE: Any person on an open-competitive or promotional employment list for a given classification.

6.15 EMPLOYMENT LIST:

- a. Open-competitive - a list of candidates who have qualified in an examination open to all qualified individuals and who are eligible for appointment.
- b. Promotional - a list of candidates who have qualified in all examination open only to qualified City employees and who are eligible for appointment.
- c. Re-employment - a list of former employees who have been laid off and who are eligible for re-employment in their former classification.
- d. Reinstatement - a list of former employees who resigned from the Classified Service in good standing and who are eligible for reinstatement to their former classification or to a comparable classification carrying the same or lower maximum rate of pay.

6.16 EXEMPT SERVICE: Those positions and employment categories set forth in Rule 2 of these Regulations.

6.17 FISCAL: July 1 through June 30.

6.18 LAYOFF: Separation from employment due to lack of work, funds or need.

6.19 PERMANENT EMPLOYEE: An employee who has completed the prescribed probationary period for his classification.

6.20 PERMANENT POSITION: Any full-time or part-time budgeted position in the Classified Service which will require appointment for more than 1040 hours in a fiscal year.

6.21 PERSONNEL OFFICER: The City Administrator or his designated representative.

6.22 POSITION: A combination of duties regularly assigned to be performed by one person.

6.23 PROBATIONARY EMPLOYEE: An employee whose permanent status under an original or promotional appointment is contingent upon successful completion of a prescribed period of observation to determine fitness for the work being performed.

6.24 PROMOTION: Advancement from a position in one classification to a position in another carrying a higher maximum rate of pay.

6.25 RECLASSIFICATION: Allocation by the Personnel Officer of an individual position to another more appropriate classification, whether new or already created.

6.26 RESIGNATION: A voluntary termination of employment.

6.27 SEPARATION: Any termination of employment.

6.28 SUSPENSION: An involuntary absence imposed by the appointing authority for disciplinary purposes or pending investigation of charges.

6.29 TRANSFER: A change between positions within the same classification or a similar classification carrying the same maximum rate of pay.

6.30 WAIVER: The voluntary relinquishment by an eligible of the right to consideration for appointment to a specific position.

6.31 YEAR: The calendar year unless otherwise indicated.

6.32 MEANING OF WORDS: Words used in the masculine gender include the feminine.

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## RULE 7. CLASSIFICATION AND PAY PLAN

**7.01 RESPONSIBILITY** The responsibility for the development and administration of the City's Classification and Pay Plan shall reside with the Personnel Officer. Amendments to the Plan caused by modifications to positions, classes and salary ranges shall be submitted by the Personnel Officer to the City Council for adoption.

**7.02 THE PLAN** The plan shall cover all positions in the Classified Service and shall consist of the following elements:

- a. An Allocation List reflecting the number and departmental location of positions allocated to each job classification. The allocation of a position to the appropriate classification shall be based upon common job characteristics including, but not limited to, the basic tasks performed, the minimum background normally required for their performance and the type of supervision received and given.

The title established for each classification shall be generally descriptive of the type and level of work performed by the positions allocated to it.

- b. Class Specification Manual containing specifications for all job classifications in the Classified Service. The class specification shall reflect the basic duties, knowledges, skills, abilities and minimum employment standards applicable to each classification. The specification shall also, where appropriate, set forth job characteristics which serve to distinguish the classification from other related classifications.

Class specifications shall not be construed as an all-inclusive list of tasks performed or be interpreted as restricting the assignment of related tasks not specifically listed therein.

- c. A Pay Plan to which each classification shall be assigned a specific salary range or salary rate in accordance with such factors as:
  - i. The duties and responsibilities of the individual classification relative to those of related classifications in the City service.
  - ii. Existing levels of compensation for generally comparable work in public and private employment.
  - iii. The availability of qualified personnel for the individual classification.

The Pay Plan shall be modified as necessary to reflect Council-approved general or special salary adjustments, classification actions and other actions impacting upon the individual classification's salary level.

**7.03 MAINTENANCE OF PLAN** When it is proposed that a new position be created in the Classified Service or an existing one reclassified or abolished, the department head proposing such action shall submit the justification therefore to the Personnel Officer who shall conduct

whatever study may be required.

The Personnel Officer shall have the authority to initiate at any time a study to determine the appropriateness of any position's classification allocation.

The City Administrator shall make the final determination on all actions arising under this provision, subject to approval by the City Council where appropriate.

The classification plan shall be so developed and maintained that all positions substantially similar with respect to duties, responsibilities, authority and character of work are included within the same class, and that the same schedules of compensation may be made to apply with equity under like working conditions to all positions in the same class.

**7.04 SALARY ADMINISTRATION** The placement and movement of Classified employees in the appropriate salary range shall be governed by the provision set forth below. No such provision shall be construed to permit the assignment of any employee a salary which is less than the minimum or more than the maximum rate of pay applicable to the classification to which the employee's position is allocated.

- a. Upon original appointment, the employee shall be assigned the first step in the salary range applicable to the classification of appointment; provided, however, that the City Administrator may appoint at a higher step in that range if he determines that it is not feasible to recruit personnel at that level, or that the appointee possesses exceptional qualifications.
- b. Upon promotional appointment or upward reclassification, the employee shall be assigned that step in the new range which produces the equivalent of at least one full step salary increase over the employee's former salary rate.
- c. Upon demotion for non-disciplinary reasons or downward reclassification, the employee shall be assigned that step in the new range which most closely corresponds to, but does not exceed, the employee's former salary rate.

On downward reclassifications, the City Administrator may permit incremental or deferred salary reductions at his discretion where circumstances warrant.

- d. Advancement to higher steps in the employee's salary range shall not be automatic, but shall depend upon increased value of the employee to the City service. This shall be determined through such means as recommendations of the immediate supervisor and department head, current and prior performance evaluations and other relevant considerations. Eligibility for such step increases shall be as follows:

Second Step - Upon satisfactory completion of six (6) months of the employee's probationary period as set forth in Rule 12 of these Regulations.

Third, Fourth and Fifth Steps - Upon satisfactory completion of twelve (12) months of service in each lower step.

In order for any merit increase to be granted, a performance report must be submitted to the Personnel Officer at least thirty (30) days prior to the date on which the employee will become eligible for such increase. This report must indicate at least satisfactory work performance and conform to the procedures governing performance ratings as set forth in Rule 12 of these Regulations.

Final approval of all merit salary increases provided for in this section shall rest with the Personnel Officer. It shall be the joint responsibility of the Personnel Officer and department head to insure that the required performance evaluation is submitted in a timely and complete fashion. In no event shall a merit increase be granted before the requirements of this provision have been satisfied.

The eligibility periods specified above may be modified upon special recommendation by the employee's department head and approval by the City Administrator where said employee is deemed to have demonstrated extraordinary ability and performance.

The in-grade eligibility periods contained in this Rule are subject to extensions as provided in Rule 7.05 as regards pay anniversary dates.

#### 7.05 ANNIVERSARY DATES

The employment anniversary date shall be the date of hire under original appointment to a position in the Classified Service. Irrespective of subsequent personnel transactions which affect an employee's pay status, the employment anniversary date shall remain unchanged and be controlling for purposes of establishing total time in the Classified Service and for establishing eligibility for such service-related benefits as vacation leave.

Pay anniversary dates shall be modified to reflect changes in appointment status such as promotion, demotion or reclassification. Modifications to such dates shall coincide with the effective date of the change in appointment status. The new pay anniversary date shall control for purposes of determining eligibility for future merit increases in the new class.

Pay anniversary dates as applicable to the merit provisions of Rule 6.04 shall be extended on a day-for-day basis where an employee:

- a. Is on a leave-without-pay status, except where such leave is a result of illness or injury or is due to an authorized military leave pursuant to the provisions of the State Military and Veterans Code.
- b. Is on an unpaid leave status due to illness or injury for more than 30 consecutive days in

any anniversary year.

The affect of the aforementioned absences on probationary periods and on seniority and benefit credits shall be governed by the provisions of Rule 12 and Rule 17 of these Regulations.

#### 7.06 PART-TIME EMPLOYEES

The basic rate of compensation for permanent part-time employees in Classified positions shall be the hourly wage applicable to the appropriate step in the salary range of the classification to which the position is allocated.

Permanent part-time employees who work 1,040 hours or more in a fiscal year shall be eligible for step increases pursuant to Rule 7.04.

The eligibility of such personnel for benefits shall be in accordance with the provisions of Rule 17 of these Regulations.

## RULE 8. EMPLOYMENT ANNOUNCEMENTS AND APPLICATIONS

### 8.01 JOB ANNOUNCEMENTS

All examinations for classifications in the Classified Service shall be publicized by distributing announcements of the examination to all sources as are deemed necessary by the Personnel Officer to attract a sufficient number of qualified applicants. In all cases, a position vacancy announcement shall be posted on a central bulletin board, accessible to all employees and submitted to affected Departments at least ten (10) days prior to announcement closure.

The Personnel Officer may extend the filing period for any examination based upon considerations such as the quantity and quality of applications received.

The selection technique to be used shall be specified in the Job Announcement, and the relative weights of the examination components shall be identified in the Job Announcement.

### 8.02 APPLICATIONS

All applications for employment must be made on official, standard forms furnished by the Personnel Officer. Such applications shall not be returned to the individual applicant, nor shall the names of any applicant be made public.

Information requested on the application form may provide for employment and personal references, physician statements, fingerprinting and such other information deemed reasonable and necessary by the Personnel Officer.

All applications must be filed in the Personnel Office by the official closing date of the filing period, be complete and bear an original signature of the applicant. Mailed applications shall be considered filed as of the date received. Failure to conform to these requirements may result in their rejection by the Personnel Officer. In addition, an application may be rejected on any of the following grounds:

- a. The applicant's failure to satisfy the employment standards prescribed for the classification.
- b. The applicant having made a false statement of material fact or having practiced deception, fraud or misconduct in connection with his employment application.

The foregoing shall also constitute grounds for disqualification or discharge at any point during or subsequent to the examination process, or following appointment.

The Personnel Officer may establish prior to the commencement of recruitment, a limit on the number of applications which may be filed for the examination. This condition shall be clearly stated in the examination announcement and shall be administered in accordance with the date

and time on which the individual application is received by the Personnel Office.

#### 8.03 NOTICE TO APPLICANTS

Each applicant accepted or rejected for examination shall be notified prior to the established date of examination by means of mail directed to the address shown on the application.

Applications which are rejected as being incomplete may be corrected and returned prior to the official closing date for filing applications. This opportunity shall not be construed as mandatory and its use shall be at the sole discretion of the Personnel Officer based upon such factors as number of acceptable applications, the official closing date and impact upon the examination process.

## **RULE 9. EMPLOYMENT EXAMINATIONS**

### **9.01 TYPES OF EXAMINATIONS**

The Personnel Officer shall determine whether an examination is to be administered on an open-competitive basis or on a promotional basis.

Where an open-competitive examination is to be utilized, applications may be accepted from any qualified individual, subject to limitations which may be imposed on the number of applications based upon the known labor market for the individual class of employment.

Promotional examinations shall be open only to qualified, permanent City employees.

At the discretion of the Personnel Officer, the examination may be administered on both an open-competitive and promotional basis. In such instances, eligibles on the promotional employment list shall be certified ahead of those on open lists.

In making a determination concerning the type of examination to be conducted, the Personnel Officer shall consider such relevant factors as, the complexity of the work performed by the classification; the known labor market for such personnel; and the availability within the City service of a sufficient number of qualified applicants. Wherever feasible and consistent with the best interests of the City service, promotional opportunities shall be provided to employees in the Classified Service.

### **9.02 CONTINUOUS TESTING**

The Personnel Officer may conduct recruitment for certain classes of employment on a continuous basis which would permit the acceptance, testing and placement of qualified applicants on open employment lists as they become available. This type of examination shall only be utilized where the need for qualified personnel occurs frequently and/ or where there is demonstrated shortage of qualified persons. This process may be instituted on an interim or permanent basis and, in all cases, shall be administered in full compliance with applicable provisions of this Rule and of Rules 8, 10, and 11 of these Regulations.

### **9.03 SELECTION TECHNIQUES**

The Personnel Officer shall adopt selection techniques which are impartial and related to the primary tasks of the job classification. The examination for a given class of employment may include any of the following:

- a. A written test measuring the candidate's job knowledges or aptitude.
- b. An evaluation of each candidate's application in terms of applicable training and experience.

- c. A performance test whereby candidates demonstrate the degree of job knowledge and ability possessed.
- d. A physical fitness test whereby candidates demonstrate their physical capacity to perform tasks directly related to the job.
- e. A personal interview designed to evaluate the candidate's personal characteristics, background and job knowledges.
- f. A medical examination.
- g. Such other selection techniques which, in the judgment of the Personnel Officer, are necessary to evaluate the candidate's capacity to perform the job tasks. These may include, but not be limited to, a psychiatric examination, background investigation and reference checks.

All components of an examination which require evaluative judgments regarding technical subjects shall be administered using as a rater at least one competent authority in the area being tested.

#### 9.04 CONDUCT OF EXAMINATIONS

It shall be the responsibility of the Personnel Officer to assure that the examination process is conducted in an objective, timely and efficient manner.

The Personnel Officer may engage in cooperative examination programs with other public jurisdictions; provided, however, that participation in such programs does not serve to: diminish the quantity and quality of applicants who would otherwise be available to the City; cause undue delays in completion of the examination process; or reduce opportunities for City residents to participate.

#### 9.05 SCORING OF EXAMINATIONS

A candidate's final score in the examination shall be for qualification purposes only and be the average of the candidate's score in each competitive part of the examination. On any examination where test scores are to be weighted by relative significance or difficulty, notice to that effect shall be included in the examination announcement. At the discretion of the Personnel Officer, one or more examination components may be for qualifying purposes only.

Failure on the part of a candidate to pass any one phase of the examination shall result in that candidate being eliminated from consideration for employment. Except for tests designated as "qualifying only", candidates shall be required to attain a score of not less than seventy percent (70%) on each test. However, the minimum passing point need not be the arithmetic 70% of the total possible score, but may be an adjusted score based upon consideration of the difficulty of the test, the quality of competition and the needs of the City.

Where a given test, such as a written examination, is conducted prior to the interview phase and produces a relative score, that score shall not be made available to raters on interview boards.

#### **9.06 NOTIFICATION OF EXAMINATION RESULTS**

Following each phase of the examination, candidates, upon request, shall be advised of their satisfactory completion or failure of that test. Upon completion of the examination process, each candidate successfully completing all phases shall be placed on the appropriate employment list in accordance with Rule 10 of these Regulations. An applicant shall be advised of his final earned score upon his request.

#### **9.07 REVIEW OF WRITTEN EXAMINATION**

The Personnel Officer shall act promptly on any question raised by a candidate alleging an error in scoring or in the content of the questions. Should the Personnel Officer determine that any such claim is justified, scores applying to that test shall be recomputed accordingly and candidates so notified where affected by the recomputation.

No successive phase of the examination process shall be administered during this period of review.

Competitors shall have the right to inspect their written test papers under the supervision of the Personnel Officer.

No appeal regarding any phase of an examination may be made after five (5) working days from the date the results of that phase are mailed or otherwise directly provided to candidates.

All examination materials shall remain confidential and no copying of questions or answers from any paper made available for inspection shall be permitted. Any candidate violating this provision is subject to disqualification from the examination, disbarment from future examinations and, on promotional examinations, to disciplinary action. Decisions regarding disqualification and disbarment shall reside with the Personnel Officer or his designated representative; decisions regarding disciplinary action shall be processed in accordance with Rule 14 of these Regulations.

#### **9.08 EXAMINATION RECORDS**

Applications and related examination records shall be retained for the life of the employment list. Applications and examination records of appointees may be retained for a longer period as determined by the Personnel Officer.

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## RULE 10. EMPLOYMENT LISTS

### 10.01 PLACEMENT ON LIST

Candidates who successfully complete all components of the examination shall be placed on the appropriate employment list. Preparation, approval and maintenance of employment lists under these Rules shall be the responsibility of the Personnel Officer.

### 10.02 DURATION OF LISTS

All open-competitive and promotional lists shall remain in effect for one year unless exhausted or abolished within that period as provided below. The Personnel Officer may extend any such list for up to twelve months. The effective date of a list shall be that date on which it is approved by the Personnel Officer.

The Personnel Officer may abolish all employment list when reasons are provided in writing to the City Administrator which include either of the following two findings:

- a. The open employment list contains three or fewer eligibles who are available for and willing to accept employment, and a review of the qualifications of each eligible has been made in light of the employment needs of the City.
- b. The promotional list contains only one eligible who is available and willing to accept the promotion.

### 10.03 RE-EMPLOYMENT LISTS

A permanent or probationary employee laid-off in accordance with Rule 13.02 of these Regulations shall at his request, be placed on a reemployment list for his former classification. Where more than one employee in the same classification is laid-off, the names of such employees shall be placed on the list in accordance with the date of layoff.

Employees placed on such a list shall remain eligible for recall for a period of one year from the effective date of layoff. Recall shall be to the employee's former classification and be in the reverse order of layoff, with the last employee laid-off to be the first employee offered re-employment. At the sole discretion of the Personnel Officer, an employee may be recalled to a position in a different classification for which the employee is qualified and which does not carry a higher maximum rate of pay than the employee's former classification.

A former employee refusing re-employment shall automatically be removed from that list, except where the offer of re-employment is to a classification other than the one from which the employee was laid off. The failure of a former employee to respond to a recall notice within ten (10) days of its mailing shall be deemed a refusal of reemployment. Such notices shall be by certified mail directed to the last address of record. The Personnel Officer may extend or waive this response period where circumstances warrant.

The terms and conditions of restoring seniority and benefit credits upon re-employment are set forth in Rule 13.02 of these Regulations.

#### 10.04 REINSTATEMENT LISTS

A permanent or probationary employee who resigns in good standing pursuant to Rule 13.01 of these Regulations may, at his request, be placed upon a reinstatement list for his former classification. The final determination as to whether or not an employee is to be placed on a reinstatement list shall rest with the Personnel Officer.

Employees placed on such a list shall remain eligible for reinstatement for a period of one year from the effective date of resignation. Reinstatement may be to the employee's former classification or to a comparable classification which does not carry a higher maximum rate of pay and which the employee is qualified to perform as determined by the Personnel Officer. The Personnel Officer may extend the duration of the list for a maximum of twelve months where circumstances warrant.

An employee refusing reinstatement to either his former classification or to a comparable classification for which he is qualified, shall automatically be removed from the reinstatement list. The failure of a former employee to respond to a reinstatement notice within ten (10) days of its mailing shall be deemed a refusal of reinstatement. Such notices shall be by certified mail directed to the last address of record. The Personnel Officer may extend or waive this response period where circumstances warrant.

The terms and conditions of restoring seniority and benefit credits upon reinstatement are set forth in Rule 13.01.

#### 10.05 REMOVAL FROM LISTS

The Personnel Officer shall remove the names of eligibles from promotional and open-competitive employment lists:

- a. Upon written request of the eligible.
- b. Upon appointment to a permanent position in the class for which the list was established.
- c. Upon failure of the eligible to respond within ten (10) days of mailing to a notice of certification sent by certified mail to his last address of record.
- d. Upon the eligible having been refused appointment after two (2) certifications and employment interviews.
- e. Upon the eligible having waived certification or refused appointment two (2) times.

- f. Upon resignation, layoff or discharge from the City service, except as otherwise provided in Rule 13.
- g. On any of the grounds set forth in Rule 8.03 of these Regulations.
- h. For failure of the eligible to continue to meet any of the employment standards established for the class; or to successfully pass any phase of the examination process, such as a physical examination or background investigation, which is conducted following placement on the list.

Notification of removal, and the reasons therefore, shall be sent to the eligible by certified mail at his last address of record.

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## RULE 11. EMPLOYMENT APPOINTMENTS

### 11.01 FILLING OF VACANCIES

The department head shall promptly notify the Personnel Officer of any anticipated vacancy in a classified position. Following any administrative review or Council action as may be required by Rule 7.03, the Personnel Officer and department head shall determine the means of filling the vacancy.

With the approval of the Personnel Officer, the vacancy may be filled through a transfer or voluntary demotion of an employee. If appointment is not made in this manner, the vacancy shall be filled by appointment from existing employment lists in the following order:

- a. Re-employment.
- b. Promotional.
- c. Reinstatement.
- d. Open competitive.

If there are three or fewer eligibles on the applicable open employment list, or only one eligible on the applicable promotional list, the Personnel Officer may:

- a. Authorize appointment from among the available eligibles.
- b. Cancel the existing eligible list and declare an alternate list as appropriate in accordance with Rule 11.04.
- c. Cancel the existing eligible list and order a new examination. The Personnel Officer may also authorize a temporary appointment for the interim period as provided in Rule 11.03.

Where no eligible list exists, the alternatives set forth in paragraph (b) and (c) above shall also apply.

### 11.02 CERTIFICATION OF ELIGIBLES

When a vacancy is to be filled from either a promotional or an open-competitive list, the names of all eligibles on the appropriate list shall be certified to the department head by the Personnel Officer. Where both a promotional and an open-competitive list exist for the same classification, the complete promotional list shall be certified for an employment interview prior to the certification of any eligible from the open list unless the promotional list has only one name on it, in accordance with Rule 10.02.

The order in which eligibles are certified shall be in accordance with general groupings based upon the final average scores obtained in the examination process. Where an excessive number

of eligibles exists in relation to the number of present vacancies, the Personnel Officer shall have the discretion to certify fewer names than are on the complete list, provided that none of the aforementioned certification groupings shall be divided as a consequence.

Following interview and recommendation by the department head, the City Administrator may appoint from among those eligibles certified and interviewed. The City Administrator may decline to appoint from a current eligible list based upon the needs of the City.

#### 11.03 TEMPORARY APPOINTMENTS

The Personnel Officer may authorize temporary appointments to meet short-term employment needs such as periods of peak workload, illness or pending the establishment of a new eligible list.

Such appointments may be made from an appropriate employment list or from among other qualified persons where there is no active list or where there are insufficient eligibles directly available for appointment.

The period of temporary appointments shall not exceed 1,040 hours in a fiscal year unless extended by the City Council in accordance with Rule 6.04, c.

Where the temporary appointee is an employee in a Classified position, that employee shall remain covered by these Rules and shall receive the appropriate level of benefits applicable to the position to which the temporary appointment is made. Otherwise, temporary employees shall not be covered by these Rules and shall not receive any benefit other than those mandated by law. In no event shall a period of temporary appointment constitute satisfactory completion of any part of a probationary period for any class in the Classified Service.

#### 11.04 ALTERNATE EMPLOYMENT LISTS

In the absence of an existing employment list for a classification in which a vacancy exists, the Personnel Officer may authorize certifications from an active list for another classification having similar duties and employment standards. Appointments made in this manner shall be the equivalent in all respects to having appointed from a list for the classification in which the vacancy occurs.

#### 11.05 APPOINTMENT OF RELATIVES

The following policy shall govern the employment of family members of any official or employee of the City:

Employment of family members of City employees or appointed officials shall be permitted when the employment relationship does not involve direct supervision, potential conflicts of interest or security.

The provision of this Rule shall not affect personnel who are in the City's employment on the

effective date of the adoption of these Rules. For purposes of this Rule, "family members" shall include spouse, grandparent, grandchild, child, parent, brother or sister whether by blood, marriage or legal adoption.

#### 11.06 LATERAL TRANSFERS

A candidate who meets the desired minimum standards for the applicable classification and who is currently employed by another public agency in the same or closely related class may be placed on the appropriate open employment list by the Personnel Officer.

The Personnel Officer shall require that any such candidate successfully complete an oral interview, medical examination and background investigation. Additionally, the Personnel Officer may require completion of any other examination component set forth in Rule 9.03 of these regulations.

The Personnel Officer shall insure general job comparability and may request certification to this effect by an appropriate management official of the public agency.

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## RULE 12. PROBATIONARY PERIOD AND PERFORMANCE RATINGS

### 12.01 OBJECTIVE OF PROBATIONARY PERIOD

The probationary period shall be regarded as part of the testing process and shall be utilized for closely observing the employee's work, for securing the most effective adjustment of the employee to the new position and for rejecting any probationary employee whose performance does not meet the required standards of work.

### 12.02 DURATION

All original and promotional appointees to positions in public safety classifications shall serve a probationary period of twelve (12) months. All other appointees shall serve a probationary period of six (6) months.

The City Council may establish a probationary period of other than six or twelve months for a given classification.

### 12.03 EXTENSIONS

The Personnel Officer shall extend a probationary period on a day-for-day basis in instances where a probationary employee:

- a. Is on a leave-without-pay status, except where such leave is a result of illness or injury or is due to an authorized military leave pursuant to the provisions of the State Military and Veterans Code.
- b. Is on an unpaid leave status due to illness or injury for more than 30 consecutive days during the probationary period.

The probationary period may also be extended at the discretion of the Personnel Officer where time lost under Paragraph b., above, exceeds more than 30 cumulative days during the probationary period.

The probationer and his department head shall be advised in writing of any such extension. Such actions shall not be construed as disciplinary nor be subject to the grievance procedure set forth in Rule 15 of these Regulations.

### 12.04 EVALUATIONS

It shall be the responsibility of the probationer's department head and immediate supervisor to investigate carefully the employee's adjustment and performance to determine whether or not the employee is qualified for permanent status. Such evaluations may be conducted at any time, but must be completed and submitted to the Personnel Officer in the prescribed form at

approximately the following intervals:

- a. After the sixth month of employment for employees in public safety classifications; and after the third month for all other employees.
- b. After the eleventh month of employment for employees in public safety classifications; and after the fifth month of employment for all other employees.

The evaluations submitted pursuant to paragraph b. above shall include the department head's recommendation regarding retention. Earlier evaluations may also include such recommendations at the discretion of the department head. In all cases, the department's evaluations shall be discussed with the employee.

#### 12.05 REJECTION DURING PROBATIONARY PERIOD

During the probationary period, an appointee may be rejected at any time by the appointing authority without cause and without right of appeal. Notice of rejection shall be served in writing to the probationer, indicating that the employee has failed to satisfactorily complete the probationary period.

The City Administrator may, where circumstances warrant, apply the provisions of Rule 14 and Rule 15 to such rejections.

An employee rejected during the probationary period from a position in the Classified Service to which he has been promoted shall be reinstated to a position in the class from which he was promoted unless the rejection results in dismissal from the City service. Where rejection results in dismissal, the employee shall have the right to appeal such action in accordance with Rule 15 and shall be furnished advance notice pursuant to Rule 14.02.

#### 12.06 PERFORMANCE REPORTS - PERMANENT EMPLOYEES

Performance reports shall be completed by the department head and submitted to the Personnel Officer in conjunction with department review of employee eligibility for merit step increases pursuant to Rule 7.04 of these Regulations. Such reports shall be submitted within thirty (30) days prior to the employee's pay anniversary date in accordance with that Rule. In the event such a report is not completed, the affected employee shall receive the available merit increase. However, the performance review is still required.

The department head shall also be responsible for assuring completion of annual evaluations of all personnel having permanent status. The timing of these reports shall be determined by the Personnel Officer in consultation with the department head.

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## RULE 13. PERSONNEL ACTIONS: NON-DISCIPLINARY

### 13.01 RESIGNATION

An employee desiring to leave the Classified Service in good standing shall submit a letter of resignation to his immediate supervisor. This letter shall be submitted no later than two weeks in advance of the effective date of separation, except under extraordinary circumstances. The letter of resignation shall be forwarded to the Personnel Officer, together with a final evaluation of the employee's performance prepared by the immediate supervisor and approved by the department head.

Provided the employee's service at the time of separation was rated as at least satisfactory, the employee may be reinstated within one year of the effective date of resignation. Such reinstatement may be to a position in the employee's former classification or to one in a comparable classification which does not carry a higher rate of pay and which the employee is qualified to perform. The Personnel Officer may extend the duration of the twelve (12) month reinstatement period for a maximum additional twelve (12) months.

If an employee is reinstated as provided above, all service credits and other benefits accrued to the date of resignation shall be restored. In no event, however, will the City be required to restore credits for vacation or other benefits paid out at the time of separation. With respect to Police Officers, previously held seniority rights for vacation scheduling, shift bidding and layoff position are not restored.

Upon separation, the resigning employee's name shall be removed from all promotional eligible lists, but at the employee's request, shall be retained on any open-competitive eligible list subject to the provisions of Rule 9.05 of these Regulations.

### 13.02 LAYOFF

The City Council may abolish any position in the Classified Service due to lack of funds, work or need.

The layoff of employees resulting from the elimination of positions shall be governed by the following procedures:

- a. Layoffs shall be made from within the affected job classification in reverse order of total time in the Classified Service, including any period of probation, paid leave or active military leave. No service credits shall be earned during any leave of absence without pay. Where time in service is equal between two (2) or more affected employees, their performance evaluations shall serve as the determining factor.
- b. The order of layoff in the affected classification shall be:
  - i. Temporary employees.

- ii. Probationary employees.
- iii. Permanent employees.

c. Probationary and permanent employees in the Classified Service who, under paragraph a., are scheduled to be laid off shall receive at least forty-five (45) days' written notice to this effect.

In lieu of layoff, a permanent employee may elect transfer or demotion to a vacant position in the Classified Service which the City intends to fill and for which the employee is qualified. Such actions shall be governed by the terms of Rules 13.03 and 13.04, and in no event shall result in an employee being placed in a classification carrying a higher maximum rate of pay.

Within ten (10) days from the date layoff notices are issued, an employee who would otherwise be laid off may elect to displace an employee in a classification carrying a lower or the same maximum rate of pay; provided, however, that the displacing employee must have held permanent status in such classification and have greater time in the Classified Service than the employee being displaced.

A probationary or permanent employee displaced in accordance with this paragraph shall, in turn, be provided the same notice and displacement privilege as set forth in this paragraph.

d. Permanent and probationary personnel laid off in accordance with this Rule shall, at their request, be placed on a reemployment list as provided by Rule 10.03 of these Regulations. If an employee is re-employed from such a list, all service credits and other benefits accrued to the date of layoff shall be restored. In no event, however, shall the City be required to restore credits for vacation and other benefits paid out at the time of layoff.

At the time of layoff, the employee's name shall be removed from all promotional eligible lists, but, at the employee's request, shall be retained on open-competitive lists subject to the provisions of Rule 10.05 of these Regulations.

### 13.03 DEMOTION

Based upon an employee's request or upon an employee's demonstrated inability to perform the tasks of the position, the City Administrator may demote an employee to a position in a classification which carries a lower maximum rate of pay and which the employee is qualified to perform. Under these circumstances, the employee's new rate of pay shall be that step in the new salary range which most closely corresponds to, but does not exceed, the employee's former salary rate.

Where such action is based upon an employee's inability to perform the work of the current position, the demotion shall be effected in accordance with the provisions of Rule 14.02 and Rule 15 of these Regulations.

#### 13.04 TRANSFER

An employee may be transferred by the City Administrator from one position to another position in the same classification or in a comparable classification carrying the same maximum salary rate and which the employee is qualified to perform.

Advance written notice of this action, together with its effective date, shall be provided the employee and the affected managers.

#### 13.05 PROMOTIONS, DEMOTIONS AND RECLASSIFICATIONS

The rate of pay applicable to promoted or reclassified employees shall be governed by Rule 7.04 of these Regulations.

## RULE 14. PERSONNEL ACTIONS: INFORMAL/FORMAL

### 14.01 POLICY

The City of Millbrae encourages two-way communication between employees and supervisors in order to resolve work performance problems. Employees and supervisors are encouraged to first try an informal approach to resolve work-related issues.

There may be times when a person's work performance does not meet either the employee's, supervisor's, and/or management's expectations. When this occurs, the "progressive discipline" process should be initiated. Progressive discipline is defined as "an effective, reasonable system of disciplinary activities founded on the premise that actions are to be corrective rather than punitive; actions are progressively more severe; and the actions fit the nature of the problem".

### 14.02 ACTION BY CITY

Supervisors have the responsibility to initiate progressive disciplinary action for employees in the Classified Service, when performance falls below a defined standard and/or for misconduct as defined in these Regulations. Progressive discipline is usually implemented after other supervisory techniques, such as informal counseling, structured work programs, etc., have not proved successful in improving employee performance. A typical progressive sequence of disciplinary actions used by public agencies is as follows:

- a. Counseling
- b. Oral Reprimand
- c. Written Reprimand
- d. Suspension
- e. Reduction in grade/Demotion
- f. Discharge

As listed here, disciplinary actions taken may include an oral or written reprimand, suspension without pay for a set number of days, pay reduction, demotion, discharge or any combination of these or other appropriate penalties which will improve job performance. In addition to the disciplinary actions which may be taken by supervisors and/or department heads, the Personnel Officer/City Administrator may initiate disciplinary actions against any employee, up to and including discharge.

Disciplinary actions taken against an employee in the Classified Service, other than oral and/or written reprimands, must receive the prior approval of the department head, except under emergency circumstances which dictate immediate suspension of the employee by the supervisor. Should more stringent discipline be needed, the employee's supervisor shall immediately report the incident to the department head, who shall review discipline options with the supervisor.

Should it be determined that suspension/termination actions are appropriate, the department head may initiate a "Notice of Intent to Suspend/Terminate" for all suspension/termination discipline actions of 3 days or less. A copy of this notice shall be sent to the Personnel Officer/City Administrator.

For disciplinary actions involving suspensions of more than three (3) days, demotions, withholding of salary step increases, etc., the department head shall submit an initial disciplinary recommendation to the Personnel Officer/ City Administrator. The Personnel Officer/City Administrator shall review the case and make a determination concerning the appropriateness of the suspension and/or of further disciplinary action which, unless appealed, shall then be implemented.

Written notice of all disciplinary actions taken shall be submitted to the Personnel Officer/City Administrator for inclusion in the employee's personnel file. All non-probationary employees have the right to appeal disciplinary actions, other than oral and written reprimands, pursuant to Rule 15 of these Regulations.

For Police Officers, Government Code Section, 3.300 et seq. applies.

#### 14.03 NOTICE OF PROPOSED DISCIPLINARY ACTION

The provisions of this section shall apply to disciplinary actions involving discharge, demotion, reduction in pay or suspension in excess of three (3) working days. The Personnel Officer/City Administrator may extend the provisions of this Rule to other forms of discipline where, in his/her opinion, the circumstances warrant it. Except in emergency circumstances, the department head shall submit recommendations for the types of discipline covered under this section, together with supporting documentation, to the Personnel Officer/City Administrator, who shall approve or modify the proposed action.

Upon approval of the Personnel Officer/City Administrator, the department head shall provide the affected employee with written notice prior to taking disciplinary action, except where circumstances dictate the department taking immediate action to remove the employee from the work place. In such cases, written notice, as set forth below, shall be provided the employee within five (5) working days from the date of the action. In all cases, written notice of disciplinary action shall be served on the employee personally or by registered mail, with a copy of the notice to be placed in the employee's personnel file.

The written notice shall contain the following information:

- a. The disciplinary action proposed.
- b. The effective date of the action.
- c. The reason or cause for the action.
- d. An indication that the employee may inspect copies of all materials upon which is action is based.

- e. An indication that the employee has the right to respond, either orally or in writing, to the authority initially imposing the discipline.
- f. An indication that the employee has the right of formal appeal pursuant to Rule 15 of these Regulations.

Except in instances where disciplinary action must be taken immediately, the notice shall be provided the employee no later than five (5) working days before the disciplinary action is to be effective. Where immediate disciplinary action has been imposed, the employee has a right of appeal as outlined in Sections 15.02 and 15.03.

#### 14.04 RESPONSES TO NOTICES OF DISCIPLINE

An employee who is provided notice of proposed disciplinary action pursuant to Rule 14.03 shall have five (5) working days within which to respond to the authority who would initially be imposing the discipline. This authority shall be the department head, except for discipline involving suspensions of greater than 3 days, demotions, denial of salary step increases, etc., where the authority is the Personnel Officer/City Administrator.

Any such meeting between the employee and the aforementioned authority shall not be considered to be a formal appeal or evidentiary-type hearing. Its purpose is to permit the employee to examine the materials upon which the proposed action is based and to have an additional opportunity to respond to the charges.

Revised by City Council **October 10, 1989**

## **RULE 15. GRIEVANCE AND APPEALS PROCEDURE**

The provisions of this Rule shall not apply to Classified employees represented by any City employee organization which has a grievance and appeals procedure set forth in a current memorandum of understanding with the City nor to employees being rejected from probationary status.

### **15.01 DEFINITION**

A grievance is defined as any dispute involving a disciplinary action taken by the City in accordance with Rule 14; or a dispute involving the interpretation, application or alleged violation of:

- a. A current memorandum of understanding between the City and a recognized employee organization.
- b. These Rules and Regulations where the provision in dispute is within the scope of representation.

All ordinances, resolutions, rules and regulations, the subject of which is not specifically covered by the provisions of a memorandum of understanding shall be excluded from the grievance process. The excluded ordinances, resolutions, rules and regulations shall not be subject to the grievance procedures set forth in this section.

Should any dispute concern an agreement, rule or action which prescribes a separate appeal procedure, that dispute shall be excluded from this procedure.

### **15.02 INFORMAL AND FORMAL GRIEVANCES**

Individuals should first attempt to exhaust all informal methods (see Rule 14.01) prior to following through to more formal methods to resolve problems. Nothing within these procedures shall be construed to limit the right of an employee to informally discuss any employment problem with an immediate supervisor or designated manager.

### **15.03 INFORMAL GRIEVANCES**

An employee who has a grievance shall bring it to the attention of his immediate supervisor within five (5) working days of the occurrence of the act which is the basis for the dispute. Where the grievance concerns a matter of proper compensation or a matter which could not reasonably be discovered by the employee within five (5) working days of its occurrence, the grievance on such a matter must be raised within twenty (20) working days of the occurrence.

If the employee and the immediate supervisor are unable to resolve the grievance within five (5) working days of the date it is raised, the employee may refer it to the next higher level of supervision. If no such level exists, or the grievance cannot be resolved at this level, the dispute

may be referred to the department head.

Disputes involving disciplinary actions by supervisors, other than oral and written reprimands, taken pursuant to Rule 14 shall be initiated at Step 2 of this procedure.

#### 15.04 FORMAL GRIEVANCES

If the grievance cannot be resolved informally within ten (10) working days of the date it is first raised with the employee's immediate supervisor, the employee shall have the right to submit a formal grievance on a City Grievance Form. The formal grievance shall contain the following information:

- a. The name of the grievant.
- b. The grievant's department and specific work site.
- c. The name of the grievant's immediate supervisor.
- d. A statement of the nature of the grievance including date and place of occurrence.
- e. The specific provision, policy or procedure alleged to have been violated.
- f. The remedy sought by the grievant.
- g. The name of the individual or organization, if any, designated by the grievant to represent him/her in the processing of the grievance. However, in no event shall an employee organization other than the one which formally represents the position occupied by the grievant be designated as the grievant's representative.

##### Step 1

An employee dissatisfied with the response received through the informal procedures discussed in Rule 15.03 may submit a formal grievance to the next higher level supervisor or department head within five (5) working days of receipt of the decision reached through the informal process. The higher level supervisor or department head, upon receipt of the grievance, shall discuss the grievance with the employee. The higher level supervisor or department head shall render a decision in writing and notify the employee within five (5) working days after receipt of the grievance.

In those departments where there are several layers of supervision and the grievant is not satisfied with the decision of the higher level supervisor, the grievant may process a grievance request to the department head within five (5) working days after receipt of the supervisor's decision. The department head shall have five (5) working days to respond to the grievant with a written decision.

The time limits for this step may be extended/waived by mutual agreement of the parties. Failure on the part of the department head to comply with prescribed time limits or extensions thereto shall result in the grievance being moved to the next step of the procedure.

##### Step 2

If the employee is dissatisfied with the decision of the department head in step 1, the employee

may submit the grievance to the Personnel Officer/City Administrator within five (5) working days from receipt of the department head's response.

The Personnel Officer/City Administrator, or a designated representative, shall respond to the grievance in writing within the following time limits:

- a. For non-disciplinary matters: within ten (10) working days.
- b. For disciplinary matters: within twenty (20) working days.

Within either of these periods, the Personnel Officer/City Administrator or designated representative may, at their discretion, conduct an informal meeting involving the parties to the dispute.

In disputes involving disciplinary actions, the time period for filing grievances with the Personnel Officer/City Administrator shall be five (5) working days from the effective date of the disciplinary action.

The time limits for this step may be extended/waived by mutual agreement of the parties. Failure on the part of the Personnel Officer/City Administrator to comply with prescribed time limits or extensions thereto shall result in the grievance being moved to the next step of the procedure.

### Step 3

If the employee is dissatisfied with the decision of the Personnel Officer/City Administrator in Step 2, the grievant may appeal the grievance to advisory arbitration.

The request for advisory arbitration must be given in writing to the Personnel Officer/City Administrator or a designated City representative by the grievant within ten (10) working days from the date of the Step 2 answer.

An arbitrator may be selected by mutual agreement between the grievant's representative and the City's representative. Should the representatives fail to mutually agree on a arbitrator, they shall make a joint request to the California State Conciliation and Mediation Service, the American Arbitration Association, or some other source mutually agreed upon, for a list of five (5) qualified arbitrators. The parties shall each strike two (2) names from the list and the remaining person shall be accepted as the arbitrator. The first party to strike shall be determined by the flip of a coin.

The jurisdiction and authority of the arbitrator so selected and the opinions the arbitrator expresses will be confined exclusively to the interpretation of the express provision or provisions of the MOU or Personnel Rules at issue between the parties. The arbitrator shall have no authority to add to, subtract from, alter, amend, or modify any provisions of the MOU or Personnel Rules or impose any limitations or obligations not specifically provided for under the terms of the MOU or Personnel Rules.

The arbitrator shall be without power or authority to recommend any decision that would require the City or the administration to do an act prohibited by law. With regard to discipline, the arbitrator may recommend affirmation, reversal or modification of the disciplinary penalty. Any recommended backpay due as a result of modification or reversal shall be a net amount, deducting any income from other employment earned by the employee subsequent to the effective date of the disciplinary action. The arbitrator's decision shall be advisory to the City Council.

The fees of the arbitrator and the court reporter will be borne equally by the employee or employee association and the City.

### CONDUCT OF THE HEARING

The conduct of the advisory arbitration hearing shall be as follows:

- a. Court Reporter. The hearing shall be transcribed by a certified shorthand reporter.
- b. Rights of Employee. The employee shall attend any hearing, unless excused by the Hearing Officer and shall be entitled to:
  - i. be represented by counsel or any other person at such hearing;
  - ii. testify under oath;
  - iii. compel the attendance of other employees of the City to testify in his/her behalf;
  - iv. cross-examine all witnesses appearing against the employee;
  - v. impeach any witness;
  - vi. present such affidavits, exhibits and other evidence as the Hearing Officer deems pertinent to the inquiry;
  - vii. argue his/her case

The party attempting to substantiate the charges against the employee shall be entitled to the same privileges.

- c. Evidence. The hearing shall be informal and need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be admitted to any purpose but shall not be sufficient in itself to support a finding unless it would be admissible over objection in

civil actions. The rules of privilege and of official or judicial notice shall be effective to the same extent as in civil actions. Irrelevant and repetitious evidence shall be excluded. Oral evidence shall be taken only under oath or affirmation.

- d. Exclusion of Witnesses. The Hearing Officer may in his/her discretion exclude witnesses not under examination, except the employee and the party attempting to substantiate the charges against the employee, and their respective counsel. When hearing testimony on scandalous or indecent conduct, all persons not having a direct interest in the hearing may be excluded.
- e. Burden of Proof. The burden of proof shall be upon the party attempting to substantiate the charges.
- f. Findings and Decision. Upon completion of the hearing, Findings of Fact and Conclusions of Law shall be signed and filed by the Hearing Officer, which shall constitute his/her decision. Written findings and conclusions shall be submitted by the Hearing Officer to the Personnel Officer/City Administrator and to the employee or his/her counsel or representative.
- g. Transcript of Hearings. The fees and expenses of the Hearing Officer and the hearing shall be split between the parties. The cost of the services and expenses of the court reporter shall be split by the parties. Any other expenses shall be borne by the parties incurring them.
- h. Continuances. The Hearing Officer may grant a continuance of any hearing upon such terms and conditions as he/she may deem proper, including in his/her discretion the condition that the employee shall be deemed to have waived salary for the period of the continuance. Any request for continuance made less than 48 hours prior to the time set for the hearing will be denied unless good cause is shown for the continuance.

#### Step 4

If either the employee or the City is dissatisfied with the advisory decision of the arbitrator in Step 3, an appeal may be made to the City Council within ten (10) working days from receipt of the arbitrator's advisory decision.

The City Council may adopt the advisory decision in its entirety. In such case, no additional hearing is required and the Council need not review the hearing transcript. If the City Council does not adopt the advisory decision in its entirety, it may, at its discretion, hold an additional hearing. The hearing shall be conducted in accordance with the "conduct of hearing" rules set forth in Step 3 above.

If the City Council does not adopt the advisory decision in its entirety, it may modify or reject the advisory decision after reviewing and deciding the grievance on the hearing transcript record. The City Council shall issue a written decision setting forth findings of fact and conclusions of law. The majority decision of the City Council shall be final and binding.

With regard to disciplinary appeals, the City Council may affirm, reverse or modify the disciplinary penalty. Any back pay due as a result of modification or reversal shall be a net amount, deducting any income from other employment earned by the employee subsequent to the effective date of the disciplinary action.

#### 15.05 GENERAL CONDITIONS

- a. Any time limit set forth in Rule 15.04 may be extended by written agreement between the appropriate City representative and the grievant or the recognized employee organization representing him/her.
- b. Failure on the part of the grievant or his/her designated representative to comply with the time limits of Rules 15.03 or 15.04 or any extension thereto shall constitute a withdrawal of the grievance without further recourse to resubmittal under this procedure. Failure on the part of the City to comply with prescribed time limits or extensions thereto shall result in the grievance being moved to the next step of the procedure.
- c. Upon receipt of a written grievance, the City shall have the right to refuse to handle such grievance if the aggrieved party has not followed the steps outlined in these Rules and Regulations for processing a grievance.
- d. Except as provided in Rule 15.04 (g), the grievant shall be entitled to have a representative of his/her own choosing present at any grievance meeting with the City.
- e. Except as provided in Rule 15.04 (g), a representative of a recognized employee organization which represents the grievant's classification shall be entitled to be present at any hearing held in conjunction with Step 2, 3 or 4 of Rule 15.04.
- f. Nothing herein shall preclude the use of alternate means of resolving the grievance at Step 2 of Rule 15.04. Such means must be jointly agreed to by the Personnel Officer/City Administrator and the employee and the recognized employee organization which represents this classification. Decisions rendered in this manner shall be advisory only and shall be submitted to the Personnel Officer/City Administrator for approval, modification or reversal.
- g. Petitions for judicial review of administrative determinations by the City Council made under this Rule shall be governed by the provisions of Section 1094.6 of the California Code of Civil Procedure.
- h. Any employee may, at any time, present grievances to the City and have such grievances adjusted without the intervention of the recognized employee organization, as long as the adjustment is reached prior to arbitration and is not inconsistent with the terms of the MOU or Personnel Rules; provided that the City shall not agree to a resolution of the grievance until the recognized employee organization has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a

response.

- i. Employees shall have freedom from reprisal for use of the Grievance Procedures.

## RULE 16. EMPLOYEE RELATIONS REGULATIONS

### 16.01 STATEMENT OF PURPOSE

These Regulations implement Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq) entitled "Local Public Employee Organizations" by providing a uniform and reasonable basis for the conduct of employer-employee relations between the City and its employees and employee organizations.

Nothing contained herein shall be deemed to supersede the provisions of State law or City ordinances, resolutions and rules which establish and regulate a merit or civil service system or which provide for other methods of administering employer-employee relations.

### 16.02 DEFINITIONS

- a. APPROPRIATE UNIT: A unit of classes or positions established for representation purposes in accordance with Rule 16.09.
- b. CERTIFICATION: The process and act of recognizing an employee organization as the bargaining representative for an appropriate bargaining unit.
- c. CONFIDENTIAL EMPLOYEE: An employee who assists and acts in a confidential capacity to officials or officers who formulate, determine and implement management employee relations policies.
- d. DECERTIFICATION: The process and act of rescinding the rights of a recognized employee organization to act as the bargaining representative for an appropriate bargaining unit.
- e. EMPLOYEE: Persons employed by the City on a permanent full-time or permanent part-time basis excluding persons elected by popular vote or appointed to serve on boards or commissions by the City Council.
- f. EXCLUSIVE RECOGNITION: The rights accorded to a recognized employee organization certified in accordance with Rule 16.09 as the only organization entitled to represent employees on matters within the scope of representation.
- g. IMPASSE: Inability of the City and a recognized employee organization to reach, after negotiations and exchange of proposals, agreement on the terms of a memorandum of understanding or other items pertaining to the Meet and Confer process.
- h. MANAGEMENT EMPLOYEE: An employee having significant responsibility for formulating, administering or managing the implementation of City policies or programs.

- i. MANAGEMENT REPRESENTATIVE: The City Administrator, or any other management employee, person or organization duly designated as such by the City Council or by the City Administrator.
- j. MEDIATION: The efforts of an impartial third party functioning as an intermediary to assist the parties in reaching a voluntary resolution of an impasse.
- k. MEET AND CONFER: The mutual obligation of the City and its recognized employee organizations to meet promptly upon request of either party and continue for a reasonable period of time in order to freely exchange information, opinions, and proposals; and to endeavor to reach agreement on matters within the scope of representation. The process should include adequate time for the resolution of impasses as specified in Rule 16.12. This process does not require either party to agree to a proposal or to make a concession.
- l. PEACE OFFICER: An employee who is a full-time peace officer as that term is defined in Section 830.1 of the California Penal Code.
- m. PROFESSIONAL EMPLOYEE: An employee engaged in work requiring specialized knowledges and skills attained through completion of a recognized course of instruction.
- n. RECOGNIZED EMPLOYEE ORGANIZATION: An organization certified in accordance with Rule 16.09.
- o. SCOPE OF REPRESENTATION: All matters relating to employment conditions and employer-employee relations including, but not limited to, wages, hours and other terms and conditions of employment. However, the scope of representation shall not include consideration of the merits, necessity or organization of any service or activity provided by law or administrative order; nor shall it include any matter set forth in Rule 16.04 (City Rights).
- p. SHOWING OF INTEREST: The submission of evidence of employee support by employee organizations for the purpose of certification or decertification in the manner prescribed in Rules 16.09 and 16.10.
- q. SUPERVISORY EMPLOYEE: An employee having authority to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward or discipline other employees; or the responsibility to direct them; or to address their grievances; or to effectively recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine nature, but requires the use of independent judgment.

### 16.03 EMPLOYEE RIGHTS

Except as otherwise provided by law or by these regulations, City employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing. Employees shall also have the right to refuse to join or participate in the activities of such organizations and shall have the right to represent themselves individually in their employment

relations with the City.

Neither the City nor any employee organization shall interfere with, intimidate, restrain, coerce or discriminate against any employee in the exercise of these rights.

#### 16.04 CITY RIGHTS

The City retains all rights and functions except those which are expressly abridged or modified by terms of a current memorandum of understanding with a recognized employee organization.

#### 16.05 RIGHTS OF EMPLOYEE ORGANIZATIONS

Recognized employee organizations shall have the right, except as otherwise provided in these regulations, to represent employees within the appropriate bargaining unit concerning matters within the scope of representation. They shall likewise bear an obligation to provide full and fair representation to all employees in their representation unit irrespective of employee membership in the organization. Recognized employee organizations may establish reasonable restrictions and provisions regarding membership in and dismissal from the organization.

A reasonable number of employee representatives of recognized employee organizations shall be allowed reasonable time off without loss of compensation or other benefits when formally meeting with Management representatives on matters within the scope of representation. This shall not be construed to provide compensation and benefits to employees who attend or participate in such activities during their off-duty time.

#### 16.06 NOTICE TO RECOGNIZED EMPLOYEE ORGANIZATIONS

The City shall give reasonable advance written notice to each affected, recognized employee organization of any action directly relating to the scope of representation proposed for adoption by the City Council. Each affected organization shall be provided an opportunity to meet with the City Council on the proposed action.

Where circumstances dictate immediate action by the Council which prevents advance notice to employee organizations, the Council shall furnish such notice and opportunity to meet as soon as possible following its action.

#### 16.07 NOTICE TO CITY

Each recognized employee organization shall promptly notify the Personnel Officer in writing of any change in its officers, representatives, affiliation status or of any other information contained in its petition for recognition filed pursuant to Rule 16.09. Each organization shall also provide the City as often as necessary a list of the officers and/or represented employees who are authorized by the organization to speak for it and to bind the organization in matters of employee relations.

#### 16.08 CRITERIA FOR BARGAINING UNIT DETERMINATION

No employee organization shall be certified or decertified without a final determination having been made on the appropriateness of the bargaining unit(s) concerned.

Such determination shall result in the broadest feasible grouping of classes and positions which share an identifiable community of interest and which do not serve to cause undue fragmentation of classes or proliferation of units. Factors to be considered in assessing community of interest shall include similarity of job duties, qualifications, compensation and general working conditions. These additional criteria shall also apply:

- a. The proposed unit's affect on and compatibility with efficient operation of the City, the delivery of its services to the community and its organizational structure.
- b. The history of representation in the City and in similar types of public and, where appropriate, private employment.
- c. The proposed unit's affect on the City's classification and compensation structure and on the bargaining relationship of dividing a single classification or a series of related classifications among two or more bargaining units.

Irrespective of the foregoing provisions:

- a. No unit shall be deemed appropriate solely on the basis of the extent to which the employees concerned have organized.
- b. In the establishment of any appropriate unit after the adoption of these rules, management, supervisory and confidential employees shall not be allocated to a bargaining unit which also includes non-management, non-supervisory and non-confidential employees; nor shall they represent any employee organization which represents non-management, non-supervisory or non-confidential employees. This paragraph shall not otherwise serve to limit the rights set forth in Rule 16.03.
- c. Professional employees shall not be denied the right of separate representation from non-professional personnel; provided, however, that nothing herein shall serve to create an automatic right to separate representation of employees in one profession from those in other professions.
- d. Full-time peace officers, as that term is defined in Section 830 of the California Penal Code, shall have the right of separate representation from non-peace officers provided that the employee organization seeking representation rights for such employees is composed solely of peace officers and is not subordinate to any other organization.

#### 16.09 RECOGNITION OF EMPLOYEE ORGANIZATIONS

- a. Timing of Petitions: A petition seeking to modify a unit established pursuant to this Section or to decertify the existing bargaining representative shall only be valid if

filed between 180 days and 150 days prior to the expiration date of an approved memorandum of understanding which covers the subject bargaining unit.

Where no memorandum of understanding is in effect for the subject unit or group of employees, all petitions must be filed in the month of January.

- b. Content of Petitions: An employee organization seeking recognition shall file with the Personnel Officer a petition containing the following information and documentation:
  - i. Name and address of the employee organization.
  - ii. Names and titles of its officers.
  - iii. Names and titles of representatives who are authorized to speak on behalf of the employee organization in dealing with the City.
  - iv. A statement that the employee organization has, as one of its primary purposes, the representation of employees in their employment relations with the City.
  - v. A statement as to whether the organization is a chapter, local or affiliate of any employee organization and, if so, the name and address of such other organization.
  - vi. A copy of the employee organization's constitution and bylaws.
  - vii. A designation of not more than two individuals, and their addresses, to whom notice sent by regular mail service will be deemed sufficient notice to the organization for any purpose.
  - viii. A statement that the organization has no restriction on membership based on race, color, creed, sex, national origin, political affiliations or marital status.
  - ix. A statement that the organization is aware of and agrees to abide by these rules and regulations, subject to its right to challenge by court action any provision it deems to be invalid or unreasonable.
  - x. The specific job classifications included in the proposed unit.
  - xi. Submission of evidence that at least 30% of the employees in the proposed unit have designated the employee organization as their representative for employee relations purposes. This showing of interest can take the form of authorization cards, petitions or dues deduction authorizations. In all cases, these must be signed and personally dated by the individual employee within ninety (90) days of the date the petition for recognition is filed.
  - xii. A request that the Personnel Officer grant exclusive recognition to the

organization as the bargaining representative for the proposed unit.

- c. Action by City: The Personnel Officer shall determine if the petition meets all requirements of this Section and if the proposed unit is an appropriate one in accordance with the provisions of Rule 16.08. Verification of showing of interest furnished by the organization shall be based upon the City payroll register as of the period immediately preceding filing of the petition.

Written notice of the petition's acceptance or rejection shall be furnished the petitioning organization within fifteen (15) days of its receipt by the Personnel Officer. Where the petition has been accepted, written notice shall also be furnished all employees whose classes are to be included in the bargaining unit and all other recognized employee organizations of the City. No further action on the petition shall be taken by the Personnel Officer for thirty (30) days from the date such notice is provided.

If no challenging petition, as provided in paragraph d. below, is filed within the aforementioned thirty-day period, the Personnel Officer shall order a representation election in accordance with paragraph f. of this Section.

Where the Personnel Officer determines that either the petition is defective or that the proposed unit is inappropriate, he shall deny it and so notify the petitioning employee organization. Such notices shall be in writing and shall specify the causes for rejection.

If grounds for rejection were due to technical deficiencies in form, the organization may amend its petition accordingly, provided the amended petition is received by the Personnel Officer by the end of the appropriate filing period as set forth in paragraph a of this Section.

If grounds for rejection were due to inappropriateness of the bargaining unit, the Personnel Officer shall, at the request of the employee organization, consult with it on this matter. If consultation produces no change in the initial determination of the Personnel Officer, the employee organization may appeal this decision pursuant to paragraph e. of this Section.

- d. Where the challenging petition seeks a unit other than that specified in the original petition or that stipulated to by the petitioning organization and the City, the Personnel Officer shall conduct a hearing involving all petitioning organizations in order to determine the more appropriate unit. Within ten (10) days following the conclusion of such a hearing, the Personnel Officer shall determine the appropriate unit and so notify the affected employee organizations and all employees in classes to be included in the bargaining unit.

This determination may be appealed by any petitioning organization as provided below.

- e. Appeals: A petitioning employee organization dissatisfied with the Personnel Officer's determination of the appropriate bargaining unit may, within fifteen (15) days of

notification of that official's decision, request the intervention of the California State Conciliation Service for mediation or for recommendation for resolving the dispute pursuant to Government Code Sections 3507.1 and 3507.3. It is understood that the recommendation for resolving the dispute would be limited to the recommendation of an appropriate dispute resolution procedure.

- f. Election Procedure: Upon final determination of the appropriate bargaining unit and of the eligible employee organization(s), the Personnel Officer shall arrange for a secret ballot election to be conducted by the California State Conciliation Service.

The ballot shall include all employee organizations who filed valid petitions in accordance with this Section, and also a choice of "no organization". For purposes of decertification elections, the incumbent employee organization shall also be placed on the ballot unless it waives this right in writing.

Employees eligible to vote shall be those who were employed in a position in the appropriate unit as of the last pay period preceding the election.

The employee organization receiving a numerical majority of the valid votes cast shall be certified as a recognized employee organization and be granted exclusive recognition for the appropriate bargaining unit. In the event there are only two (2) choices on the ballot, and the voting results in a tie, no organization shall be certified. Where the ballot contains more than two choices and no organization receive a majority of the valid votes cast, a run-off election shall be arranged. The ballot for this election shall include the two choices which received the greatest and second greatest number of valid votes in the initial election. A tie vote in the run-off election shall also result in no organization being certified.

The results of the election(s) shall be certified by the Personnel Officer to the City Council and to the petitioning employee organizations. Employees in the appropriate bargaining unit shall also be notified of the election results.

#### 16.10 DECERTIFICATION OF RECOGNIZED EMPLOYEE ORGANIZATIONS

An employee organization or employees represented by a recognized employee organization may file a petition seeking the decertification of that recognized employee organization on the grounds that it no longer represents the majority of employees in the appropriate bargaining unit.

The timing of the petition shall be governed by Rule 16.09. However, in no case, shall a decertification petition be filed within twelve (12) months from the date the recognized employee organization was certified, nor shall two (2) representation elections be held affecting the same unit, or portions thereof, within a twelve-month period.

All decertification petitions shall specify the bargaining unit and incumbent employee organization at issue; demonstrate a 30% showing of interest on the part of employees in the subject bargaining unit; and an allegation that the organization no longer represents a majority of

the employees in the appropriate bargaining unit. In addition, an employee organization seeking certification as a recognized employee organization for the unit in question, shall include all information required in Rule 16.09, paragraph b.

The City shall have the right to request a representation election if it has reasonable and objective grounds for believing that a recognized employee organization no longer represents the majority of employees in an appropriate bargaining unit. Such grounds may include, but not be limited to, substantial modifications in the classification plan resulting in the elimination or reallocation of classes once in the bargaining unit.

Except in extraordinary circumstances, the City's request shall be subject to the timing requirements of this Section and of Rule 16.09 and shall only be acted upon with the prior approval of the City Council.

The procedures set forth in Rule 16.09 shall govern matters concerning appropriateness of a proposed unit, notification of the parties, waiting periods, appeals and elections. Further, an employee organization desiring to intervene in the proceedings shall be subject to the provisions of Rule 16.09, paragraph d. concerning Challenging Petitions.

#### 16.11 MAINTENANCE OF BARGAINING UNITS

When a new classification is created or an existing one reclassified or eliminated, the Personnel Officer shall amend the class composition of the respective bargaining unit(s) accordingly and shall so notify the affected, recognized employee organization(s) in writing.

An employee organization disagreeing with such an allocation, reallocation or deletion may request a meeting with the Personnel Officer for the purpose of clarifying the determination and discussing any disagreement between the parties. If this meeting fails to resolve the issue, the employee organization may appeal the Personnel Officer's decision as provided in Rule 16.09, paragraph e.

#### 16.12 IMPASSE PROCEDURE

If the meet and confer process has reached an impasse as defined in Rule 16.02, either party may initiate the Impasse Procedure by filing with the other party a written request for an impasse meeting, together with a statement of its position on all disputed issues. An impasse meeting shall then be scheduled by the Personnel Officer. The purpose of such an impasse meeting shall be to review the positions of the parties in a final effort to resolve such disputed issues or, if the dispute is not resolved, to discuss utilization of alternative methods of dispute settlement. Such methods would include:

- a. Mutual agreement to submit the impasse to mediation. All mediation proceedings would be conducted in closed session, with the mediator to make no public recommendations.
- b. A determination by the City Council after a hearing on the merits of the dispute.

- c. Any other dispute-settlement procedure to which the parties mutually agree.

If the parties agree to submit the impasse directly to the City Council or if it assumes jurisdiction over it for any other reason, the City Council shall take such action regarding the impasse as it, in its discretion, deems appropriate.

Any action taken by the City Council shall be final.

#### 16.13 PROHIBITED ACTIVITIES

No employee organization shall encourage participation in, nor shall any employee participate in any strike, picketing, slow down, sick-in or any other form of concerted activity against the City; nor shall any employee recognize any picket line in the course of his duty, nor in any way be involved in the reduction or denial of City services to any premises because of a labor dispute.

#### 16.14 DUES DEDUCTIONS

Any recognized employee organization may have the regular dues of its members deducted from the employee's paychecks and other mutually agreed upon deductions; provided, however, that such dues deduction and other deductions shall be made only upon the written authorization of the individual employee. The amount of dues deducted shall be remitted by the City to the officer designated in writing by the President of the organization as the person authorized to receive such funds every month. The President of the organization shall notify the City in writing as to the amount of such dues uniformly required of its members.

Authorization, cancellation or modification of dues deduction shall be made upon forms provided and approved by the City. The voluntary payroll deduction authorization will remain in effect until employment with the City is terminated or until cancelled, or the employee requests, in writing, that dues deduction be discontinued due to withdrawal from the organization.

The organization shall refund to the City any amount paid to it in error upon presentation of supporting evidence.

The employee organization shall defend, save, indemnify and hold harmless the City and its officers, agents and employees from any and all liabilities and damages from any cause arising from or connected with and on account of dues deductions made on behalf of and received by the organization.

Should the City be required to defend against any such claim, the employee organization shall reimburse the City for the services of its legal counsel and for related costs.

#### 16.15 ADMINISTRATION AND AMENDMENTS

The Personnel Officer shall be responsible for establishing such rules and procedures as are necessary to implement and administer these regulations after consultation with affected, recognized employee organizations.

The Personnel Officer shall also be responsible for recommending for enactment by the City Council such amendments as are necessary to insure that these regulations remain in compliance with applicable law, judicial interpretations and sound employer-employee relations practices. Such amendments shall be adopted as necessary following prior notice and discussion with affected, recognized employee organizations.

#### 16.16 CONSTRUCTION

- a. Nothing in these regulations shall be construed to deny any person or employee the rights granted by Federal and State law.
- b. The rights, powers and authority of the City Council in all matters, including the right to maintain any legal action, shall not be modified or restricted by these regulations.
- c. The provisions of these regulations are not intended to conflict with the provisions of Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500, et seq).

## RULE 17. ATTENDANCE AND LEAVES

### 17.01 ATTENDANCE

Employees shall be in attendance at their work in accordance with rules and policies regarding hours of work, leaves and related conditions. Department heads shall be responsible for maintaining employee attendance records which shall be reported to the Personnel Officer in the form and at the times prescribed by him.

Except in extraordinary circumstances, an employee who is unable to report for work at the beginning of his established shift shall notify his immediate supervisor in accordance with departmental regulations. Such regulations may reasonably vary due to operational considerations, but shall require that notification be provided by the employee prior to or shortly after the beginning of the employee's work shift.

Failure to provide this notification may result in the unreported period of absence for the first day being considered as leave without pay. An employee who is absent without notification for more than one work day may be subject to disciplinary action, including discharge, pursuant to Rule 14 of these Regulations.

In order to insure employee availability for the performance of emergency services, the City Administrator may establish reasonable response time for employees to report to work after call to duty under emergency conditions. This response time may vary by operating unit, but shall not serve to require employees to reside within City boundaries.

### 17.02 HOURS OF WORK

The normal work week for employees in full-time positions in the Classified Service shall consist of five consecutive eight-hour days, Monday through Friday. The City Administrator shall have the authority to establish work weeks and schedules other than the above based upon operational needs.

### 17.03 EXEMPTION FROM COVERAGE

The terms and conditions of leaves of absence, with or without pay, shall be controlled by current memoranda of agreement between the City and its recognized employee organizations. Where such an agreement is silent, the provisions of the rules and regulations to follow shall control.

### 17.04 VACATIONS

All full-time personnel in non-public safety positions shall accrue annual vacation leave as provided below.

Years of Continuous Service	Working Days Per Year
First 5 years	12 days
After 5 years	16 days
After 12 years	17 days
After 14 years	18 days
After 15 years	19 days
After 16 years	20 days
After 17 years	21 days
After 18 years	22 days
After 19 years	23 days

The above schedule shall also apply to uniformed Fire Department personnel who work 40-hour weeks.

All full-time uniformed personnel in the Fire Department, and all full-time sworn personnel in the Police Department, shall accrue annual vacation leave as provided by Memorandum of Understanding.

Part-time employees in the Classified Service shall be provided vacation and other paid leave benefits in accordance with Rule 17.13 of these Regulations.

Employees shall be required to serve one year of continuous service in order to be eligible for the complete annual vacation allotment. However, at the end of six months of continuous service, employees other than fire suppression personnel shall be credited with, and may use, seven days of accrued vacation.

The department head and employee shall schedule the times at which vacation leave is to be taken with due consideration being given to the desires of the employee and the operational needs of the department.

Based upon operational needs or employee preference, the use of vacation leave earned in a given year may be deferred to the following year. However, the total amount of vacation which may be accumulated, including current year accrual, shall not exceed thirty days for general (non-public safety) employees. Deferments of accrued vacation as provided above shall have the written approval of the department head and the City Administrator. Notice of deferments shall be provided the Personnel Officer following approval.

In the event a City holiday falls during the period of an employee's vacation leave, that day shall not be charged against vacation accrual and the leave shall be extended accordingly. Where an illness or injury requires hospitalization of an employee during his vacation leave, the days of hospitalization shall not be charged against the employee's vacation accrual unless the employee has insufficient amounts of accrued sick leave.

All employees shall, upon separation for any reason, be entitled to receive payment at their current base straight-time rate of pay for all vacation credits earned, but not taken as of the effective date of separation. However, no such payment shall be made for vacation leave credited in advance of being earned.

#### 17.05 SICK LEAVE

Employees in the Classified Service shall be provided paid sick leave as set forth below. These benefits shall not be considered as a right which an employee may use at his discretion, but shall be allowed only where justified by necessity and actual personal sickness or disability. Unwarranted use of the benefits provided under this Rule shall subject the employee to disciplinary action pursuant to Rule 14 of these Regulations.

- a. Accrual. Full-time employees in the Classified Service shall accrue sick leave credits at the rate of one workday per calendar month of service or fraction thereof; except that the rate of accrual for fire suppression personnel shall be twelve hours for each calendar month of service or fraction thereof.

Sick leave earned in accordance with this Rule may be accumulated without limitation.

- b. Sick Leave Usage. Accrued sick leave may be used in case of a bona fide illness or injury to an employee; and, under certain circumstances, for critical illness in the immediate family as provided in Paragraph (c) below. Sick leave credits may also be used for medical and dental appointments in accordance with Paragraph (d) of this Rule.

In order for sick leave to be granted, an employee who, because of illness or injury, is unable to report to work, shall so notify his immediate supervisor in accordance with departmental regulations or policies.

Failure to provide such notification without good reason may result in that day of absence being treated as a leave of absence without pay. The determination in this regard shall be made by the department head. Where the period of absence due to illness or injury is not known at the outset, it shall be the responsibility of the employee to remain in contact with his immediate supervisor.

The employee may be required, when absence is for more than one work day, to file a physician's certificate or a personal affidavit with the Personnel Officer, stating the cause of absence.

Sick leave may not be used in increments of less than one hour and usage shall be charged to the employee's balance on an hour-for-hour basis.

- c. Family Illness. Employees having available sick leave to their credit may utilize such credits when an emergency occurs due to the illness of a member of the employee's immediate family. Up to one day of accrued sick leave may be used for this purpose in any one instance except on approval of the City Administrator.

"Immediate family" shall be defined as grandparent, parent, spouse, child, brother or sister, whether by marriage, blood or legal adoption.

The City Administrator may authorize the use of additional amounts of sick leave for this purpose and may also permit the use of such leave for other than the family members defined above. The approval of such extensions shall be based upon hardship or unusual circumstances and shall require the prior approval of the City Administrator.

- d. Medical/Dental Appointments. Accrued sick leave may, with department head approval, be used for medical and dental appointments of the employee where it is unfeasible to schedule them on the employee's own time.
- e. Payment For Accumulated Sick Leave. Upon retirement, death or abolishment of position, employees having unused accumulated sick leave shall be paid therefor in an amount equivalent to twenty-five percent (25%) of their daily wage rate for each day of unused sick leave for the first 200 days of such unused leave. Such payments for fire suppression personnel shall be based upon the 56-hour rate and be paid for the first 2,240 hours of unused sick leave.

#### 17.06 BEREAVEMENT LEAVE

In the event of the death of a member of an employee's immediate family as defined in Rule 17.05(c), the employee shall be granted up to three working days of paid bereavement leave. Fire suppression personnel shall be granted up to 1.5 workshifts for this purpose. Such leave shall not be charged against the employee's accrued sick leave.

The City Administrator may permit additional time off for this purpose which shall be charged against the employee's accrued sick leave. The City Administrator may also permit the use of such leave for other than the family members defined in Rule 17.05(c).

#### 17.07 HOLIDAYS

- a. Coverage. The provisions of this Rule shall apply to all full-time employees in the Classified Service except those who are unable to observe City holidays due to the nature of their work schedules. Compensation of employees who are unable to observe such holidays shall be governed by Paragraph (c) of this Rule.
- b. Holidays Observed. The City shall observe the following holidays:

New Year's Day (January 1)

Lincoln's Birthday (February 12)

Washington's Birthday (Third Monday in February)

Memorial Day (Last Monday in May)

Independence Day (July 4)

Labor Day (First Monday in September)

Admission Day (September 9)

Veteran's Day (November 11)

Thanksgiving Day (Fourth Thursday in November)

Friday After Thanksgiving

Christmas (December 25)

Every day appointed by the Governor of the State or the President of the United States as a memorial, public fast, thanksgiving or holiday when affirmed by the City Council.

When any of the aforementioned holidays falls on a Sunday, the following Monday shall be observed as the holiday. When a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday.

- c. Compensation In Lieu Of Holiday Observance. Sworn Police personnel who are unable to observe City holidays shall be paid eight hours at the straight-time rate of pay for each such holiday whether it is worked or not.

Fire suppression personnel who are unable to observe City holidays shall be paid twelve hours at the straight-time rate of pay for each such holiday whether it is worked or not.

Pay in lieu of holiday observance shall include as applicable, educational incentive pay, longevity pay and premium pay.

#### 17.08 JURY DUTY AND COURT APPEARANCE

Employees who are called to serve on jury duty shall be given leave with pay provided that the employee immediately notifies his department head upon receipt of the summons, and that any payment received by the employee for serving as a juror shall be remitted to the City except for subsistence and travel payments.

An employee who is subpoenaed to appear in court in an official capacity shall be allowed to do so without loss of compensation. An employee subpoenaed to appear in court in a matter unrelated to his employment shall be permitted to use accrued vacation and/or compensatory time off.

## 17.09 MATERNITY LEAVE

Maternity leaves of absence shall be granted in accordance with applicable provisions of Federal and State law.

## 17.10 MILITARY LEAVE

Military leave shall be granted in accordance with the provisions of the State Military and Veterans Code. An employee requesting leave for this purpose shall provide the department head 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 may determine when the leave is to be taken and may modify the employee's work schedule to accommodate the request for leave.

## 17.11 ADMINISTRATIVE LEAVE

The City Administrator may place an employee in the Classified Service on administrative leave where, in his judgment, such action would be in the best interests of the City service. This leave shall be with pay. Its application may include, but not be limited to, situations where disciplinary matters are pending.

## 17.12 OTHER LEAVES OF ABSENCE

The City Administrator may grant a permanent employee a leave of absence without pay or benefits for a definite period not to exceed one (1) year. The request for leave, and the reasons therefore, shall be submitted to the City Administrator in writing together with the department head's recommendation. The City Administrator's approval or denial of such request shall be in writing.

On expiration of the approved leave, the employee shall be reinstated to his former position or to a vacant position in a comparable class if the former position is abolished during the leave and the employee otherwise would not have been laid off. The City Administrator may recall the employee from leave prior to its expiration should unforeseeable changes in operating requirements occur.

Failure on the employee's part to return to work on the date originally scheduled or subsequently modified shall be considered as a resignation.

## 17.13 ELIGIBILITY FOR BENEFITS: PERMANENT PART-TIME EMPLOYEES

Permanent part-time employees in positions in the Classified Service shall be eligible for the paid leave benefits of this Rule on a pro-rata basis in relationship to the number of hours per week the position requires.

## 17.14 LEAVES OF ABSENCE WITHOUT PAY: AFFECT ON SENIORITY AND BENEFITS

Except as provided under State law for employees on military leaves of absence, employees on

leaves of absence without pay in excess of sixty days shall not accrue service or leave credits, nor shall the City maintain contributions toward group insurance coverages. During the period of such leaves, all service and leave credits shall be retained at the levels existing as of the conclusion of the first sixty days of leave. An employee may elect to continue, at his own expense, group medical insurance coverages.

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## **RULE 18. SPECIAL CONDITIONS**

The City Administrator may suspend any provision or provisions of these Rules and Regulations under emergency circumstances, which in his judgment are of such a nature as to threaten to endanger tile public health and safety or threaten to seriously impair tile City's ability to deliver essential services.

The City Administrator shall directly report such action to the City Council with justifications.

The City Administrator shall meet and confer with recognized employee organizations, if requested, on such changes which are within the scope of representation within ten (10) working days, if possible.

In case of absence or disability of the City Administrator, the City Council may designate a duly qualified person to perform the duties of the City Administrator as provided in the Millbrae Municipal Code.

#### **RULE 19. SEVERABILITY**

If any provision of these Rules, or the application of such provision to any person or circumstance, shall be held invalid, the remainder of these Rules, or the application of such provision to persons or circumstances other than those to which it is held invalid, shall not be affected thereby.