

THE CODE OF THE CITY OF MONTEREY, CALIFORNIA

CHAPTER 25

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Article 25-1 Purpose, Scope and Administrative Provisions

25-1.01 Authority for Rules and Regulations

These Rules and Regulations are established in accordance with Article I, Section 1.4 of the City Charter and are Chapter 25 of the City Code which constitute the Personnel Ordinance.

25-1.02 Intent of Rules and Regulations

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

- a. The establishment of an equitable and uniform procedure for dealing with personnel matters; and
- b. The recruitment and retention to the City service of the most competent personnel available; and
- c. The assurance that appointments of personnel shall be based upon merit and fitness; and
- d. To assure no recruitment, examination, or personnel transaction shall be influenced in any manner by consideration of race, sex, color, marital status, ancestry, national origin, age, disability, or political or religious opinion or affiliation, unless determined to be a bona fide occupational

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requirement.

25-1.03 Application of Rules and Regulations

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, or by contract between the employer and employee.

25-1.04 City Rights

The City retains all of its power and authority to manage municipal services and the work force performing these services including, but not limited to, those outlined in Section 16.04 of these Rules.

25-1.05 Memorandums of Understanding

These Personnel Rules and Regulations are not intended to supersede any provisions of executed memorandums of understanding; therefore, if any provision in these Rules differs from that contained in a memorandum of understanding, the memorandum of understanding shall prevail and the corresponding provision of the Rules shall not apply to the affected recognized employee organization.

25-1.06 Duties and Authority

The City Manager and City Attorney have primary responsibility for appointment and removal of officers and employees within their respective chain of command and authority as established in the City Charter. The City Manager (and City Attorney) within his span of control shall be responsible for administering these Rules and Regulations, except as appropriately delegated to subordinate officers and employees. All duties and authority of the City Manager established in these Rules and Regulations shall apply equally to the City Attorney in administering these Rules and Regulations to employees of the City Attorney's Office unless obviously inapplicable.

25-1.07 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.

Article 25-2 Definition of Terms

25-2.01 Allocation: The assignment of a position to its proper job classification

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in accordance with its duties and levels of responsibility.

25-2.02 Anniversary Dates

For the purpose of salary administration and performance evaluations, each employee shall have an Anniversary Date which shall be determined as herein provided.

- a. The Anniversary Date for a new employee shall be one (1) year from the first day of the pay period following the first day of employment in a regular position. If a new employee begins work on the first day of a pay period, then the Anniversary Date shall be one (1) year from this date.
- b. The Anniversary Date for an employee who is promoted shall be one (1) year from the first day of the pay period following the first day of the promotion. If the employee is promoted on the first day of the pay period, the Anniversary Date shall be one (1) year from this date.
- c. The Anniversary Date for an employee who is demoted shall be one (1) year from the first pay period following the first day of demotion. If the employee is demoted on the first day of a pay period, the Anniversary Date shall be one (1) year from this date.
- d. In each of the provisions above, all subsequent Anniversary Dates shall occur annually from the Anniversary Date established by the appropriate application of the above provision.

25-2.03 Appointment: The offer and acceptance of a position in the Classified Service pursuant to Rule 9 of these Regulations.

25-2.04 Appointment - Types

- 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 candidate or, where no employment list exists, a qualified person to fill a position in the Classified Service for a limited period of time.

25-2.05 Candidate: An applicant accepted for participation in the examination process.

25-2.06 Certification: The submission of names of eligible candidates from an

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appropriate list or lists to a department head by the Personnel Director.

- 25-2.07 City: The City of Monterey.
- 25-2.08 Classification: 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.
- 25-2.09 Classification Specification: The official description of a job classification including: the title; a statement of duties and levels of responsibility; and standards of employment, such as desired or required training, experience, licenses, registrations, knowledge, skills and abilities.
- 25-2.10 Classified Service: The Classified Service shall consist of all employees who have been appointed to regular full-time or regular part-time positions except:
- a. The City Manager.
 - b. The City Attorney and staff.
 - c. All other positions designated as Executive Management in the City's annual salary schedule.
 - d. All elected officials and members of appointed boards, commissions and committees.
 - e. All temporary personnel whether employed directly by the City or retained under contract for services, except as provided in the contract for services.
 - f. All volunteer personnel.
 - g. Library employees.
- 25-2.11 Classification Plan: The arrangement of positions in classes, together with the title for and specifications describing each classification.
- 25-2.12 Days: Calendar days unless otherwise indicated.
- 25-2.13 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; or an action entailing a reduction in the salary step assigned an employee for disciplinary purposes.

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- 25-2.14 The following are, for purposes of definition, the department heads for the City of Monterey.
- a. City Manager
 - b. Assistant City Manager
 - c. City Attorney
 - d. Community Development Director
 - e. Public Works Director
 - f. Finance Director
 - g. Fire Chief
 - h. Library Director
 - i. Recreation and Community Services Director
 - j. Personnel and Employee Relations Director
 - k. Police Chief
 - l. Public Facilities Director
 - m. City Clerk
 - n. Deputy to City Manager
- 25-2.15 Discharge/Dismissal: Removal of an employee from City employment.
- 25-2.16 Eligible Candidate: Any person on an open competitive or promotional employment list for a given classification who meets all published requirements.
- 25-2.17 Employment Date: The employment 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 date shall remain unchanged and be controlling for purposes of establishing total time in the Classified Service and for establishing eligibility for service-related benefits such as vacation or sick leaves. Any time served as a temporary or regular part-time employee shall not be credited for service-related benefits such as vacation and sick leaves.

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- 25-2.18 Employment List
- a. Open competitive - a list of candidates who have qualified in an examination open to all applicants who have met minimum qualifications for the position and are eligible for appointment.
 - b. Promotional - a list of candidates who have qualified in an examination open only to City employees and who are eligible for appointment.
 - c. Reemployment - a list of former employees who have been laid off and who are eligible for appointment in accordance with Section 8.03 of these Rules.
 - d. Reinstatement - a list of former employees who have resigned in good standing or have failed a promotional probation and who are eligible for appointment in their formerly held classification in accordance with Section 8.04 or Sections 10.05 & 10.06 of these Rules.
- 25-2.19 Exempt Service: All personnel excluded from the Classified Service shall comprise the Exempt Service. See the definition of Classified Service.
- 25-2.20 Family Member: Family members shall include spouse, former spouse, grandparent, grandchild, parent, child, adopted child, brother, sister, aunt, uncle, first cousin, niece, and nephew, and all of the above including in-law and step relationships.
- 25-2.21 Layoff: Separation from employment due to lack of work, funds or need.
- 25-2.22 Leave of Absence: Permission to be absent from duty for a specified purpose, with the right to return before or upon the expiration of the leave period.
- 25-2.23 Limited Term Employee: An employee working in excess of 1,000 hours per fiscal year, subject to employment contract.
- 25-2.24 Pay Status: An employee is in a pay status for purposes of these Rules when the employee receives pay for a work period whether worked or not by the employee.
- 25-2.25 Personnel Ordinance: Chapter 25 of the Monterey City Code which creates a personnel system for the City, and all amendments thereto.
- 25-2.26 Position: A combination of duties as defined by the City's classification system and authorized by the City's budget.

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- 25-2.27 Prevailing Rate of Pay: The prevailing rate of pay refers to the employee's regular rate of pay at the time it was earned.
- 25-2.28 Probationary Employee: An employee whose regular status under an original or promotional appointment is contingent upon successful completion of a prescribed period of evaluation to determine final selection as a regular employee.
- 25-2.29 Probationary Period: A prescribed period of time under an original or promotional appointment where the employee's performance is observed to determine final selection as a regular employee.
- 25-2.30 Promotion: Advancement from a position in one classification to a position in another carrying a higher maximum rate of pay.
- 25-2.31 Reassignment: A change of status of an employee from a position in one classification to a position in another carrying an equal or lower maximum pay, or an act entailing a reduction in salary step assigned an employee for other than disciplinary purposes.
- 25-2.32 Reemployment Lists: A list of laid-off employees or employees reassigned to a lower classification in lieu of layoff who are eligible for reemployment in the employee's former classification, subject to the terms and conditions governing the use of such lists as set forth in Section 13.03 of these Rules.
- 25-2.33 Regular Employee: An employee who has completed the prescribed probationary period for the classification.
- 25-2.34 Regular Part-Time Employee: An employee who has completed the prescribed probationary period for their classification and works between 1,000 and 1,560 hours per fiscal year. Regular part-time employees shall be eligible for those benefits required by applicable state and federal law and to participate in the appropriate City retirement system. Regular Part-time Employees shall also be eligible for those benefits adopted by City Resolution. **Ord. 3280 § 1, June 2000**
- 25-2.35 Regular Rate of Pay: The regular rate of pay consists of an employee's base salary, plus education incentive pay, if applicable. It may also contain additional salary if the individual is working out of class or receiving a differential for a special assignment.
- 25-2.36 Reinstatement List: A list of regular employees who resign in good standing and who, at the employee's request, are placed on a reinstatement list for reemployment in the employee's former classification. The terms and conditions governing reinstatement of former employees shall

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be subject to the provisions of Section 11.03 of these Rules.

- 25-2.37 Resignation: A voluntary termination of employment.
- 25-2.38 Seniority for Purposes of Leave: Seniority for purposes of determining priority for leave assignments shall be defined by classification with superior classifications superseding subordinate classifications and shall be determined by time served within the classification. In this case, an employee with longer continuous employment in a pay status within the classification shall receive priority for leave assignments over an employee with less continuous employment in a pay status.
- 25-2.39 Separation: Any termination of employment.
- 25-2.40 Suspension: Any involuntary absence imposed for disciplinary purposes or pending investigation of charges.
- 25-2.41 Temporary/Seasonal Part-Time Employee: An employee who works no more than 1,000 hours in the fiscal year and who is eligible only for those benefits required by applicable state and federal law.
- 25-2.42 Contract Employee: An employee retained to work a defined, fixed term, established by an employment contract, and who is eligible for only those benefits defined by contract.
- 25-2.43 Transfer: A change between positions within the same classification or a similar classification carrying the same maximum rate of pay.
- 25-2.44 Vacancy: Any unfilled position in the Classified Service.
- 25-2.45 Waiver: The voluntary relinquishment by an eligible candidate of the right to consideration for appointment to a specific position.
- 25-2.46 Working Days: Working days, as used in these rules, shall be defined as the days of scheduled work for an employee using the employee's usual and customary work schedule.
- 25-2.47 "Y" Rating: The process by which an employee's rate of pay is frozen at a pay step/range until future adjustments exceed either the current pay step/range or other pay step/range determined by the City Manager.
- 25-2.48 Year: The calendar year unless otherwise indicated.
- 25-2.49 Meaning of Words: Words used in the masculine gender include the feminine.

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Article 3 Policies Governing Employment and Working Conditions

25-3.01 Equal Employment Opportunity

No recruitment, examination or personnel transaction shall be influenced in any manner by consideration of: race, sex, color, marital status, ancestry, national origin, age (40 years and over), disability, or political or religious opinion or affiliation, unless determined to be a bona fide occupational requirement or in meeting the Affirmative Action Program goals of the City through outreach in the recruitment process.

25-3.02 Affirmative Action Program

a. Purpose

The Affirmative Action Program is to ensure equal employment opportunity for all persons consistent with the provisions of this document, Title VII of the Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972, the California Fair Employment Practice Act as amended in 1974, the Americans with Disabilities Act and other such federal, state and municipal statutory provisions as apply.

b. Scope

The scope of the City's Affirmative Action Program shall include the traditional areas of public personnel management such as recruitment, selection, training, advancement and other areas that would assist in the creation of a work environment conducive to equal employment opportunity.

c. Policy

It shall be the policy of the City to positively pursue the goal of equal employment through an Affirmative Action Program. The basic goal of the program is to ensure that discrimination will not occur against any applicant for employment or employee because of sex, race, color, religion, national origin, ancestry, age (40 years and over), marital status, or disability which would not hamper job performance, by ensuring that treatment will be on the basis of merit, efficiency and effectiveness as determined by competitive procedures.

25-3.03 Harassment Policy

a. Policy

1. Harassment of an applicant or employee by a supervisor, manage-

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ment employee or any other employee of the City on the basis of race, religious creed, national origin, ancestry, disability, marital status, sex or age will not be tolerated.

2. Disciplinary action up to and including termination may be instituted for behavior falling within the following definitions of harassment.
- b. Definition: Harassment includes, but is not limited to:
1. Verbal Harassment - For example, epithets, derogatory comments or slurs on the basis of race, religious creed, national origin, ancestry, disability, marital status, sex or age.
 2. Physical Harassment - For example, assault, impeding or blocking movement, and/or physical interference with normal work or movement when directed at an individual on the basis of race, religious creed, national origin, ancestry, disability, marital status, sex or age.
 3. Visual Forms of Harassment - For example, derogatory posters, photographs, notices, bulletins, cartoons or drawings based on race, religious creed, national origin, ancestry, disability, marital status, sex or age.
 4. Sexual Harassment - Unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature constitute unlawful sexual harassment when:
 - (a) Submission to sexual conduct is an explicit or implicit term or condition of an individual's employment; or
 - (b) The submission to or rejection of sexual conduct by an individual is the basis for any employment decision affecting the individual; or
 - (c) When sexual advances, requests for sexual favors, or other verbal or physical conduct of a sexual nature have the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive working environment.
- c. Procedures
1. Complaint of Employee

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An employee who has been harassed on the job should file a written statement with the department head containing the following.

- (a) The nature of the harassment charge (i.e., verbal, physical and/or visual).
 - (b) The name(s) of the employee(s) accused of engaging in harassment.
 - (c) The specific date(s) of harassment, along with a description of the events surrounding the alleged harassment. The names of any witnesses.
2. Such a complaint must be filed within thirty (30) calendar days of the last incident of harassment by the employee making the complaint.
 3. Complaints received after this period shall be deemed not timely and the determination concerning the disposition of the complaint shall be at the discretion of the department head, including a rejection of the complaint for not being timely.
 4. Department Head Processing

Upon receipt of a timely complaint, the department head shall cause an investigation to be conducted to determine a proper disposition of the complaint, including taking or recommending disciplinary action against an employee(s) responsible for harassment as defined herein and in conformance with these Rules and Regulations. In conducting such an investigation, the employee(s) making the complaint and the accused shall be interviewed. As appropriate, the department head or designee may interview or take statements from supervisors/ witnesses and review written documentation and records relating to the specific incident(s). The department head will make a good faith effort to conclude the investigation within ninety (90) days, provided, however, that if a full and complete investigation can be completed by the department head prior to this ninety (90) day period, nothing in this section shall be interpreted so as to delay the investigatory process. If the department head is unable to complete the investigation with ninety (90) days, the department head will issue a status letter to the complainant limited to the expected timeline to complete the investigation. Thereafter a similar status letter will be issued by the department head to the complainant every thirty (30) days until the investigation is

completed. **Ord 3273; 1/00**

5. Complaint Regarding Department Head

Any time a department head is the accused perpetrator of an incident of harassment under the definitions of this policy, the complaint shall be filed with the Personnel Director who shall assume the investigatory role of the department head and make a recommendation to the City Manager for the disposition of the complaint.

6. Complaint Regarding City Manager, City Attorney or Personnel Director

Any time the City Manager or the City Attorney is the accused perpetrator of an incident of harassment under the definitions of this policy, a complaint regarding the City Manager shall be filed with the City Attorney and a complaint regarding the City Attorney shall be filed with the City Manager. They shall file their recommendation with the City Council for final action. Any time the Personnel Director is the accused perpetrator of an incident of harassment under the definitions of this policy, the complaint shall be filed with the Assistant City Manager, who shall assume the investigatory role and make recommendations to the City Manager for the disposition of the complaint.

7. Complaint Regarding Member of Council

In those incidents where a member of the City Council is the accused perpetrator of an incident of harassment under the definitions of this policy, the complaint regarding the Council Member shall be filed with the City Manager. The City Manager shall retain outside counsel to investigate the allegations and file a recommendation with the balance of the City Council for action on the complaint.

d. Confidentiality

The letter of complaint, investigatory process, and the disposition of the complaint shall be confidential in order to protect the privacy rights of the parties involved.

e. Complainant Responsibilities

An employee who files a complaint of harassment under this policy is expected to present facts, which at least on the face of the allegations

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substantiate the complaint. Employees found to have filed a false complaint may be subject to discipline up to and including termination.

25-3.04 Alcohol and Controlled Substance Abuse

- a. The City is committed to providing a work environment that is safe, healthy and free of any adverse effects caused by alcohol or controlled substances. City employees shall not be permitted to possess, distribute, or use alcohol or controlled substances while on duty for the City while on City property, or using City equipment; and City employees are not permitted to perform services and/or operate motor vehicles while under the influence of those substances. Consumption of alcohol or controlled substances at rest or meal breaks prior to returning or going to work shall be prohibited.
- b. For the purpose of enforcing this policy and maintaining an alcohol, drug, and controlled substance-free work place, the City reserves the right to search all work areas and property in which the City maintains full or joint control with the employee, including, but not limited to, City vehicles, desks, lockers, file cabinets, and bookshelves. Such searches may be conducted when the City has reasonable grounds to conclude that there has been a violation of this section.

The employee shall be given notice prior to such a search in such a manner that the employee is provided knowledge of the intended search, but not the opportunity to remove items and materials present in the area to be searched. The employee may be present during the search, but the employee's presence is not required for the search to occur. If the employee wishes to be present during the search, the employee cannot be denied the opportunity to be present, provided, however, that the City will determine the time of the search with or without the employee's concurrence.

- c. If a department head has reason to suspect that an employee is under the influence of alcohol or a controlled substance while in the workplace or subject to duty, the employee may be required to submit to a drug and alcohol analysis provided at the City's expense.
- d. Exceptions to this Policy
 1. Prescription drugs used in compliance with a doctor's instructions.
 2. Performance of normal job duties and responsibilities requiring limited use of alcohol as directed by assignment or detail shall not result in an employee being in violation of this policy.

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3. During special, infrequent occasions, consumption of alcoholic beverages may be allowed on City property, while an employee is on duty for the City, or while using City equipment, but only upon specific prior authorization from the City Manager.
4. An employee who resides on City-owned property is excepted from provisions of this policy for off-duty circumstances that would be considered appropriate or legal if the employee's residence were on private property.

25-3.05 Conflicts of Interest

- a. Employees, including exempt employees, of the City are prohibited from:
 1. Engaging in or having any interest in any business or transaction, or incurring any obligation which conflicts with or impairs, their independent judgment in the discharge of their official duties.
 2. Accepting money, favors or other considerations, except as paid them by the City of Monterey, for work they would be required or expected to perform in the regular course of their duties. Awards or recognition bestowed upon an employee, by community or professional organizations may be accepted.
 3. Accepting, directly or indirectly, any gift, rebate, money, or anything else of value whatsoever from any person or entity if the gift, rebate, money or item of value is intended as a reward or inducement for conducting business, placing orders with, or otherwise using the employee's position to favor the contributor. Awards and promotional items of nominal value, such as calendars, pens, balloons, etc., shall not constitute a gift if received as a non-personal item by the exempt or classified employee, and the item is distributed to customers or potential customers routinely by the contributor. The intent of this section is not to prohibit gifts or awards that are given to an exempt or classified employee where no business relation exists. A business relationship is defined as a relationship where the employee, by their actions or position, can affect or be perceived as affecting, the conduct of business in favor of the gift giver.
 4. Disclosing confidential information acquired by or made available to them in the course of their employment with the City, or using such information for speculation or personal gain.

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- b. It is the employee's responsibility to disclose and report all potential conflict of interest situations to the employee's supervisor, department head or the City Manager.
- c. Employees required to file conflict of interest forms shall do so in accordance with the City Resolution designating those City classifications which must file and in accordance with State law. Generally, employees who must file conflict of interest forms hold positions with the City in which their decisions or direct advice to decision makers could influence their personal financial gain, either directly or indirectly.

25-3.06 Outside Employment

- a. City employees, including exempt employees, need to recognize that the City of Monterey is their primary employer. City employees shall not engage in any other employment, business or undertaking which conflicts with their City employment, or with the following rules:
 - 1. City employees shall not use their position, badge, uniform, prestige or influence within the City to enhance or promote any private enterprise.
 - 2. City employees shall not conduct any work or activities pertaining to their outside employment during their working hours within the City.
 - 3. No City employee shall be or become involved in any private business or service which will render that employee less efficient in their performance of their City duties. **Ord 3273, 1/00**
 - 4. City employees shall not use any City equipment or facilities without the permission of and, when appropriate, just compensation to the City.
 - 5. No two City employees who have a supervisor/subordinate relationship within the City may engage in any ongoing business or partnership in outside employment.
 - 6. No City employee engaged in outside employment shall hold the City responsible for any worker's compensation claims incurred in outside employment.
 - 7. Outside employment shall adhere to Rule 3.05 Conflict of Interest.
 - 8. City employees who engage in outside work shall complete and

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submit an outside work registration form to the department head under any of the following circumstances:

- (a) Prior to engaging in any outside work that involves working more than twenty percent (20%) of the employee's regularly scheduled work week with the City, or
- (b) Prior to engaging in any outside work that occurs during three (3) or more calendar months in a calendar year, or
- (c) When there is any change in status of outside work that has been previously approved or that at any time meets either of the above conditions.

Volunteer work does not require the completion of an outside work registration form. **Ord. 3273, 1/00**

- 9. The department head has the authority to grant approval for outside work. In granting approval, the department head may impose terms and conditions.
- 10. If a department head finds a conflict with City employment, or imposes terms and conditions on outside work, he/she shall meet with the employee to discuss the conflict. If the conflict cannot be resolved with the employee, the employee and department head may meet with the Personnel Director for an appeal. If the conflict cannot be resolved, a final appeal may be made to the City Manager or designee whose decision will be final.
- 11. Outside work status shall be reviewed annually at an appropriate time as determined by the employee's department head. **Ord. 3273, 1/00**

25-3.07 Political Activities

The political activities of City employees shall be governed by the provisions of applicable state and federal law, and by the City Charter.

25-3.08 Employment of Relatives

- a. The following policies shall govern the employment of family members of any official or employee of the City.
 - 1. Family members of the City Manager, Assistant City Manager, Personnel Director, City Attorney and City Councilmembers are

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not eligible for employment by the City in any paid position. This provision does not prohibit a family member from performing unpaid volunteer duties for the City.

2. Family members of City employees or appointed officials may be employed with the following restrictions:
 - a) Family members may work within the same department, but not within the same division or in any relationship that involves either direct or indirect supervision on a permanent or temporary basis. Temporary supervision excludes an occasional supervisory relationship of one (1) day or less that is not on a frequent basis. This subsection shall not apply to temporary/seasonal part-time employees unless a supervisory relationship will be created by the employment. **Ord 3273, 1/00**
 - b) Family members may not work in positions, even in different departments, where they could conceivably collaborate to embezzle City funds.
 - c) Family members of appointed officials may not be employed in a department within the sphere of influence of the advisory body of which the appointed official is a member. Family members of appointed officials who are in the City's employment on the effective date of the adoption of these Rules shall not be affected by this provision, limited to their present relationships, during the term of the appointed official. Further, family members of appointed officials shall not be affected by this provision during any subsequent re-appointment of the appointed official, so long as:
 - (1) the appointed official was serving in the position at the time these Rules were adopted and effective, and
 - (2) the appointment is to the same advisory body and only continues the service of the appointed official from the effective date of these Rules. This subparagraph c) does not apply to temporary/seasonal part-time employees. It is the intent of this provision that family members of appointed officials may be employed in such temporary/seasonal part-time positions.

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3. The provisions of this Section shall not affect personnel who are in the City's employment on the effective date of the adoption of these Rules, limited to their present relationships. Any change in position of one of these employees must be approved by the City Manager or designee prior to appointment as a precaution against potential conflict.
 4. Where a family relationship which is prohibited by this Section is created subsequent to employment, the City Manager shall allow the affected employees six (6) months to voluntarily comply with this Section by arranging for a transfer, demotion or resignation. If none of these actions occurs by the end of the six-month period, both employees shall be dismissed from the City service.
- b. For purposes of this Section, "family member" shall include spouse, former spouse, grandparent, grandchild, parent, child, adopted child, brother, sister, aunt, uncle, first cousin, niece, and nephew, and all of the above include in-law and step relationships.

Article 4 Classification Plan

25-4.01 Purpose

The purpose of the classification plan is to provide a complete and continuous inventory of all classifications in the Classified Service and to provide accurate descriptions and specifications for each classification. Positions having similar duties and responsibilities shall be classified and compensated on a uniform basis.

25-4.02 Composition

The classification plan shall consist of groupings of positions which are approximately equal in difficulty and responsibility, consisting of the same general qualifications, and which can be compensated with the same range of pay for similar working conditions into classifications.

25-4.03 Content of Classification Specifications

Each classification specification shall include the title, a description of the duties and responsibilities of the work, and a statement of the minimum qualifications required of the person who is to perform the work. Classification specifications may, from time to time, be reviewed and updated at the direction of the Personnel Director.

25-4.04 Use of Classification Titles

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The classification title shall be the official title of every position allocated to the classification for the purpose of personnel actions and shall be used on all payrolls, budget estimates, official records, and reports relating to the position. The department head may authorize the use of another working title for the purposes of internal administration or in contacts with the public.

25-4.05 Interpretation and Significance

The classification specifications are not to be considered restrictive nor construed as limiting the duties and responsibilities of any position. They neither limit nor modify the authority of any City official to assign duties to, direct, and control the work of employees in the City service. However, no employee shall be required to perform duties of a position outside of the classification to which they have been appointed, except on a temporary basis. The classification specifications are descriptive and explanatory of characteristic duties and responsibilities of positions in a classification and, as such, they are to be interpreted in their entirety and in relation to other classifications in the classification plan.

25-4.06 Maintenance of the Plan

- a. 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 to the Personnel Director who shall conduct whatever study may be required. Appropriate times to initiate such requests may be designated by the Personnel Director.
- b. The City Manager shall make the final determination on all actions arising under this provision, subject to approval by the City Council where appropriate. Decisions relating to this section shall not be subject to the grievance procedure.

Article 5 Compensation and Salary Administration

25-5.01 Compensation Plan

A Compensation Plan shall be established by resolution of the City Council. This plan shall establish the salary range and salary steps or rates of pay for each position in the City. The City Council shall administer the compensation plan for the City Attorney and City Manager. The Personnel Director shall administer the compensation plan for all other City employees. If a salary review indicates that there should be adjustments in the compensation plan, the Personnel Director shall make appropriate recommendations to the City Manager. Final action on salary adjustments rests with the City Council.

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25-5.02 Anniversary Dates Adjusted

Any person on leave without pay for thirty (30) consecutive days, or major fraction thereof, or more, shall have their anniversary date adjusted to reflect the time absent without pay. In the case of Fire Department employees working on a shift schedule, thirty (30) consecutive workdays shall be defined as 336 duty hours. Upon recommendation of a department head and with the approval of the City Manager, this provision may be waived.

25-5.03 Anniversary Date upon Transfer

Anniversary Dates of employees who are transferred to a job classification with the same salary range, or whose job classification is reclassified from one salary range to another, shall not be changed.

25-5.04 Salary upon Original Appointment

Upon original appointment with the City, an employee shall be placed in the first step of the salary range. However, when it is difficult to obtain qualified personnel at the first step, or when the education, training or previous experience justify a higher step, appointment at a higher step within the range may be authorized by the City Manager or designated representative.

25-5.05 Step Advancements

- a. Step advancements are merit increases and are not automatic. An employee must perform the duties of the position in a manner satisfactory to the department head to receive a step advancement.
- b. Eligibility for such step advance shall be upon completion of twelve months satisfactory service in the employee's prior step. The step system shall consist of five (5) steps and an employee's initial placement on the step system shall be determined by Sections 25-5.04 or 25-5.06.(Ord. 3249 § 1, 1999)
- c. Step advancements shall be made on the Anniversary Date. No advancement shall be made without a performance evaluation with a written recommendation by the department head and approval of the City Manager or designated representative.

25-5.06 Salary upon Promotion

Upon promotion, an employee shall be placed in the first salary step of the range for the new classification. If placement in the first salary step provides for a salary increase that is less than five (5) percent, the employee shall be placed in a salary step in the range for the new classification that provides for at least a five

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(5) percent increase. Upon recommendation by the department head and approval of the City Manager or designated representative, an increase in excess of five (5) percent may be granted.

25-5.07 Salary upon Non-Disciplinary Demotion

In the case of an employee demotion from a promotion, the employee will return to the step that was held by the employee prior to the promotion.

The salary of an employee who is demoted to a position of a job classification with a lower salary than the job classification from which the employee was demoted shall be reduced to the salary step in the range for the new classification closest to that received by the employee prior to demotion.

25-5.08 Salary upon Transfer or Reassignment

In the case of a transfer or reassignment of an employee from one position to another in the same salary range, the employee shall continue in the same salary step. In the case of a transfer of an employee from one position to another in a classification with a lower salary range, the employee may be placed in any step in the range closest to, but not exceeding, their previous salary.

25-5.09 Salary upon Reclassification

- a. Any employee in a job which is reclassified with a different salary range shall be compensated at the step in the new salary range that does not result in a loss of pay. Upon recommendation of the department head, and approval of the City Manager, an employee in a position which is reclassified may be placed in a step of the new salary range for the new class which provides for an increase of approximately five (5) percent.
- b. The salary of an employee whose position is reclassified to a classification with a lower salary range, and whose salary is above the maximum of the new salary range, shall be frozen at the salary of the old classification until the salary range of the new classification is equal to or exceeds the employee's salary. This shall be referred to as "Y Rate."
- c. When an employee is reclassified, their anniversary shall be the first day of the following pay period one (1) year from the first day the employee was reclassified. If the employee is reclassified on the first day of a pay period, then the Anniversary Date shall be one (1) year from this date.

25-5.10 Special Salary Adjustment

Upon recommendation of the department head and with the approval of the City Manager, an employee may be placed on a higher step within the authorized

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salary range in recognition of meritorious service, or other extraordinary attributes related to job performance.

25-5.11 Working out of Class Pay

a. Conditions of Eligibility

1. An employee, including those designated as Management, may be temporarily advanced to a higher rate of pay in circumstances where the department head assigns the employee to perform a majority of duties (normally assigned to a classification carrying a higher maximum rate of pay. Such assignments are for the purpose of performing work required due to an extended absence of the regular incumbent or due to a vacancy, and must receive the prior approval of the City Manager. Employees shall have the right to refuse such an assignment, except during a declared emergency.
2. Work at a higher level must be performed on a continuous basis for a period in excess of four (4) consecutive workweeks in order to be eligible for additional compensation or as specified in the memorandum of understanding of the employee's bargaining unit.

- b. Compensation. Compensation for such temporary assignments shall commence with the first workday following the end of the four-week eligibility period, or as specified in the memorandum of understanding of the employee's bargaining unit. The rate of pay shall be as determined by the City Manager or designee. Compensation under this provision need not equal the rate of pay of the regular incumbent.

25-5.12 Special Assignment Pay

The City Manager or designee may authorize a temporary pay adjustment for an employee given a specific assignment clearly beyond the scope of the regular job description. A request for such an assignment must be made to the City Manager, in writing, from the department head. The request for special assignment shall describe the assignment, justify why it is to be performed by the designated employee, give a specific duration for completion of the assignment and recommend the amount of compensation to be received over regular pay. Special assignment pay cannot be less than two (2) percent nor more than five (5) percent above the employee's normal pay range. Procedures for application of special assignment pay shall be the same as those for working out of classification pay. The special assignment differential shall be discontinued on the date originally identified for completion of the assignment, unless an extension of specific duration is approved by the City Manager or designee. Upon completion of the assignment, the employee's supervisor shall prepare a

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written evaluation of how the assignment was performed, review it with the employee and cause it to be placed in the employee's personnel file.

Article 6 Applications for Employment

25-6.01 Application Form

- a. All applications for employment must be made on official, standard forms furnished by the Personnel Director. Such applications shall not be returned to the individual applicant, nor shall the names of any applicant be made public. The requirement for an official standard form may be waived by the Personnel Director.
- b. The Personnel Director is authorized to require any necessary job-related information from an applicant to make appropriate employment decisions.

25-6.02 Incomplete/Defective Applications

Incomplete or defective applications may be amended at the Personnel Office by the applicant prior to the date of examination. Incomplete or defective applications, at the discretion of the Personnel Director, may constitute disqualification.

25-6.03 Standards and Verification of Information

The City's statements of required or desirable training and experience are to be interpreted as standards, and reasonable equivalent combinations may be accepted by the Personnel Director. The Personnel Director may require applicants to provide certified copies or affidavits relating to receipt of any diploma, license, or any other accreditation or certification required to meet the requirements of the classification.

25-6.04 Acceptance or Rejection of Application

- a. 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 rejection by the Personnel Director. In addition, an application may be rejected on any of the following grounds:
 1. The applicant's failure to satisfy the employment standards prescribed for the classification.
 2. The applicant having made a false statement of material fact or

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having practiced deception, fraud or misconduct in connection with the employment application.

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

25-6.05 Notice to Applicants

- a. Each applicant accepted or rejected for examination shall be so notified.
- b. 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 Director based upon such factors as number of acceptable applications, the official closing date and impact upon the examination process.

25-6.06 Review Process

Any applicant rejected for examination may request that the Personnel Director review the rejection. The applicant must request such a review within five (5) working days of the mailing of the notice of rejection. Determinations of the Personnel Director are final.

Article 7 Employment Examinations

25-7.01 Open or Promotional Examinations

- a. Prior to the distribution of any examination announcement, the Personnel Director shall determine whether the examination is to be administered on an open-competitive basis, on a promotional basis, or both at the discretion of the Personnel Director after consultation with the department head within which the vacancy exists, or the City Manager.
- b. 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 classification of employment.
- c. Promotional examinations shall be open only to qualified, regular City employees unless, at the discretion of the Personnel Director, it is open to application by temporary/seasonal employees or employees of the Library. Applications may be accepted from qualified employees on probation subject to the provisions of Rule 10, Section 10.06.

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- d. In making a determination concerning the field of competition, the Personnel Director 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.

25-7.02 Examination Announcements

- a. 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 Director to attract a sufficient number of qualified applicants.
- b. The Personnel Director may extend the filing period for any examination, based upon considerations such as the quantity and quality of applications received.

25-7.03 Continuous Testing

The Personnel Director 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 process may be instituted on an interim or permanent basis.

25-7.04 Selection Techniques

- a. The Personnel Director shall adopt selection techniques which are impartial and related to the primary tasks of the job classification. The examination for a given classification of employment may include, but not be limited to, any of the following.
 - 1. An evaluation of each candidate's application in terms of applicable training and experience; or
 - 2. A written test measuring the candidate's aptitude and/or job knowledge; or
 - 3. A performance test whereby candidates demonstrate the degree of job knowledge and ability possessed; or
 - 4. A physical fitness test whereby candidates demonstrate their physical capacity to perform tasks directly related to the job; or
 - 5. A personal interview designed to evaluate the candidate's

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personal characteristics, background and job knowledge; or

6. Such other selection techniques which, in the judgment of the Personnel Director, are necessary to evaluate the candidate's capacity to perform the job tasks.
- b. All components of an examination which require evaluative judgments regarding technical subjects shall be administered using at least one rater who is a competent authority in the area being tested.

25-7.05 Preappointment Screening

The Personnel Director may utilize other selection techniques to evaluate a candidate's fitness to perform job duties. These may include, but not be limited to, a medical examination, psychological evaluation, background investigation, reference checks and verification of licenses, registrations, and diplomas.

25-7.06 Conducting Examinations

- a. It shall be the responsibility of the Personnel Director to assure that the examination process is conducted in an objective, timely and efficient manner.
- b. The Personnel Director may engage in cooperative examination programs with other public jurisdictions.

25-7.07 Qualification Standards

- a. All candidates must achieve a qualifying or passing score in each successive component of the selection process.
- b. The City may, at its discretion, invite only those candidates who achieve the highest scores to the next stage of the selection process.
- c. The City may establish any passing score or job-related qualifications standard to be met by a candidate for employment consideration.

25-7.08 Notification of Examination Results

All candidates shall be advised of their satisfactory completion or failure in the examination process. Upon completion of the examination process, each candidate successfully completing all phases shall be placed on the appropriate employment list in accordance with Rule 8 of these Rules.

25-7.09 Review of Written Examinations

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- a. The Personnel Director 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 Director determine that any such claim is justified, the scores applying to that test shall be recomputed and candidates notified if affected by the recomputation. Regardless of the results of the recomputation, the candidate alleging an error will be notified of the Personnel Director's determination.
- b. No phase of the examination process shall be administered during this period of review.
- c. No appeal regarding any phase of an examination may be made after five (5) days from the date the results of that phase are mailed or otherwise directly provided to candidates.
- d. 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 and prohibition from participation in future examinations. In the case of promotional examinations, the employee will be subject to disciplinary action for violation of this provision. Such decisions shall reside with the Personnel Director or designated representative; decisions regarding disciplinary action shall be processed in accordance with Rule 14 of these Rules.

25-7.10 Examination Documents

Examination documents shall be retained in accordance with applicable state and federal regulations.

Article 8 Employment Lists

25-8.01 Employment Lists Established

Candidates who successfully complete all components of the examination shall be placed on the appropriate employment list. Placement on any open or promotional list does not imply any right to employment. Preparation and maintenance of employment lists under these Rules shall be the responsibility of the Personnel Director.

25-8.02 Duration of Lists

- a. All open-competitive and promotional lists shall remain in effect for one (1) year unless exhausted or abolished within that period as provided below, or unless established for a period of shorter duration in advance of the recruitment by the Personnel Director. The Personnel Director may

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extend any such list for up to twelve (12) months. The effective date of a list shall be that date on which it is approved by the Personnel Director.

- b. The Personnel Director may abolish any employment list which has three (3) or fewer eligibles.

25-8.03 Reemployment List

A regular employee laid off or reassigned to a lower classification in lieu of layoff shall be placed on a reemployment list for his/her former classification or in a subordinate related classification. The terms and conditions governing the use of such lists shall be as set forth in Section 13.03 of these Rules.

25-8.04 Reinstatement List

A regular employee who resigns in good standing may, at his/her request, be placed upon a reinstatement list for his/her former classification. The terms and conditions governing reinstatement of former employees shall be subject to the provisions of Section 11.03 of these Rules.

25-8.05 Removal from Lists

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

- a. Upon written request of the eligible; or
- b. Upon appointment to a regular position in the classification for which the list was established; or
- c. Upon failure of the eligible to respond for an employment interview or action requested by the City to determine suitability for employment, after reasonable attempts to contact the eligible have been made; or
- d. Upon the eligible having been refused an appointment after certification and employment interview; or
- e. Upon the eligible having refused an employment interview or appointment; or
- f. Upon resignation, layoff or discharge from the City service, except as otherwise provided in Rule 13; or
- g. On any of the grounds set forth in Section 6.02 and 6.04 of these Rules; or

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- h. For failure of the eligible to continue to meet any of the employment standards established for the classification; or for failure to successfully pass any of the subsequent phases of the examination process, after the list is constituted.

25-8.06 Notification of Removal

Any person whose name is removed from an Employment List pursuant to Sections c, d, e, f, and g above, shall be notified by mail of the action taken and reasons therefor.

25-8.07 Review of Removal

Any person whose name is removed from an Employment List shall have the right to request a review and reconsideration by the Personnel Director within five (5) working days after receiving notice of such removal. Requests for review shall be in writing and addressed to the Personnel Director and shall state briefly the basis upon which the request for review is made. The decision of the Personnel Director with respect to any review under this section, whether favorable or unfavorable to the applicant, shall be final.

Article 9 Certification and Appointment

25-9.01 Filling of Vacancies

- a. The department head shall promptly notify the Personnel Director of any anticipated vacancy in an approved position. Following any administrative review or Council action as may be required by Section 4.06, the Personnel Director and department head shall determine the means to be used to fill the vacancy.
- b. With the approval of the Personnel Director, the vacancy may be filled through a transfer or voluntary demotion of an employee. If appointment is not made in this manner, the vacancy may be filled by appointment from one of the following existing employment lists in the following order.
 - 1. Reemployment
 - 2. Promotional
 - 3. Reinstatement
 - 4. Open-competitive

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- c. If there are three (3) or fewer eligibles on the applicable promotional and/or open list, the Personnel Director may:
 - 1. Authorize appointment from among the available eligibles; or
 - 2. Cancel the existing employment list and declare an alternate list as appropriate in accordance with Section 9.05; or
 - 3. Cancel the existing employment list and order a new examination. The Personnel Director may also authorize a temporary appointment for the interim period as provided in Section 9.03.

25-9.02 Certification of Eligibles

- a. When a vacancy is to be filled from either a promotional or an open-competitive list, the Personnel Director shall provide the department head with a list containing an appropriate number of eligibles. The number of eligibles so certified shall depend upon the number of vacancies. Their final score shall not be made available to individual eligibles.
- b. Following interview and recommendation by the department head, the City Manager or designated representative may appoint from among those eligibles certified and interviewed.

25-9.03 Temporary Appointment

- a. The City Manager or designated representative may authorize temporary appointments to meet short-term employment needs such as periods of peak workload, illness, or pending the establishment of a new employment list. Such appointments may be made from an appropriate employment list, or from among other qualified persons where there is either no active list or where there are insufficient eligibles directly available for appointment.
- b. The period of temporary appointments shall not exceed 1,000 hours in a fiscal year unless extended by the City Manager or designated representative.
- c. Temporary employees shall not be covered by these Rules and Regulations 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 classification in the Classified Service.

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25-9.04 Limited-Term Appointment

A vacancy may be filled by a limited-term appointment subject to the approval of the City Manager or designee. A limited-term appointment will be for a fixed term established by a written employment agreement between the City and the selected candidates, to be executed prior to appointment. The employment agreement may also cover any other relevant terms and conditions of employment for the limited-term appointment, including, but not limited to, supplemental benefits, leaves, and cancellation provisions for the limited-term appointment. Subject to any other terms imposed by an employment agreement, a limited-term appointment may be cancelled or extended at the discretion of the City Manager or designee upon the expiration of the agreed upon fixed term.

25-9.05 Use of an Alternative Employment List

In the absence of an existing employment list for a classification in which a vacancy exists, the Personnel Director 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.

25-9.06 Legal Authority to Work

Each applicant must attest to his or her identity and legal authority to work in the United States on an INS-9 Form, provided by the federal government. This verification must be completed as soon as possible after an offer of employment is made and in no event more than three (3) business days after an individual is hired. All offers of employment and continued employment are conditioned on furnishing satisfactory evidence of identity and legal authority to work in the United States.

25-9.07 Preemployment Medical Examination

Each prospective employee shall be required to complete a preemployment health questionnaire and, as determined by the City, take a preemployment medical examination after receiving an offer of employment and before beginning the first day of duty. The medical examination is provided by the City at its sole expense, unless other prior arrangements are made. An offer of employment is contingent upon successful completion of the health questionnaire and/or medical examination by the prospective employee.

25-9.08 Reemployment Medical Examination

Employees who are rehired following separation from City service shall be required to complete the medical examination process, as defined above.

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Article 10 Probationary Period and Performance Ratings

25-10.01 Objective of Probationary Period

The probationary period shall be regarded as part of the testing process and shall be utilized for closely evaluating 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.

25-10.02 Duration

All original appointees to positions in any classification shall serve a continuous probationary period of twelve (12) months. All promotional appointees shall serve a probationary period of six (6) months, except police and fire employees, who shall serve twelve (12) months. Probation shall not apply to employees who are reclassified, re-employed or reinstated.

25-10.03 Extension of Probationary Period

- a. At the request of the department head, the probationary period served by a probationary employee may be extended a corresponding length of time, at the discretion of the Personnel Director when such an employee has been absent from work in excess of twenty (20) cumulative workdays during the probationary period.
- b. The probationer and the 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 Rules.
- c. In the event a probationary employee takes an approved unpaid leave of absence of thirty (30) or more calendar days during his/her probationary period, the Personnel Director may, upon the recommendation of the employee's department head, extend the probationary period for an equivalent period of time.
- d. No other cause shall be considered for extending a probationary period.

25-10.04 Evaluations During Probationary Period

- a. 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 regular status. Such evaluations may be conducted at any time, but must be completed and submitted to the Personnel Director at the

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following intervals:

- i. At the fifth month anniversary of employment; and
 - ii. At the eleventh month anniversary of employment.
- b. The evaluations submitted pursuant to paragraph a., above, shall include the department head's recommendation regarding retention. In all cases, the department's evaluations shall be discussed with the employee by the department head or authorized representative.

25-10.05 Rejection During Probationary Period

During the probationary period, an appointee may be rejected at any time by the City Manager or designated representative without cause and without right of appeal.

- a. New Hires rejected during probation shall be released from City employment. Notice of release shall be served in writing to the probationer.
- b. Employees not successfully passing a promotional probation or voluntarily requesting not to be promoted during the probation process shall be returned to their previously held position without notice or hearing, provided a vacancy exists in the classification. If a vacancy does not exist, the employee may bump a less senior employee in accordance with appropriate provisions of Rule 13.03 Layoff. If the cause for not passing probation was sufficient grounds for dismissal, the employee shall be subject to dismissal without reinstatement to the lower position. Such dismissal shall be subject to the provisions of Rule 14 Disciplinary Procedures.

25-10.06 Promotion Eligibility During Probationary Period

- a. Any City employee shall be eligible to participate in a promotional examination during their probationary period subject to the following conditions:
 1. If the employee is serving an original probation, the employee cannot be certified for promotional consideration or appointment to a vacancy until the employee has completed his/her original probation. An original probation shall be that probationary period that an employee must serve prior to achieving Regular status for the first time in the classified service of the City.
 2. An employee who is serving a probationary period other than an original probation may be certified and appointed from a promotional list prior to completing his/her probation.

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- b. An employee may be appointed from an open competitive list to a vacancy for which the list is applicable during any probationary period.
Ord 3273, 1/00

25-10.07 Performance Evaluations — Regular Employees

- a. Performance evaluations shall be completed by the department head or authorized representative and submitted to the Personnel Director in conjunction with department review of employee eligibility for merit step increases pursuant to Section 5.05 of these Rules. Such reports shall be submitted within fifteen (15) days of the employee's pay anniversary date in accordance with Section 2.02.
- b. The department head shall also be responsible for conducting annual evaluations of all personnel having regular status. Such evaluations shall be completed and submitted before the pay anniversary date of the individual employee or at such other time fixed by the City Manager or designee.
- c. Employees are to receive a copy of all comments made in their evaluations. Employees have the right to discuss their evaluation with their supervisor and to submit a written response which will be filed with the employee's evaluation.

Article 11 General Working Conditions

25-11.01 Attendance

- a. Department heads shall be responsible for maintaining employee attendance records, which shall be reported to the Finance Director in the form and at the time prescribed.
- b. An employee who is unable to report for work at the beginning of the established shift shall notify the immediate supervisor in accordance with departmental rules. Failure to provide this notification within one hour after start time may result in the unreported period of absence being considered as leave without pay. An employee who is absent without notification may be presumed to have resigned after three (3) consecutive work shifts after reasonable attempts by the City to notify the employee of such a presumption.
- c. In order to ensure employee availability for the protection of life and property, and to otherwise serve the health, safety and welfare of the community, the City Manager is authorized to direct employees to report to work under a declared emergency condition. This response time may

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vary by operating unit, the type of personnel involved and the type of emergency.

25-11.02 Work Schedule/Alternative Schedules

The basic workweek for full-time regular employees shall be forty (40) hours, rendered in units of eight (8) hours per day in a workweek which runs Saturday through Saturday, or as set forth in the appropriate memorandum of understanding. The City Manager may assign a different workweek when it is deemed to be beneficial to the City. For purposes of conformance with the Fair Labor Standards Act, work periods shall be defined as follows:

1. The work period for all City employees, except those listed below, shall commence on Saturday at 12:01AM (0001 hours) and end the next Saturday at 12:01AM (0001 hours). This will be referred to as the Saturday Work Week.
2. The following employees and departments are exceptions from the above and shall have a work week commencing and ending on the days of the week or periods indicated below:
 - a. Parking Enforcement personnel in the Parking Division shall have a work period commencing on Thursday at 12:01AM (0001 hours) and ending on the next Thursday at 12:01AM (0001 hours). This will be referred to as the Thursday Work Week.
 - b. The Assistant Harbormaster at the Harbor/Marina Division shall have a work period commencing on Tuesday at 12:01AM (0001 hours) and ending on the next Tuesday at 12:01AM (0001 hours). This will be referred to as the Tuesday Work Week.
 - c. Library Department personnel shall have a work period commencing on Sunday at 12:01AM (0001 hours) and ending on the next Sunday at 12:01AM (0001 hours). This will be referred to as the Sunday Work Week.
 - d. Conference Center Division personnel shall have a work period commencing on Monday at 3:00AM (0300 hours) to Monday at 3:00AM (0300 hours). This shall be referred to as the Monday Work Week.
 - e. Non-Sworn personnel in the Police Department shall have a work period commencing on Sunday at 7:00AM (0700 hours) to Sunday at 7:00AM (0700 hours). This shall be referred to as the Sunday Work Week/P.D.

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3. Public Safety employees, utilizing the 7(k) exemption provided for in the Fair Labor Standards Act, shall have the following work periods.
 - a. Fire personnel working on shift shall have a work period defined under the 7(k) exemption which shall be fifteen (15) days calling for one hundred fourteen (114) hours, commencing at 7:45AM (0745 hours) and concluding 24 hours later at 7:45AM (0745 hours) the following day. For purposes of calculating overtime under the City overtime rules, the Work Period shall be defined as calling for one hundred twenty (120) hours. The specific application of this rule is defined in the Memorandum of Understanding between the City and the Monterey Fire Fighters Association.
 - b. All sworn Police personnel shall have a twenty-eight (28) consecutive day work period commencing on Sunday at 7:00AM (0700 hours) and ends on the Sunday which is 28 days later at 7:00AM (0700 hours).
4. Persons replacing another employee for vacation, illness, or other reason for one week or more shall assume the work week for that position.
5. The City Manager may assign different work periods for employees subject to the provisions of the Fair Labor Standards Act.

25-11.03 Resignation

- a. An employee desiring to leave the Classified Service in good standing shall submit a letter of resignation to the immediate supervisor. This letter shall be submitted at least two (2) weeks in advance of the effective date of separation, except under extraordinary circumstances. Where no letter of resignation is provided, the employee will be considered as abandoning the position and will not be considered for re-employment.
- b. 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 Section 8.05 of these Rules.

25-11.04 Reinstatement

- a. A regular employee who resigns in good standing may within ninety (90) calendar days of separation request to be placed on a reinstatement list for their former classification for a period not to exceed one (1) year from the date of resignation.

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- b. An employee refusing reinstatement to either the former classification or a comparable classification for which qualified, shall automatically be removed from the reinstatement list. The failure of a former employee to respond to a reinstatement notice within ten (10) working days of its mailing shall be deemed a refusal of reinstatement. Such notices shall be directed to the last address of record and sent by certified mail. The Personnel Director may extend or waive this response period where circumstances warrant.
- c. Upon reinstatement, all rights and benefits acquired by the employee prior to resignation shall be restored, including credit for years of employment towards seniority including previous pay step. In no event, however, will the City be required to restore credits for vacation or other benefits paid out at the time of separation or coverage for any group insurance programs for the period the employee was not working for the City.

25-11.05 Overtime

- a. The following provisions shall not apply to positions designated as Management in the annual salary schedule. Where the provisions of this Section conflict with the Fair Labor Standards Act, the provisions of this Section shall prevail, so long as benefits under this Section meet the minimum requirements of the Fair Labor Standards Act. Under no circumstance shall an employee receive benefits under this Section and the Fair Labor Standards Act.
- b. Definition and Authorization
 1. Weekly overtime shall be defined as all hours worked in a pay status in excess of the 40-hour workweek for general non-management, and 56 hours for uniformed operations fire personnel.
 2. Daily overtime shall be defined as hours worked in excess of the applicable scheduled 8-hour or 10-hour workday for the classifications of Police Officer and Sergeant.
 3. In order to be eligible for overtime compensation, the overtime must be authorized beforehand by the department head or designated representative.
 4. For purposes of determining overtime, time worked is any time in a pay status.
- c. Compensation

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1. Except as provided below or set forth in the appropriate memorandum of understanding, all overtime authorized and worked shall, at the employee's discretion, be compensated in either cash at time-and-one-half the employee's regular rate of pay, or compensatory time off at time-and-one-half the number of hours worked. The rate of pay for the purpose of computing overtime shall include, if applicable, the following pay types: regular base pay, cash-in-lieu, educational incentive pay, and additional salary. The regular rate of pay used for computing overtime worked shall be the rate that was applicable at the time the overtime was worked. Employees must notify their departments of their selection between cash and compensatory time off before the payroll is submitted to the Finance Department for the pay period in question. If the employee does not indicate a preference, the overtime hours will be paid.
 2. Compensatory time off earned under this Section is limited to a maximum, depending upon bargaining group, as established by memorandum of understanding. Compensatory time off earned in excess of these limits shall be paid in cash to the employee at the employee's current prevailing rate of pay as defined above.
 3. All use of compensatory time off shall be scheduled and approved in advance by the department head or designated representative.
- d. Disposition of Accrued Compensatory Time Off Upon Promotion or Reclassification

Should an employee be promoted or reclassified from a classification which is eligible to receive compensatory time off to a classification which is ineligible to receive overtime and accrue compensatory time off, the employee shall be given the following options for disposing of any accrued compensatory time off which they possess at the time such a change in classification occurs.

1. The employee may receive pay for the accrued bank of compensatory time off (overtime) at the base rate of pay they received in their prior classification; or
2. The employee may elect to retain the bank of accrued compensatory time (overtime) for use until June 30th of the current fiscal year, when any remaining balance shall be paid. If the promoted or reclassified employee selects this option, the rate used for calculation of the accrued overtime shall be the employee's

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regular rate of pay in the former classification at the time of promotion or reclassification.

25-11.06 Holiday Pay

a. Compensation

1. General Non-management Employees

General non-management employees who are authorized to work on the City holidays set forth in Section 12.04, which would otherwise be a normal duty day, shall only be compensated in cash or compensatory time off at the overtime rate for the number of hours worked. When a non-management general employee is required to work on a holiday which would be their scheduled day off, they shall be compensated in cash or compensatory time off at the overtime rate for the number of hours worked and accrue holiday time for the same number of hours worked.

2. Management Employees

Executive Management and Management personnel, who are authorized by their supervisor to work on City holidays, shall be compensated in cash or in time off at the employee's straight time base rate of pay for actual hours worked. The employee may elect to retain the bank of accrued compensatory time off for use until June 30 of the current fiscal year, when all accrued holiday time is paid off in cash. If the employee is promoted or reclassified, the rate used for calculation of the accrued holiday shall be the employee's regular rate of pay at the time the holiday time was earned.

3. Police Employees — Non-management

Sworn police department personnel shall be compensated in cash or holiday time off at the base straight-time rate of pay for all hours worked on a City holiday.

4. Fire Employees — Non-management

Fire operations personnel shall be compensated for 104 hours annually of holiday time. This represents thirteen (13) eight (8) hour days. At each quarter year interval, fire operations personnel shall be able to elect from two options in regard to the method of compensation. The two options are:

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- a) 8.67 hours paid each month at the employee's fire call rate of pay; or
- b) 13.00 hours accumulated each month at straight time.

If an employee has reached the maximum accrual in their compensatory time off bank, then all hours will automatically be paid. All pay and accrual time will be recorded on the second pay period of the month (16th to end of the month). New employees will have holiday hours pro-rated according to the number of remaining holidays in the year from their date of hire.

- 5. The maximum accumulation bank of holiday time shall be forty (40) hours. For non-management Fire personnel, the maximum accrual bank for holiday time and compensatory time off (overtime) shall be as described in the Fire Memorandum of Understanding.
- 6. Employees must be in a paid status on the day before and after a holiday in order to be compensated for the holiday.

25-11.07 Education Incentive Plan

a. Coverage

This Section shall apply to all full-time positions in the Classified Service except:

- 1. All Management positions as so designated in the City's classification system; and
- 2. Those classes of employment requiring a postsecondary degree as an entrance requirement for employment; and
- 3. Employees hired by the City after July 1, 1990 and, in the case of uniform Fire personnel, employees hired by the City after October 1, 1990.

b. Compensation

Covered employees who comply with the eligibility provisions of this Section shall, upon application, receive compensation equal to:

- 1. 2.5% of their base monthly salary upon satisfactory completion of thirty (30) units of college level, job-related courses.

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2. 5% of their base monthly salary upon satisfactory completion of sixty (60) units of such job-related course work; or by presentation of certification indicating attainment of an Associate of Arts, Bachelor of Arts, Bachelor of Science or higher degree. Covered sworn police personnel may qualify for the 5% increment through attainment of an Advanced Certificate from the Commission on Peace Officers Standards and Training (P.O.S.T.).
- c. The total maximum salary increment attainable under the Plan shall be 5%.
 - d. College-level units earned prior to employment with the City or during the first year of City employment shall be counted toward the attainment of the above unit requirements provided the other requirements of this Rule are satisfied. However, any education required as a condition of employment shall be excluded.
 - e. Proof of completion of course work requirements shall be submitted to the department head indicating the specific courses and credits completed, together with transcripts or other documentation as may be required by the Personnel Director. This information shall be submitted on forms provided by the Personnel Director. The Personnel Director shall approve or disapprove eligibility for additional compensation and transmit the necessary documentation and recommendations to the Finance Department. Following appropriate processing by the Finance Department, the documentation and recommendations provided by the Department shall be submitted to the Personnel Director. The Personnel Director shall be responsible for insuring full compliance with the provisions of this Section and for processing the transaction in the manner provided below.
 - f. Additional compensation due under this Section shall commence the first pay period following submission and approval of the above documentation, provided said documentation is received and approved by the Personnel Department on or before the close of the payroll period.
 - g. Additional compensation shall cease as of the effective date of appointment to a position not covered by the Plan.
 - h. Qualifying Course Work
 1. All course work undertaken in connection with the Plan must have the prior approval of the department head. In addition, all courses must be taken during the employee's off-duty hours for which the employee is not receiving any form of compensation

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from the City.

2. Qualifying course work must be both job related and at a college level in accordance with the definitions provided below. Plan credits shall not be given for work experience, even though an academic institution may have given credit for such experience, until such time as a qualifying degree is granted by such institution. However, the Personnel Director may grant approval, for covered general employees, for a course of instruction which does not lead to the accumulation of college units, but which clearly will increase the employee's job-related skills and knowledge. The equivalency of such instructional hours to a college unit shall be in the range of 36 to 54 hours equalling one college unit. Such equivalency values shall be established by the Personnel Director in consultation with the department head prior to the commencement of the course work, and the employee shall be so advised.

i. Definitions

1. "Base Pay" shall mean the monthly salary as set forth for the range and step of the eligible person in the ~~annual~~ salary schedule and shall specifically exclude any form of premium pay, other direct compensation and supplemental benefit.
2. "Satisfactory Completion" shall mean a grade of "C" or better in each course. Not more than one third of the total number of units considered for Educational Incentive pay may be on a "credit only" or "pass/fail" basis (limit of 10 out of 30 units; 20 out of 60 units). Units earned with a "Credit Minus" or "Fail" (D or F) grade will not be eligible under the Educational Incentive Plan. Repeated courses will not be counted except when the course is repeated to earn a satisfactory grade not earned when the course was initially taken.
3. "College Level" shall mean any post-high school educational institution accredited by the California State Department of Education, the Western Association of Schools and Colleges, or equivalent organizations in other states or countries, or which has the prior approval of the Personnel Director.
4. "Job Related" shall mean any college-level course related to technical or specialized aspects of the employee's position, as well as courses meeting general educational degree requirements which are reasonably job-related. Course work may also be included if it can be reasonably demonstrated that it will prepare

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the employee for promotional consideration for an existing City classification. The Personnel Director shall determine the eligibility of all courses. In the case of doubt prior to taking a course, the employee shall request the written determination of the department head in advance of enrollment in the course.

5. "Unit" shall mean a unit as established by the educational institution.

25-11.08 Callback - Coverage

- a. In circumstances where an off-duty employee is directed to return to work to meet emergency situations, or to provide necessary relief in the absence of personnel normally scheduled to work during that period, that employee may be entitled to callback compensation as established by appropriate memorandum of understanding.

25-11.09 Standby - Coverage and Compensation

- a. Designated employees who are placed on standby status may be entitled to standby compensation as established by appropriate memorandum of understanding.

25-11.10 Tuition Reimbursement

- a. Coverage

The provisions of this Section shall apply to all positions in the Classified Service, including those designated as Management and Executive Management. The eligible courses and amount of tuition reimbursement received by an employee shall be as established under the appropriate memorandum of understanding or benefits resolution.

- b. Such courses must be taken during the employee's off-duty time, have the prior approval of the department head and be completed with a final grade of at least a "C" or its equivalent. Upon successful completion of the course, the employee shall submit a request for reimbursement to the department head, together with a grade record or other suitable certification, and proof of payment. In the case of executive management, the information and proof required in this Section shall be submitted to the City Manager for approval.

25-11.11 No Pyramiding

In the application of the provisions of these Rules, all additional compensation shall be computed separately on the employee's base straight-time rate of pay,

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which includes the Education Incentive Plan. In no event shall one form of additional compensation be computed on top of, or in addition to, any other form of compensation or supplemental benefit(s).

Article 12 Leave of Absence Provisions

25-12.01 Vacation

- a. All full-time personnel shall accrue annual vacation leave at the rates provided below.

Years of Continuous <u>Service</u>	General & Police (40-hour week)		Fire Operations (56-hour week)	
	<u>Annual Vacation</u>	<u>Accrual Rate</u>	<u>Annual Vacation</u>	<u>Accrual Rate</u>
First 5 yrs	2 weeks	6:40 hrs/mo	112 hrs	9:20 hrs/mo
After 5 yrs	3 weeks	10 hrs/mo	168 hrs	14 hrs/mo
After 10 yrs	17 days	11:20 hrs/mo	190 hrs	15:53 hrs/mo
After 15 yrs	4 weeks	13:20 hrs/mo	224 hrs	18:40 hrs/mo

Regular Part-time Employees shall accrue annual prorated vacation leave at 75% of the rates provided above. **Ord. 3280 §1, June 2000**

- b. Employees shall accrue vacation in accordance with the above schedule for every month worked, or major fraction thereof, on the last day of the month. 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 hours earned, but not taken, as of the effective date of the separation.
- c. An employee who works over one half of the month in which the employee separates employment shall be entitled to receive such payments for the full month.
- d. 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. Use of vacation leave in less than fifteen (15) minute increments shall not be permitted. Scheduling of vacation shall be in accordance with any established departmental policy and subject to department head approval. The decision of the department head shall be final.
- e. 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 448 hours for fire operations personnel and 320 hours for all other employees. Any vacation accruals in excess of these limits as of December 31 of each

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year will be paid at the prevailing rates in accordance with a procedure set by the Finance Director.

- f. In the event a City holiday for which the employee is eligible (unless provided otherwise by memorandum of understanding) falls during the period of an employee's vacation leave, that day shall not be charged against vacation accrual. Where an employee is ill or injured during vacation and desires to charge that time to sick leave, the employee shall provide a doctor's certification of illness or injury for the days to be charged to sick leave.
- g. Vacation in advance of accrual. An employee may be granted vacation in advance of accrual by their department head subject to the following conditions:
 - 1) If an employee has served at least six (6) months and has accumulated at least the equivalent of five (5) days vacation available for use, the employee may be granted an additional five (5) days of vacation in advance of accrual. Fire suppression personnel, after six (6) months of service, may take vacation that would accrue by the end of the calendar year, but not more than the equivalent of the amount of vacation that would accrue in twelve months.
 - 2) An employee who has served the City for five or more continuous years may be granted vacation time that would otherwise accrue during the next twelve (12) months, provided that the employee has accumulated and has available for use the equivalent of ten (10) days vacation.
 - 3) When such vacation is granted in advance of accrual, the employee shall be required to repay any vacation taken, but not yet accrued, at the time of separation.

25-12.02 Sick Leave

- a. All Full-Time and Regular Part-Time employees shall be provided paid sick leave as set forth below.
- b. Sick Leave Accrual
 - 1. Full-time employees shall accrue sick leave credits at the rate of eight (8) hours per month or major portion thereof; except that fire operations personnel shall accrue such credits at the rate of 12 hours per month or major portion thereof. Regular Part-Time employees shall accrue sick leave credits at the rate of six (6) hours per month of major portion thereof. **Ord 3280 §1, 6/00**
 - 2. Employees shall accrue sick leave and be permitted to use such

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accrued leave upon employment for the permitted uses in 12.02.c.

3. All Full-Time and Regular Part-Time employees may accrue sick leave without limitation. **Ord 3280 §1, 6/00**
- c. Sick Leave Usage
1. Accrued sick leave may be used, at any time, for any bona fide illness of, or injury to an employee, and, under certain circumstances, for critical illness or death as provided in paragraph e., and for family sick leave as provided in paragraph d. Such leaves may also be used for medical and dental appointments in accordance with paragraph f. Sick leave must be used in accordance with the provisions of the salary continuation plan when applicable.
 2. When utilizing the sick leave benefit, the employee shall notify the immediate supervisor, in accordance with departmental regulations and rule 11.01(b).
 3. 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 the immediate supervisor, on a daily basis if deemed necessary by the supervisor.
 4. Usage of sick leave shall be charged to the employee's balance on an hour-for-hour basis in one-fourth (1/4) hour increments or in accordance with current law
- d. Family Sick Leave
- Up to 40 hours of accrued sick leave hours may be used each calendar year to care for and attend to a spouse, principal domestic partner, child, stepchild, parent, parent-in-law, or a close relation residing in the employee's household, unless a different amount of leave time is specified in the employee's memorandum of understanding or benefits resolution. **Ord 3273, 1/00**
- e. Family Member Critical Illness/Death
1. All employees may be authorized to use up to 32 hours of accrued sick leave per calendar year to visit or care for a critically ill family member; and to use up to 40 hours of such leave per calendar year for the death of a family member or close relation. The maximum combined allowable use of sick leave for the above purposes shall not exceed seventy-two (72) hours in any calendar year for a single family member. The annual allotments available

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to fire operations shall be 33.6 shift hours for critical illness and 56 shift hours for bereavement. The maximum combined allowable use of sick leave by a fire operations employee for the above purposes shall not exceed 89.6 shift hours in any calendar year for a single family member.

2. At the department head's discretion, the employee may be required to provide evidence that the leave was used for the purposes intended by this section.
3. For purposes of determining the use of sick leave for critical illness and death of a family member, the following definition shall be used: The employee's spouse, principal domestic partner, child, parent, brother, sister, grandparents, parents-in-law, brother-in-law, sister-in-law, son-in-law, daughter-in-law, step-parents, step-siblings, step-children, step-grandparents or grandparents-in-law.

f. Medical/Dental Appointments

Accrued sick leave may, with department head approval, be used for medical and dental appointments of the employee where it is infeasible to schedule them on the employee's own time.

g. Sick Leave Abuse

1. Sick leave abuse shall mean: "Any use of sick leave, for purposes other than those identified in this section." Sick leave abuse may subject the employee to disciplinary actions.
2. When the department head has reason to suspect that an employee has abused sick leave benefits, the department head may require that employee to file a personal affidavit or physician's affidavit stating the cause of the absence. The department head, at their discretion, may establish methods of verification as deemed appropriate. These means may include, but are not limited to, examination by a physician selected by and paid for by the City. If an employee is required to be examined by a physician selected by the City, the employee will be paid for the time, if off duty, and will be given reimbursement for mileage to attend the examination.
3. The payment of sick leave may be suspended or curtailed by the City Manager where there is evidence that absences taken on a given day or days are the result of a concerted action on the part of two or more employees which is related to a labor dispute with

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the City directly, or one in which the City is involved as a third party. Sick leave may be restored when proof is provided that the sick leave was taken as provided in these Rules.

25-12.03 Family Leave

Family Leave under the federal Family Medical Leave Act shall be granted in compliance with the implementing City policy. In general terms, Family Leave may be taken under the following circumstances.

- a. For the birth of a child, child care, or care of a newborn of an employee;
- b. The placement of a child with an employee in connection with the adoption or foster care of a child;
- c. Leave to care for a child, spouse, or parent (excludes parent-in-law) who has a serious health condition; or
- d. Leave because of a serious health condition that makes the employee unable to perform the functions of the employee's position.

25-12.04 Holidays

- a. Coverage

The provisions of this Section shall apply to all full-time employees. Compensation of employees who are unable to observe such holidays shall be governed by Section 11.05 of these Rules. The compensation of other eligible employees for work performed on a City holiday shall also be set forth in Section 11.05.

The provisions of this Section shall also apply to all Regular Part-Time employees at a prorated rate of 75%.

If a holiday falls of a Regular Part-Time employee's regular scheduled work day, and the employee does not work, the employee will receive 6 hours of holiday pay at their straight time base rate of pay. If an employee works on a holiday that is their scheduled work day, they shall receive the holiday compensation mentioned above, plus the employee shall be paid at their straight time base rate of pay for the number of hours worked.

If a holiday falls on a Regular Part-Time employee's scheduled day off, and the employee does not work, the employee will receive 6 hours of accumulated holiday time in their leave bank. This is subject to the limitations described in Section 12.04.b.3. If an employee works on a holiday that falls on their regularly scheduled day off, the employee will receive holiday compensation as mentioned in this paragraph, plus the employee shall be paid at their straight time base rate of pay for the

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number of hours worked.

b. Holidays Observed

1. The City shall observe the following holidays. The work status of employees on these days shall be provided in the appropriate memorandum of understanding.
 - a) First day of January (New Year's Day)
 - b) Third Monday of January (Martin Luther King's Birthday)
 - c) Third Monday in February (Washington's Birthday/
President's Day) **Ord. 3273, 1/00**
 - d) Last Monday in May (Memorial Day)
 - e) Fourth day of July (Independence Day)
 - f) First Monday in September (Labor Day)
 - g) Ninth day of September (Admission Day)
 - h) Eleventh day of November (Veteran's Day)
 - i) Fourth Thursday in November (Thanksgiving Day)
 - j) Day following Thanksgiving Day
 - k) Twenty-fifth day of December (Christmas Day)
 - l) The employee's last working day immediately preceding Christmas
 - m) The employee's first working day immediately following Christmas
 - n) 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.
2. 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 or other regularly scheduled day off, eight (8) hours of holiday time off shall be provided.
3. Holiday time off accrued under this Section shall be limited to 40 hours. Any time accumulated in excess of this limit shall be paid out at the employee's base straight-time rate prevailing at the time of payment.

c. Floating Holiday

If the applicable memorandum of understanding provides, employees shall be eligible to receive a specified number of floating holidays per fiscal year. These days shall not be carried over to a subsequent fiscal year and may be used at the employee's discretion subject to prior approval by the department head. Floating holidays shall have no cash value.

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25-12.05 Jury Duty and Court Appearances

- a. An employee who is called to serve as a juror shall be entitled to leave during the period of such service or while necessarily being present in court as the result of such a summons. Under these circumstances, the employee shall be paid full salary for this period and shall be allowed to retain all fees and reimbursements received for service as a juror.
- b. An employee who is subpoenaed to appear in court as a result of official duties as a City employee shall be allowed to do so without loss of compensation. Any witness fees paid as required by law shall be submitted to the City if the employee is required to attend the legal proceeding in an official capacity. An employee subpoenaed to appear in court in a matter unrelated to official duties as a City employee shall be permitted to use accrued vacation, holiday, and/or compensatory time off.
- c. Except as provided in an applicable memorandum of understanding, employees shall be required to return to work, where reasonable, upon release from their daily court duties for completion of their assigned work shift. "Reasonableness" shall be determined by the department head, or the department head's designated representative.

25-12.06 Maternity Leave

- a. Based upon medical evidence of disability, a pregnant employee shall be entitled to a reasonable period of disability leave of up to four (4) months in duration. This leave shall be paid subject to the availability of sick leave and salary continuation benefits. The actual duration and scheduling of the disability leave shall be based upon a doctor's certification of disability. (Note: The period of four (4) months is a statutory maximum and the doctor's certification may be for a period of shorter duration.) The City shall retain the right to have an employee examined by a physician of the City's choice to substantiate the claim of disability or to determine fitness to return to employment.
- b. Once the disability period has lapsed, the employee must return to work or face termination, unless additional leave is approved by both the department head and the City Manager or designee. This additional leave is totally discretionary, and the granting of such an extension to one person does not give any right to others for such an additional period of leave. Such leave may be paid or unpaid, depending on the availability of other leave banks, such as vacation time, accumulated holiday time, or compensatory time off which has accrued.
- c. The employee shall, insofar as possible, notify the City of when the pregnancy disability leave will be taken, the dates of the leave period, and

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present a statement of disability from the physician to the City verifying the above period of disability.

25-12.07 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 as soon as possible and prior to the actual taking of leave, when possible. 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.

25-12.08 Management Compensation Pay

- a. Due to the unique aspects of the Executive and Management normal job duties, these employees shall receive Management Compensation Pay in the amount indicated in the appropriate Memorandum of Understanding, Resolution or Employment contract.
- b. Management compensation pay will be paid on a semi-monthly basis as a percentage of the employee's prevailing salary rate.
- c. Management compensation pay will not be affected by any Management Unpaid Leave taken during the calendar year.

25-12.09 Administrative Leave

The City Manager or department head may place an employee in the Classified or Exempt Service on administrative leave where, in his/her judgment, such action would be in the best interests of the City service. This leave shall be with or without pay, as determined by the City Manager. Its application may include, but not be limited to, situations where an investigation is being conducted and disciplinary matters are pending.

25-12.10 Leave Without Pay

- a. The City Manager may grant an employee in the Classified or Exempt Service a leave of absence without pay for a definite period not to exceed three months, and may grant leaves of longer duration on approval of the City Council. Such leaves shall be without pay and shall not provide for the accumulation of seniority or benefit credits as provided below in Section e. Except as provided in Section e, an employee who is on leave without pay for a full calendar month shall not receive a City contribution towards medical, dental, optical and life insurance.

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- b. The request for leave, exact dates, and the reasons therefor, shall be submitted in writing to the department head who shall forward it to the Personnel Director with the department head's recommendation. The Personnel Director shall forward the request to the City Manager with the Personnel Director's recommendation. The City Manager's approval or denial of such request shall be in writing with a copy to be provided the Personnel Director and department head.

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

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- d. Failure on the employee's part to return to work on the date originally scheduled or subsequently modified by mutual agreement shall be considered as a resignation.
- e. Except as provided under State law for employees on military leaves of absence or federal law under the Family Medical Leave Act, employees on leaves of absence without pay shall not accrue service or leave credits, nor shall the City maintain contributions toward group insurance coverage. During the period of such leaves, all service and leave credits shall be retained at the levels existing as of the effective date of the leave.

25-12.11 Catastrophic Leave

a. Purpose

The purpose of this section is to provide a method for employees to assist fellow employees who have exhausted their leave time due to a catastrophic illness or injury. It is not the intent of this section for any employee to enrich him or herself, but to aid only those employees that are truly in need of assistance. With the exception of those classifications represented by the Fire Management Association, all eligible employees, as defined in 12.11.b.1 are covered under this policy.

b. Definitions

1. Eligible Employee – to be eligible to receive surrendered catastrophic leave the employee must meet all of the following criteria:
 - a. Be an active full-time or regular part-time employee.
 - b. Have exhausted all leave balances.
 - c. Have provided the required documentation to verify a catastrophic illness or injury of the employee.
2. Catastrophic Illness or Injury – an illness or injury that is expected to incapacitate the employee for an extended period of time and which creates a financial hardship because the employee has exhausted all of their accumulated leave. The illness or injury must be anticipated to extend for longer than sixty (60) calendar days in a twelve (12) month period, as certified by a medical doctor.

c. General

1. Employees may surrender to the City of Monterey accrued vacation, holiday or compensatory time (but not sick leave) to be used by an approved eligible employee. Surrendered leave will be converted to sick leave and added to the approved eligible employee's sick leave balance.
2. The recipient employee's use of surrendered leave time must not cause the employee to receive compensation in excess of their gross regular pay. The recipient employee may receive compensation from the Salary Continuation Program, Workers' Compensation, Long-term Disability, State Disability, Social Security, or other income replacement sources so long as money received does not exceed 100% of gross regular pay when combined with the donated leave pay. If a qualifying injury/illness is later found to be qualified industrial injury/illness, the recipient employee will be required to repay all money received under this program which would result in pay in excess of 100% of gross regular pay for the period in question. Any such excess will then be reimbursed as leave to the employees who originally surrendered the leave. The recipient employee may be required to sign an agreement prior to receipt of any funds under this

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program consenting to repayment pursuant to this policy, or consenting to a lien upon any Workers Compensation award as a condition of receipt of these funds.

3. The recipient employee must have exhausted all available leave time prior to using surrendered leave; however, the approval to receive surrendered leave may be made prior to the anticipated date leave balances will be exhausted. Prior to program participation, the recipient employee, recipient employee's family, other person designated in writing by the recipient employee, or the recipient employee's department head must submit a written request, using the "Catastrophic Leave Application Form."
4. Medical verification, including work-related prognosis, must be provided by the recipient employee to the Personnel Director. This verification must be signed by the treating physician. The recipient employee will be required to authorize the release of medical records to the treating physician or physician selected by the City for a second opinion to verify that the qualifying illness or injury is anticipated to extend for longer than sixty (60) days in any twelve (12) month period. The Personnel Director may consult with the treating physician(s) or other qualified medical providers and may require the employee to submit to a second opinion from a City designated physician to determine if an illness or injury is "catastrophic" as defined by this policy. The determination by the City designated physician of whether or not an illness or injury is catastrophic will be final and binding and not subject to grievance procedures. All information will remain confidential. The City may require periodic medical verification of the employee's catastrophic illness or injury to determine continued eligibility for this program.
5. A recipient employee is eligible to receive a maximum of 1000 hours of surrendered leave time per incident; however, the initial receipt of leave time is limited to 100 hours. Once the recipient's sick leave balance drops to 50 hours then an additional surrendered leave can be added to the recipient's account up to the 100-hour limit.
6. Surrender of vacation, holiday and compensatory time are to be made as follows: two-hour minimum, additional amounts can be surrendered in one-hour increments. Once the leave surrender has been processed, it is irrevocable (subject to the exceptions found in Section 2 above and Section 10 below).
7. Surrendered leave time will be calculated on a dollar for dollar basis. The value of the surrendered time will be calculated at the surrendering employee's regular rate of pay, then converted to hours

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of sick leave at the recipient's regular rate of pay to the nearest hour to determine the number of hours of sick leave available to the recipient.

8. Names of participants and amounts of leave surrendered will be maintained as strictly confidential. Application to surrender leave will be done in writing using the attached "Confidential Leave Surrender Request Form." This form will be picked up in the Personnel Office and submitted to the Personnel Office for processing. It may not be handed out or processed at the department level.
9. Unused sick leave hours remaining in the recipient's leave bank when the recipient employee returns to work with the City will be retained by the recipient and will follow normal sick leave balance provisions of the applicable MOU and/or personnel rules.
10. If, however, the recipient employee separates from employment as a result of the illness or injury for which the donation was received instead of returning to work, any sick leave balance remaining will not be reportable to PERS under the sick leave service credit program and will not be payable to the employee or the employee's estate. Such remaining sick leave balance will be transferred back on a pro-rata basis to the employee(s) who surrendered the leave as the original type of donated leave (i.e. vacation, compensatory time).
11. This is a voluntary program and no employee may be required to surrender leave.
12. Eligible employees who participate in this program and receive surrendered paid leave may be subject to the terms and requirements of the Family Medical Leave Act (FMLA), other laws, leave policies, rules or regulations. This program is to run concurrently with other leave programs.
13. The City reserves the right to retire or separate an employee from service and/or take any other personnel action regardless of this policy or leave time balances held by an employee. **(Ord 3314; 12/02)**

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Article 13 Transfers, Reassignments and Layoff

25-13.01 Transfer

- a. An employee may be transferred by the City Manager from one position to another position in a different department and in the same classification or in a comparable classification carrying the same maximum salary rate and the duties of which the employee is qualified to perform.
- b. An employee may be transferred by a department head from one position to another position of the same classification, but in a different division or work unit within the same department.
- c. Advance written notice of this action, together with its effective date, shall be provided the employee and the affected managers at least thirty (30) calendar days in advance of the action. An opportunity shall be granted for the employee to discuss the proposed action with the Department Head initiating the transfer.

25-13.02 Reassignment

- a. Based upon an employee's request, the City Manager may authorize the reassignment of an employee to a vacant position in another classification for which the employee is qualified to perform the duties.
- b. Based upon an employee's demonstrated and documented inability to perform the duties of the employee's current classification, the City Manager may authorize the reassignment of an employee to a vacant position in another classification for which the employee is qualified to perform the duties. In this case, the employee has the right to meet with the department head and have representation during this meeting.
- c. Such an action, when taken at an employee's request, is not subject to the provisions governing discipline or grievance.

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- d. The provisions of this section shall not apply to rotational positions to which an employee may be assigned by a department head for a fixed duration and for which a temporary pay differential is paid. Rotational assignments do not result in a change in the employee's classification, though a Department working title may be assigned. Such assignments are neither demotions nor promotions, and the employee after the fixed duration of the rotational assignment, shall return to the original classification and associated salary range.

25-13.03 Layoff

- a. Decision to Eliminate Position. The City Council may eliminate any position in the classified or exempt service as identified by classification and budget account due to lack of funds, work or need. Whenever, in the judgment of the City Council, it becomes necessary to eliminate any position of employment, the employee may be laid off or demoted without disciplinary action.
- b. Notice of Layoff. Employees to be laid off shall be given, except during financial emergencies where notice may be shorter, at least thirty (30) calendar days prior written notice stating the following:
 - 1) Reason for layoff
 - 2) Effective date
 - 3) Copy of Rule 13
 - 4) Employee's position on the rehire list will be forwarded when available.
- c. Order of Layoffs. Employees to be laid off within a classification and budget account shall be in the order of temporary part-time, regular part-time, and full time.
- d. Determination of Seniority. The layoff of employees resulting from the elimination of positions shall be governed by the following procedures:
 - 1. Seniority will first be determined by the length of continuous employment in a pay status within the employee's current regular classification in the classified or exempt service. Employees within the same classification shall be subject to lay off in an inverse order of seniority in class. If there is no opportunity for reassignment in accordance with Section e.1.a (where an employee may request reassignment to a previously held position), then Section 2 shall prevail.
 - 2. After the application of Section 1, seniority shall be defined as

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the length of continuous employment in a pay status within any one or series of regular budgeted positions in the classified or exempt service of the City.

3. In determining seniority, time in regular part-time service will be credited on the same ratio as the part-time hours are to full-time. For example, one year service in a 3/4 time position would equal nine months seniority credit. Time in temporary positions will not be counted toward seniority.
 4. If two (2) or more employees have identical seniority, a comprehensive review of their personnel files and a personal interview by a committee comprised of the involved department head, the Personnel Director, and the City Manager shall determine the order of layoff. The determination of this committee shall be final.
- e. Reassignment in Lieu of Layoff. Employees may elect reassignment in lieu of layoff in accordance with the following provisions:
1. Reassignment to the same or previously held position:
 - a) An employee may request reassignment to a classification in which the employee had previously held regular status anywhere in the City organization, provided the employee is more senior than the least senior employee in that classification. An employee may only be reassigned to that position within the classification held by the least senior employee.
 - b) An employee may request reassignment to the same classification anywhere in the City organization, provided the employee is more senior than the least senior employee in that classification. An employee may only be reassigned to that position within the classification that is held by the least senior employee.
 2. Reassignment to a position not previously held:
 - a) An employee may be reassigned to a different department in lieu of layoff if, at the time of layoff, a vacancy exists for which the employee is qualified as defined below in Paragraph 5.
 - b) An employee may request reassignment within the department to a lower related classification which has the

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same or less knowledge, skills, and ability requirements as the employee's current classification, provided the employee is more senior than the least senior employee in that classification, provided that the employee may only be reassigned to that position within the classification that is held by the least senior employee. The determination of qualification will be defined below in Paragraph 5.

3. Regular part-time employees shall not be reassigned to full-time positions unless a vacancy exists and there is no eligible full time employee available to fill the vacancy under the provisions of this section.
 4. An employee who has been reassigned to a lower classification as a result of layoff will be reappointed to the employee's pre-layoff classification if a vacancy in that classification occurs.
 5. The determination of whether an employee is qualified to work in another classification will be made by the City Manager upon recommendation of the department head and the Personnel Director. In making this determination, the City Manager may require the employee to successfully complete any of the examination components set forth in Section 7.04 of these Rules.
- f. Re-employment. The names of employees reassigned or laid off in accordance with this procedure shall be placed on a re-employment list in order of seniority for a period not to exceed twenty-four (24) months. The employee highest on the list for a particular classification when a vacancy occurs in this classification, or in a subordinate related classification in any department shall be offered the appointment without going through the normal selection process, but subject to the following procedures:
1. Persons offered such re-employment opportunity may be required to pass a normal preemployment physical examination prior to reappointment and any associated physical agility tests for the classification.
 2. An employee offered re-employment through this procedure must be available for reemployment within two weeks after it is offered.
 3. An employee's name will be removed from the re-employment list if the employee turns down an offer of reemployment or fails to respond to a written offer sent by return receipt requested to the last known address within ten (10) working days, or if the

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employee submits a written request to be removed from the list.

4. Upon re-employment, all rights and benefits acquired by the employee prior to layoff shall be restored, including credit for years of employment towards seniority including previous pay step. In no event, however, will the City be required to restore credits for vacation or other benefits paid out at the time of separation or coverage for any group insurance programs for the period the employee was not working for the City.
 5. An interested employee on a re-employment list may elect to be available for temporary part-time work, and shall be given preference for work in any department in the employee's former classification, or other classification for which the employee is qualified or as defined above. Any interested employee must provide a telephone number and address in writing to the Personnel Office where they can be reached. Failure of an employee to respond to a written notice of such an offer of work within ten (10) working days shall result in disqualification.
- g. Job Counseling and Placement Services. It is the City's intent to assist laid off employees through the transition from City service. To the extent possible, the City will provide job counseling to employees facing layoffs. The Personnel Department will function as a clearinghouse for information and referrals on outside employment, training opportunities, and potential re-employment opportunities with the City of Monterey.
- h. Retraining. It is the City's intent to consider on-the-job training programs for laid off employees and employees designated for layoff who may be interested in transitioning to other available positions within the City for which they may or may not be fully qualified. If an employee's qualifications are judged to meet the minimum desirable qualifications, as outlined in the job description or, if, in the opinion of the Personnel Office and department head, it is reasonable to expect the employee to meet the minimum desirable requirements within a 90-day period of on-the-job training, the City will consider the laid off employee along with any other employee or applicants. An employee who is placed in a position under this provision shall have their name removed from any re-employment lists. If the position in which the employee is placed is considered a promotion, the employee shall serve a probationary period as defined in Section 10.02.
- i. Eligibility for City Promotional Examinations. In an effort to re-employ laid off individuals, the City will allow persons on a re-employment list the opportunity to compete in closed, promotional exams.

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1. All persons on a re-employment list will receive notice of any promotional opportunity within the City service. Further, if only one qualified person on a re-employment list submits an application for the promotional exam, such exam shall remain in-house. If the one promotional applicant fails the examination, the exam may then be posted as an open recruitment and outside applications invited.
 2. The City shall mail notices of all promotional examination opportunities to persons in a laid off status for a period of twenty-four (24) months. This provision shall be satisfied by the City depositing copies of the promotional examination announcements in the U.S. Mail no less than five (5) working days prior to the closing date of the application for the promotional examination.
 3. Persons hired from a promotional list shall have the same benefits as re-employment, except that they will serve probation at the highest step closest to their previously held step.
- j. Health Insurance. Each employee is eligible to continue group health insurance benefits under the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) with the City's group health plan.
- k. Employee Request for Review. An employee directly affected by the operation of this policy may, within ten (10) working days after notice of layoff is received, request a meeting with the employee's department head to review the application of this policy as it affects the employee's status. The employee may be accompanied by the representative of their choice

If the employee is not satisfied with the review provided by his/her department head, a further review of the application of the layoff policy may be requested by the employee with the City Manager. The determination of the City Manager shall be final.

25-13.04 "Y" Rating

Upon the involuntary reassignment of an employee from one job classification to a lower level job classification as a result of a reorganization or a layoff, or upon the reclassification of a position from one class to a lower class, the City Manager shall have the authority to authorize that the pay received by an employee remain at its current rate until such time as the rate of pay authorized for the salary range of the lower class is equal to the current salary received by the employee or any other rate of pay determined by the City Manager. When the authority with this Section is implemented due to layoff, it shall be applied

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equally to all involuntary reassignments resulting from lay off within the same fiscal year.

Article 14
Disciplinary Procedure

25-14.01 Authorization

The City Manager and Department Heads shall be authorized to take disciplinary actions up to and including termination.

Notwithstanding any provision in this rule to the contrary, public safety personnel in the Police Department are subject to provisions of the Public Safety Officers Procedural Bill of Rights (POBR), as set forth in Government Code §§ 3300 et seq., and wherever any provisions of these Rules and Regulations conflict with provisions of the POBR, the provisions of the POBR shall prevail. **(Ord. 3308; 8/02)**

25-14.02 Reasons for Discipline

Disciplinary action may be taken against an employee for misconduct, including, but not limited to:

- a. Incompetence, i.e., inability to comply with the minimum standard of an employee's position for a significant period of time;
- b. Willful disobedience and insubordination, a willful failure to submit to duly appointed and acting supervision or to conform to duly established orders or directions of persons in a supervisory position;
- c. Failure to follow work rules;
- d. Failure to perform work in a satisfactory manner;
- e. Inefficiency or inexcusable neglect of duty, i.e., failure to perform duties required by the employee's position;
- f. Fraud in securing employment or misstatement of fact on an application for employment or other personnel document;
- g. Falsification of records or reports;

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- h. Dishonesty, involving employment;
- i. Mental or physical infirmity or defects which render the employee unfit for the proper performance of duties if no reasonable accommodation can be made;
- j. Unfitness for duty, including consumption of any alcoholic beverage or non-prescribed drug while on duty, or reporting to duty while under influence of any alcoholic beverage or non-prescribed drug;
- k. Unexcused absence without authorized leave;
- l. Abuse of sick leave (see Section 12.02.g.1);
- m. Participation in unlawful job actions against the City;
- n. Any willful act or conduct, either during or outside of duty hours which is of a criminal, unethical or immoral nature that it would reasonably impair the public trust and confidence in the employee's performance of duties;
- o. Discourteous treatment of the public or other employees within the scope of employment;
- p. Theft or improper or unauthorized use of City property;
- q. Inattention to duty, tardiness, indolence, carelessness or negligence in the care and handling of City property;
- r. Refusal to subscribe to any oath or affirmation which is required by law in connection with City employment;
- s. Violation of the duly established rules and regulations published in the employee's department;
- t. Failure to comply with outside employment regulations (Rule 3, Sec. 3.06);
- u. Failure to comply with conflict of interest regulations (Rule 3, Sec. 3.05);
- v. The refusal of any officer or employee of the City to testify under oath before any Grand Jury having jurisdiction over any pending cause of inquiry in which the investigation of government bribery or misconduct in City office is involved shall constitute of itself sufficient grounds for

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the immediate discharge of such officer or employee;

- w. Willful violation of any of the provisions of the ordinances, resolutions or any rules, regulations or policies which may be prescribed by the department or City;
- x. Improper political activity. Example: Those campaigning for or espousing the election or nonelection of any candidate in national, state, county or municipal elections while on duty and/or during working hours or in a City uniform on or off duty; or the dissemination of political material of any kind while on duty and/or during working hours or in uniform.

25-14.03 Types of Discipline

Disciplinary action(s) taken may include oral or written reprimand, suspension, pay reduction, demotion, discharge or any combination of these or other appropriate penalties approved by the City Manager. In accordance with Article IV, Section 4.5 (e) 1 of the City Charter, suspensions imposed under this Section shall be limited to thirty (30) working days.

In the case of management personnel, suspensions of less than five (5) working days shall only be imposed for infractions of safety rules of major significance, and reduction in pay shall not apply as a disciplinary action, unless otherwise provided under FLSA. The intent of this section is to be consistent with current FLSA regulations as they apply, or may apply, to exempt employees.

25-14.04 Oral Reprimands

No record of oral reprimands may be separately placed in an employee's personnel file; however they may be commented on or referred to in any regular or special evaluation report of the employee. Except for police officers, nothing in this section shall preclude a department head or representative from retaining a written record of an oral reprimand pending the issuance of a regular or special evaluation report. An oral reprimand or an evaluation report is not subject to appeal.

25-14.05 Written Reprimands

Written reprimands shall be served on the employee prior to being placed in their personnel file. The reprimand shall contain the reason or cause for the action and where appropriate, guidance on how the employee may resolve the issue. The reprimand shall contain a notice that the employee may respond in writing prior to a time not less than five (5) working days after receipt of the reprimand. Upon receipt of the response or expiration of the time without response, the department head shall either withdraw the reprimand, place the

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reprimand and the response, if any, in the personnel file, or request further information. Within two (2) working days of final determination, the department head shall notify the employee of the final action in writing and provide the Personnel Director with copies of all documents to be placed in the personnel file. A written reprimand is not subject to appeal.

For public safety classifications of the Police Department the following procedure shall apply to written reprimands. Written reprimands shall be served on the employee prior to being placed in his/her personnel file. The reprimand shall contain a notice that the employee may respond in writing prior to a time not less than five (5) working days after receipt of the reprimand. Upon receipt of the response or expiration of the time without response, the imposing authority shall either withdraw the reprimand, place the reprimand and the response, if any, in the personnel file, or request further information. Within two (2) working days of final determination, the imposing authority shall notify the employee of the final action in writing and provide the Personnel Director with copies of all documents to be placed in the employee's personnel file. In accordance with Government Code §§ 3000 et seq., the Public Safety Officers Procedural Bill of Rights Act (POBR), a public safety officer in the Police Department may appeal a written reprimand to the City Manager. The decision of the City Manager shall be final. A written reprimand arising from an incident that occurred on or after August 1, 2002, for a public safety employee of the Police Department will be removed from an employee's personnel file after six (6) years if there is no subsequent infraction of a similar nature occurring within the six (6) years. **(Ord 3308; 8/02)**

25-14.06 Notice of Proposed Disciplinary Action

- a. Except for reprimands, written notice of proposed disciplinary action shall be served on the employee personally or by certified mail to the last known address, and a copy of the notice shall be submitted to the Personnel Director for inclusion in the employee's personnel file. Failure to receive mailed notice shall not be grounds for reversal or delay of the proposed discipline.
- b. At a minimum, the written notice shall contain the following information:
 1. The disciplinary action proposed;
 2. The effective date of the action;
 3. The reason or cause for the action;
 4. A statement that the employee may inspect copies of all materials upon which the action is based;

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5. A statement that the employee has the right to representation and to respond, either orally or in writing, to the authority initially imposing the discipline.
- c. Except in instances where disciplinary action must be taken immediately, the notice shall be provided the employee at least five (5) working days before the disciplinary action is to be effective. Where immediate disciplinary action has been imposed, such action shall not become final until notice has been furnished the employee as noted above and the employee has had an adequate time of not less than five (5) working days to respond to the proposed discipline.
- d. Any employee may be immediately suspended with or without pay by a department head pending proposed discipline in any situation where the employee is accused of misconduct which constitutes job related moral turpitude, or where the employee's presence at the workplace could result in a disruption or interruption. The determination of whether the suspension will be without pay shall be made by the City Manager and shall be based on the severity of the misconduct alleged, the conclusiveness of the evidence of misconduct, and the nature of discipline proposed by the department head.
- e. Should the employee fail to respond to the notice of proposed disciplinary action as outlined in Section 14.06.b.5 and 14.06.c., such action shall constitute a waiver of all rights to appeal under these rules.
Ord. 3273, 1/00

25-14.07 Notice of Disciplinary Action

- a. Once the conditions of Section 14.06 have been met, the employee shall be served either personally or by certified mail to the last know address with a written notice of action, which shall be submitted to the Personnel Director to be placed in the employee's personnel file. The Personnel Director will notify the Finance Department if discipline affects the employee's compensation or benefits.
- b. At a minimum, the written notice shall contain the following information.
 1. The disciplinary action taken;
 2. The effective date of the action;
 3. The reason or cause for the action;

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4. A statement that the employee may inspect copies of all materials upon which the action is based;
5. A statement that the employee has the right to appeal under these Rules;
6. A statement that the employee has the right to representation of their choice.

25-14.08 Scope of Appeal Procedure

- a. The appeals procedure contained herein shall apply to all discipline involving loss of pay. Reprimands are not appealable, but the employee may submit a statement to be filed with the reprimand. Determinations of disciplinary actions appealed to the City Manager not involving termination are final.
- b. Disputes concerning the interpretation and application of these Personnel Rules and Regulations or any memorandum of understanding between the City and a recognized employee organization shall be processed in accordance with the Grievance Procedure set forth in these Rules.

25-14.09 Appeal to the City Manager of Discipline Imposed by a Department Head

- a. An employee may appeal any disciplinary action, except oral and written reprimands, to the City Manager. This appeal must be filed in writing with the City Manager within five (5) City working days of the date of the notice of disciplinary action.
- c. An informal hearing shall be held with the City Manager and the employee within twenty (20) City working days of the receipt of the employee's appeal. In the absence of the City Manager, the Assistant City Manager shall act in the City Manager's place.

Such hearings shall be closed and the rules of evidence shall not apply. Either the Department Head or the employee may call witnesses.

The Department Head, or Department Head's representative, will attend the hearing and may designate one person who may be present throughout the hearing. The employee may designate two persons who may be present throughout the hearing and who may also act as the employee's representative and/or legal counsel. The Department Head, or representative, may present the department's case, or may designate legal counsel to do so.

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The Personnel Director and the City Attorney, or their designees, may be present throughout the appeal hearing. **Ord. 3273, 1/00**

- d. The City Manager shall render a decision on the appeal within ten (10) City working days from the conclusion of the hearing. In rendering a decision, the City Manager may reaffirm the disciplinary action, reverse it or reduce it .

25-14.10 Appeal to the City Council

- a. Decisions of the City Manager which result in termination may be appealed to the City Council. Disciplinary actions initiated by the City Manager, except oral or written reprimands and actions not involving loss of pay, may be appealed to the City Council. This appeal shall be in writing and filed with the City Clerk within ten (10) City working days of receipt of the City Manager's decision. The appeal shall be signed by the employee and shall set forth the reasons for the appeal. The City Clerk shall provide written notice of the appeal to the City Council, the City Manager, the City Attorney, the employee's department head, the Personnel Director, and to any other appropriate parties.
- b. Upon the filing of an appeal, the City Clerk shall notice a hearing of the appeal within fifteen (15) City working days, and the hearing shall be held not less than ten (10) City working days nor more than forty-five (45) City working days from the date of the Clerk's notice. The City Clerk's notice shall include the date, time and place of the hearing. Once commenced, the hearing may be continued until it can be completed.
- c. The City Council hearing shall be closed, unless requested to be open by the employee, formal rules of evidence shall not apply, and principles of due process will be applied. Provisions of the Ralph M. Brown Act, the City Charter, and the City Code shall apply to all such hearings.
- d. The City Council shall render its decision in writing to the employee within ten (10) City working days after the conclusion of the hearing. Appropriate copies of the decision will be furnished to the City Manager, Personnel Director, and department head of the employee. The decision will also be reported in open session of the City Council in accordance

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with the Ralph M. Brown Act and the City Code.

- e. In rendering its decision, the City Council may reaffirm the disciplinary action, reverse it or modify it.

25-14.11 General Conditions

- a. The intent of the time limits set forth herein are to expedite the review and hearing of the employee's appeal. They should be adhered to unless expressly extended upon written agreement by the employee and the City.
- b. Failure on the part of the employee, without just cause, to comply with such time limits, or any extensions thereto, shall constitute a withdrawal of the appeal without further recourse to resubmittal under this procedure and the discipline may be imposed.

Article 15 Grievance Procedure

25-15.01 Definition

- a. A grievance is defined as any dispute involving the interpretation, application or alleged violation of:
 - 1. Provisions in a current memorandum of understanding between the City and a recognized employee organization; or
 - 2. These Rules and Regulations, except as excluded under 15.01b.
 - 3. Past Practice. Past practice is defined as a generally accepted and clear course of conduct which includes the provision of a benefit and which is characteristically repeated over a continuous period of time with the knowledge of parties at more than one level in the chain of command.
- b. Should any dispute concern an agreement, rule or action which prescribes a separate appeal procedure, that dispute shall be excluded from this procedure. The following are not subject to the grievance procedure.
 - 1. Disciplinary actions
 - 2. Employee performance evaluations
 - 3. Issues subject to meet and confer process
 - 4. Reclassification

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5. Layoff
 6. Transfer
 7. Denial of reinstatement
 8. Meet and Confer for purposes of developing a memorandum of understanding
- c. Grievances may be filed only by probationary and regular employees, individually or in groups.

25-15.02 Grievance Procedure

- a. Step I - Informal Meetings
1. An employee who has a grievance shall bring it to the attention of the employee's immediate supervisor within ten (10) 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 ten (10) working days of its occurrence, the grievance on such a matter must be raised within ten (10) working days of when it was discovered or should reasonably have been discovered. If the employee and the immediate supervisor are unable to resolve the grievance within ten (10) working days, the employee shall have the right to present the grievance to consecutive higher levels of supervision, including the department head.
 2. Where the grievance is a matter not within the authority of the immediate supervisor to correct, the employee may grieve directly to the department head or to the Personnel Director. The department head or the Personnel Director may direct the employee to discuss the grievance with the party having the authority to correct it. The time limits set forth in Section 15.02a.1. shall apply.
- b. Step II - Formal Grievances
1. If an employee is dissatisfied with the disposition of the grievance through the informal process or if the informal process has not resolved the grievance within thirty (30) working days, the employee may submit the grievance to the employee's department head within forty (40) working days from the date of occurrence or discovery, as provided in Section 15.02 a.1.

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The formal grievance shall be in writing, signed by the grievant, and 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) The specific section of the Rules, memorandum of understanding or past practice allegedly violated, misinterpreted or misapplied;
 - e) The specific act or omission which gave rise to this alleged violation, misinterpretation or misapplication;
 - f) The date or dates of the violation, misinterpretation or misapplication;
 - g) What documents, witnesses or other evidence support the employee's position;
 - h) The solution(s) sought by the grievant available within the scope of this procedure;
 - i) The name of the individual and/or organization, if any, designated by the grievant to represent the employee in processing the grievance.
2. If the formal grievance statement as submitted does not adequately identify the grievance, it may be returned for clarification and resubmitted within ten (10) working days.
 3. The department head shall hold a conference with the grievant within ten (10) working days following receipt of the formal grievance and shall prepare a written response within ten (10) working days after the conference. The written response shall make findings concerning the specific points of the grievance and describe the basis for each finding. Copies of the department head's response shall be provided to the parties directly involved, and a copy signed as received by the grievant shall be sent to the Personnel Director for placement in the grievant's official personnel file along with the formal grievance.
- c. Step III - Appeal of Department Head Decision To The City Manager or

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Grievance Committee

1. If the grievance is not resolved with the decision of the department head, the grievant may submit the grievance either to the City Manager or to the Grievance Committee within ten (10) working days from receipt of the department head's response. (The establishment and procedures to be followed by the Grievance Committee shall be as described under Section 15.03.)
2. The appeal shall be in writing, signed by the grievant, and contain the following information:
 - a) Whether the appeal is to be heard by the City Manager or the Grievance Committee.
 - b) For each of the department head's findings, a statement that the grievant either concurs or disagrees and the reasons for the disagreement.
 - c) The solution(s) being sought to resolve the grievance.
 - d) All supporting documentation including the written materials submitted to the department head in Step II and the department head's response.
3. If the appeal is to the City Manager, the City Manager, or a designated representative if acceptable to the grievant, shall respond to the grievance in writing within fifteen (15) working days of its receipt. Within this period, the City Manager or designated representative, shall conduct an informal hearing involving the parties to the dispute and any witnesses as deemed appropriate.
4. Copies of the City Manager's response shall be provided to the grievant, the grievant's department head, and the Personnel Director for placement in the grievant's personnel file. The department head may share the City Manager's response with the grievant's supervisor(s) or other parties directly involved.
5. The decision of the City Manager shall be final.

25-15.03 Grievance Committee

- a. **Committee Composition:** The Grievance Committee shall consist of three (3) members selected as follows:

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1. One member selected by the president of the employee association of the grievant.
2. One member appointed by the City Manager
3. One member selected as follows:
 - a) Each of the two seated members of the committee shall nominate three employees not members of the grievant's employee association.
 - b) The Personnel Director shall, in the presence of the two members, place the names of the nominees in a bowl and have one name drawn. The draw shall be performed by the City Manager's appointee in even numbered years and by the employee association appointee in odd numbered years.
- b. The City Manager may reject a Grievance Committee member for the following reasons only:
 1. Obvious benefit from the outcome of the grievance.
 2. Member of the grievant's immediate work unit.
 3. Served as a member of the Committee within the last six (6) months.
 4. Where the proposed member is already involved in other on-duty tasks on behalf of the employee association that the loss to the employee's job duties on behalf of the City is unacceptable.
- c. Any proposed member of the Grievance Committee may refuse to serve without prejudice.
- d. The Grievance Committee shall receive the same packet of information specified in Section 15.02c.2.
- e. The Grievance Committee members shall be appointed and the committee convened within fifteen (15) working days of receipt of the written appeal.
- f. The Committee members shall select a chair among themselves.
- g. The Grievance Committee shall review all written material submitted and may request additional information from any of the parties involved as it may deem necessary to conduct its investigation.

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- h. Within fifteen (15) working days of the committee first being convened, the Grievance Committee shall hold an informal hearing with the grievant and the grievant's representative, if there is one. The Grievance Committee may also interview any other employees or members of the public it deems necessary relative to developing its recommendations.
- i. Within fifteen (15) days of the hearing being completed, the Grievance Committee shall submit a written recommendation to the City Manager. For each of the issues still in dispute, the Grievance Committee shall state its findings. The findings of the Grievance Committee shall be determined based on the measure of reasonable belief. The Grievance Committee shall have no authority to recommend disciplinary action against any party, but may recommend development of pertinent policies and procedures or training as preventive measures against future similar grievances. All findings of the Committee shall be unanimous and unresolved issues shall be referred without comment to the City Manager for resolution. The referral of unresolved issues to the City Manager may include a description of the facts surrounding the unresolved issue.
- j. In preparing its recommendation, the Grievance Committee may seek counsel from the Personnel Director or City Attorney as it deems necessary.
- k. The City Manager shall review the findings and recommendations submitted by the Grievance Committee and shall prepare a written statement accepting, rejecting, or modifying the recommendation of the Grievance Committee in all or in part within ten (10) working days.
- l. In the event of any unresolved issues by the Grievance Committee, the City Manager shall decide independently in accordance with Section 15.02.c.3.
- m. Copies of the City Manager's decision, along with the Grievance Committee's recommendation, shall be provided to the grievant and the grievant's department head. A copy signed as received by the grievant shall be provided to the Personnel Director for placement in the grievant's official personnel file. The department head may share the City Manager's decision and the recommendation of the Grievance Committee with the grievant's supervisor(s) or other parties directly involved.
- n. The decision of the City Manager shall be final.

25-15.04 General Conditions and Limitations

- a. Any time limit set forth in this Rule may be extended by written agreement between the City and the grievant.

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- b. Only upon mutual written agreement between the parties may Step I of the grievance procedure be waived.
- c. Failure on the part of the grievant or the grievant's designated representative to comply with the time limits of this procedure 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.
- d. As limited in Section 15.02b.1.i), the grievant shall be entitled to have a representative of his/her own choosing present at any grievance meeting with the City.
- e. Nothing herein shall preclude the use of alternative means of resolving the grievance. Such means must be jointly agreed to by the City and the employee.
- f. The burden of proof on all issues shall reside with the grievant.
- g. All preparation of the grievance shall be done on the grievant's own time. The grievant shall be allowed reasonable use of personal leave time to meet with a representative, provided prior permission is obtained from the immediate supervisor. If the supervisor determines that granting the leave request will unduly interfere with work priorities, the request may be denied provided time off is granted within twenty-four (24) hours of the originally requested time.
- h. All meetings to resolve the grievance shall be conducted during regular business hours and the grievant, grievance committee members, and any witnesses shall be granted release time for their attendance as required.
- i. Grievances which are appealed may be referred back to the department head for further consideration or discussion by the City Manager or Grievance Committee if there is new evidence presented which was apparently not reviewed in the department head's investigation. If a grievance is referred back to the department head, the time limits for Step II shall be controlling and shall begin on the date the referral action is taken.
- j. No reprisal shall result against any employee or group of employees who present a bona fide grievance under this procedure or to any witness on behalf of a grievant.

Article 16 Employee Relations Regulations

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25-16.01 Statement of Purpose

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

25-16.02 Definitions

As used herein, the following terms shall have the meanings indicated.

- a. **APPROPRIATE UNIT:** A unit of classes or positions established for representation purposes in accordance with Section 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 serving in a position designated by separate administrative policy who has access to information within the scope of representation, confidential information dealing with other employees, or information regarding pending litigation and attorney-client or attorney work product privilege items.
- 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 regular full-time or regular part-time basis excluding persons elected by popular vote or appointed to serve on boards or commissions by the City Council.
- f. **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.
- g. **MANAGEMENT EMPLOYEE:** An employee having significant responsibility for formulating, administering or managing the implementation of City policies or programs.

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- h. **CITY REPRESENTATIVE:** The City Manager, or any other management employee, person or organization duly designated as such by the City Council or by the City Manager to represent the City in labor relations matters.
- i. **MEDIATION:** The efforts of an impartial third party or parties functioning as an intermediary to assist the parties in reaching a voluntary resolution of an impasse through interpretation, suggestion and advice.
- j. **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 an impasse as specified in Section 16.12. This process does not require either party to agree to a proposal or to make a concession.
- k. **MEMORANDUM OF UNDERSTANDING:** A written agreement on matters subject to negotiation reached by city representatives and representatives of a recognized employee organization, which shall only be binding upon approval by the City Council.
- l. **NEGOTIATE:** To meet and confer.
- m. **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.
- n. **RECOGNIZED EMPLOYEE ORGANIZATION:** An organization certified in accordance with Section 16.09.
- o. **SCOPE OF REPRESENTATION:** Matters relating to employment conditions and employer-employee relations including, but not limited to, wages, hours, and other terms and conditions of employment; except, however, that 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 or is exclusively a right retained by the City.
- 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 Sections 16.09 and 16.10.

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25-16.03 Employee Rights

- a. 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.
- b. Neither the City nor any employee organization shall interfere with, intimidate, restrain, coerce or discriminate against any employee in the exercise of these rights.
- c. Nothing in these Rules are intended to deny any employee of their rights under applicable laws.

25-16.04 City Rights

The City retains all of its powers and authority to manage municipal services and the work force performing those services including, but not limited to the following exclusive rights to:

- a. Determine and modify the organization of City government and its constituent work units;
- b. Determine the nature, standards, levels, and mode of delivery of services to be offered to the public;
- c. Determine the methods, means, and numbers and kinds of personnel by which services are to be provided;
- d. Determine whether goods or services shall be made or provided by the City, or shall be purchased or contracted for;
- e. Direct employees, including scheduling and assigning work, work hours, and overtime, subject to any restriction(s) contained explicitly in the appropriate memorandum of understanding;
- f. Establish employee performance standards and require compliance therewith;
- g. Discharge, suspend, demote, reduce in pay, reprimand, withhold salary increases and benefits, or otherwise discipline employees subject to the requirements of applicable law;
- h. Relieve employees of duty for any legitimate reason;

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- i. Implement rules, regulations, and directives consistent with law;
- j. Take all necessary actions to protect the public and carry out its mission in emergencies;
- k. Manage its operations;
- l. Exclude from the meet and confer process any subject preempted by federal or state law.

25-16.05 Rights of Employee Organizations

- a. 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.
- b. Not more than five (5) employee representatives, excluding legal counsel, of recognized employee organizations shall be allowed reasonable time off without loss of compensation or other benefits when formally meeting with City 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.

25-16.06 Notice to Recognized Employee Organizations

- a. The City shall give reasonable advance written notice to two (2) designated representatives of each affected, recognized employee organization, as determined by the employee organization, of any action directly relating to the scope of representation proposed for adoption by the City Council or City Manager. Each affected organization shall be provided an opportunity to meet and confer with the City Manager or a designated representative regarding the proposed action. Notification shall be consistent with the agreed upon procedures between the City and individual recognized employee organizations. **Ord. 3273, 1/00**
- b. Where circumstances dictate immediate action by the City Council which prevents advance notice to employee organizations, the City Council shall furnish such notice and opportunity to meet with its designated representatives as soon as possible following its action.

25-16.07 Notice to City

- a. Each recognized employee organization shall promptly notify the City Manager and the Personnel Director in writing of any change in its

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officers, representatives, affiliation status or of any other information contained in its petition for recognition filed pursuant to Section 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.

- b. Both the City and its recognized employee organizations shall provide reasonable advance notice to the other party as to the composition of its negotiating team, including nonmember negotiators. The maximum number of negotiators for either the City or employee organization shall not exceed five (5) members, excluding professional representatives.

25-16.08 Criteria for Determination of Appropriate Bargaining Units

- a. No employee organization shall be certified or decertified without a final determination having been made on the appropriateness of the bargaining unit(s) concerned by the City Council.
- b. 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.
 - 1. 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;
 - 2. The history of representation in the City and in similar types of public and, where appropriate, private employment;
 - 3. 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.
- c. Irrespective of the foregoing provisions:
 - 1. No unit shall be deemed appropriate solely on the basis of the extent to which the employees concerned have organized.
 - 2. Management employees shall not be allocated to a bargaining unit

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which also includes non-management employees; nor shall they be represented by any employee organization which represents non-management employees.

- (a) Management and confidential employees shall not represent any employee organization which represents non-management or nonconfidential employees, nor shall confidential employees disclose any information communicated to them relating to matters within the scope of representation, confidential information dealing with other employees, pending litigation and attorney-client or attorney work product privilege items. This provision, however, shall not apply to matters of public record, or to matters which confidential employees have been given written authorization to release by the City Manager.

Confidential employees shall observe the following additional regulations:

- (1) Confidential employees are precluded from serving on the board or negotiating team of their employee association.
- (2) Confidential employees may attend association meetings and participate to the extent of providing factual information and clarification on City practices and proposals. They should exercise caution in expressing their personal opinion so as not to divulge confidential information.
- (3) Confidential employees may vote on agreements with the City when such votes are conducted by secret ballot.
- (4) Confidential employees may fully participate in discussions and vote on administrative matters pertinent to the association. (e.g. election of officers, adoption of by-laws, etc.) consistent with the rules of the association.
- (5) Confidential employees may serve as association representatives on policy development committees which meet outside of the negotiation process and where confidential information would not be a factor in discussion.

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(b) This section shall not otherwise serve to limit employee rights as set forth in Section 16.03.

3. Full-time peace officers 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.

25-16.09 Establishment of Bargaining Units and Representation Rights

a. Note: Through adoption of this Rule, the City reaffirms recognition of the following employee organizations for the bargaining units in existence as of the date of adoption of these Rules.

Fire Management Association
General Employees of Monterey
Management Employees Association
Monterey Fire Fighter's Association
Monterey Police Association
Police Lieutenants' Management Association

b. Timing of Petitions

1. 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.

2. Where no memorandum of understanding is in effect for the subject unit or group of employees, petitions may be filed at any time prior to December 31 to be in effect for the meet and confer process for the following fiscal year.

c. Content of Petitions

An employee organization seeking recognition shall file with the City Clerk a petition containing the following information and documentation.

1. Name and address of employee organization;

2. Names and titles of officers;

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3. Names and titles of representatives who are authorized to speak on behalf of the employee organization in dealing with the City;
 4. A statement that the employee organization has, as one of its primary purposes, the representation of employees in their employment relations with the City;
 5. A statement as to whether the organization is a chapter, local or affiliate of any existing employee organization and, if so, the name and address of such organization;
 6. A copy of the organization's constitution and bylaws, if they exist;
 7. A designation of not more than two (2) individuals, and their addresses, to whom notice sent by regular mail service will be deemed sufficient notice to the organization for any purpose;
 8. A statement that the organization has no restriction on membership based on race, color, creed, sex, disability, national origin, political affiliations, age or marital status;
 9. The specific job classifications included in the proposed unit;
 10. Submission of evidence that at least thirty percent (30%) of the employees eligible to participate 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.
- d. Initial Action by City
1. The City Manager shall determine if the petition meets all requirements of this Section and shall also make a preliminary determination concerning the appropriateness of the proposed unit in accordance with the provisions of Section 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.
 2. Written notice of the petition's preliminary acceptance or rejection shall be furnished the petitioning organization within fifteen (15) days of its receipt by the City Manager. Where the petition is accepted, written notice shall also be furnished employees whose classes are to be included in the bargaining unit and all other recog-

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nized employee organizations of the City. No further action on the petition shall be taken by the City Manager for thirty (30) days from the date such notice is provided.

3. If no challenging petition, as provided in paragraph e., below, is filed within the aforementioned thirty (30) day period, the City Manager shall submit recommendations to the City Council, which shall make the final determination regarding the appropriateness of the proposed bargaining unit.
 4. Where the City determines that either the petition is defective or that the proposed unit is inappropriate, it shall so notify the petitioning employee organization. Such notices shall be in writing and shall specify the causes for rejection.
 5. 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 City Clerk by the end of the appropriate filing period as set forth in paragraph b. of this Section.
 6. If grounds for rejection were due to inappropriateness of the bargaining unit, the City Manager shall, at the request of the employee organization, consult with it on this matter prior to submitting a recommendation to the City Council.
- e. Challenging Petitions
1. Within the thirty (30) day period following the acceptance of a petition for recognition, any other employee organization may submit a challenging petition requesting recognition as the representative for the subject unit or for a broader or narrower unit than prescribed in the original petition. The challenging petition must meet all requirements set forth in paragraph c. of this Section. A thirty percent (30%) showing of interest of the employees eligible for membership of the proposed unit shall be required where the proposed unit is different than that named in the original petition and ten percent (10%) where it is the same.
 2. Where the challenging petition seeks the same unit encompassed by the original petition or subsequently stipulated to by the organization and the City, it shall be accepted provided it meets all requirements for the filing of a valid petition. It shall then be permitted to participate in the representation proceedings as set forth in paragraph f. of this Section.

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3. 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 City Manager, or the City Manager's designated representative, shall conduct a hearing involving representatives from all petitioning organizations to make a preliminary determination regarding the more appropriate unit. Within ten (10) days following the conclusion of such a hearing, the City Manager, or the City Manager's designated representative, shall notify the affected organizations and employees of the preliminary determination.
 4. The City Manager's recommendations shall be promptly submitted to the City Council which shall make the final determination regarding the appropriateness of the proposed bargaining unit.
- f. Final Action by City

The City Council shall make a final determination regarding the appropriateness of any proposed bargaining unit submitted to it pursuant to this Rule. Where a proposed unit is found to be appropriate, the City Council shall direct the eligible employee organization(s) to provide it with a petition as provided below. In order to qualify for acceptance, such petitions must:

1. Be submitted to the City Council within thirty (30) days of the date of its decision regarding the appropriateness of the bargaining unit; and
 2. Bear the original signatures of a numerical majority of the employees in classes included in the bargaining unit, which must be dated within the aforementioned thirty (30) day period; and
 3. Clearly state that the petition is for the express purpose of determining if the employee chooses the petitioning employee organization for representation in matters within the scope of representation.
- g. Verification of Signatures

Verification of signatures contained in recognition petitions shall be based upon the City payroll register as of the period immediately preceding the filing of the petition with the City Council. Employee signatures appearing on more than one recognition petition shall cancel one another and not be counted as a vote for either organization.

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25-16.10 Decertification of Recognized Employee Organizations

- a. 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 the employees in the appropriate bargaining unit.
- b. The timing of the petition shall be governed by Section 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 more than one (1) representation election be held affecting the same unit, or portions thereof, within a twelve (12) month period.
- c. All decertification petitions shall specify the bargaining unit and incumbent employee organization at issue; demonstrate a 30% showing of interest on the part of all employees eligible to participate 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 Section 16.09, paragraph c.
- d. The City shall have the right to initiate decertification proceedings 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.
- e. Except in extraordinary circumstances, the City's request shall be subject to the timing requirements of this Section and of Section 16.09 and shall only be acted upon with the prior approval of the City Council.
- f. The procedures set forth in Sections 16.08 and 16.09 shall govern matters concerning appropriateness of a proposed unit, notification of the parties, waiting periods and recognition proceedings. Further, an employee organization desiring to intervene in the proceedings shall be subject to the provisions of Section 16.09, paragraph e, concerning Challenging Petitions.

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25-16.11 Maintenance of Bargaining Units

- a. When a new classification is created or an existing one reclassified or eliminated, the City Manager or designee shall make a preliminary determination on amending the class composition of the respective bargaining unit(s) accordingly and shall so notify the affected recognized employee organization(s) in writing, or in accordance with any agreed upon procedure for notification between the City and an individual recognized employee organization.
- b. An employee organization disagreeing with such an allocation, reallocation or deletion may request a meeting with the City Manager or a designated representative for the purpose of clarifying the determination and discussing any disagreement between the parties. The City Manager's, or the designated representative's, decision on such matters shall be final.

25-16.12 Impasse Procedures

- a. Either party may determine that the meet and confer process has reached impasse as defined in Section 16.02 and may invoke the procedures of this section. Impasse procedures shall be commenced when one party files written notice on the other that impasse has been reached. At such time, the involving party shall, with the written notice, serve the other party with a final offer of settlement. Within three (3) working days of said written notice, the other party shall serve the invoking party with their final written offer of settlement.
- b. As soon as possible thereafter, the representatives of each party shall hold an impasse meeting. The purpose of the impasse meeting shall be to attempt to resolve all outstanding issues and reach agreement. If no agreement can be reached, the parties may mutually agree to submit the matter to non-binding mediation selected from the State Mediation and Conciliation Service or other mutually agreed upon alternative.
- c. In the event the parties agree to submit the matter to non-binding mediation, they may also agree to limit the issues submitted to a mediator. All mediation proceedings shall be conducted in closed session and the mediator shall make no public statement concerning the proceedings or any issues. The impasse meeting shall be continued from time to time until the completion of the mediation process. If the mediation process fails to produce an agreement between the parties, a final impasse meeting shall be held. The parties shall bear their own costs of the mediation proceedings and each pay one half of the costs of the mediator, unless they mutually agree to a different cost sharing formula.
- d. If mediation is not used, or agreement cannot be reached after mediation

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and the parties cannot agree at the impasse meeting, then the matter shall be submitted to the City Council. Not more than ten (10) days after the impasse meeting, the parties shall submit to the City Clerk their final offer of settlement together with any supplementary information they wish to submit. Offers submitted to the City Clerk shall be deemed for the purpose of settlement. They need not be the same as the offers submitted for impasse meeting purposes but must be the same as the final offer of settlement presented during impasse. As soon as possible after submission, the City Clerk shall forward a copy of each party's offer to the other party and to the City Council. The City Clerk shall also set the matter for a hearing before the City Council at their next adjourned or regular meeting not less than five (5) nor more than thirty (30) days after the final offers are submitted to the City Clerk's Office. The time limits set forth are intended to be maximum time limits and the parties shall attempt to agree to exact dates for the submission of written settlements and hearing before the City Council.

- e. The City Council shall take such action regarding the establishment of wages, fringe benefits or any other matter within their legislative discretion as they see fit. If the Council deems that a settlement is possible after the impasse hearing, they may continue the hearing and refer the matter back to the representatives for further negotiation. However, the Council may not continue the matter beyond the next regular or adjourned meeting at which time it must resolve the issues before the Council.
- f. The action taken by the City Council shall be final.

25-16.13 Use of City Facilities

- a. Upon reasonable advance notice, the City Manager may authorize the use of appropriate City facilities by recognized employee organizations for meetings involving City employees they represent. Such meetings shall not conflict with the conduct of normal City business.
- b. Upon request, the City Manager shall also provide a reasonable amount of space at appropriate City facilities for posting of material by recognized employee organizations. Space allotted for this purpose shall be withdrawn should any posted material contain inflammatory or other objectionable content.
- c. No City address, equipment or supplies may be used by recognized employee organizations except as specifically permitted by the City and for which the City may require compensation.

25-16.14 Dues Deductions

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- a. All recognized employee organizations shall have the right to have the regular dues of their members deducted from their paychecks at no cost. Dues deductions shall be made for a specified amount only upon the voluntary written authorization of the member. Dues deduction may be cancelled at any time by the member on written notice.
- b. All notices shall be to the Finance Director of the City on forms provided or approved by the City. The Finance Director shall regularly remit the amounts collected to the recognized employee organizations. The records of the City concerning those employees who have requested deduction and the amounts collected shall be open for inspection by the authorized members of the employee organizations at reasonable times.
- c. The City shall have no obligation to deduct back or unpaid dues, nor any fine, penalty or special assessment levied by the employee organizations against their members. The City shall have no obligation to deduct dues where the employee's net earning during the pay period for which dues are deductible are insufficient to pay the dues. Net earnings means the amount payable by the City to an employee for a particular pay period after all lawful deductions.
- d. All employee organizations which receive dues checkoff shall indemnify, defend and hold the City harmless against any suit brought against the City on account of checkoff of employee organization dues. In addition, all such employee organizations shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

25-16.15 Prohibited Activities

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

25-16.16 Administration and Amendments

The City Manager shall be responsible for establishing such rules and procedures as are necessary to implement and administer Rule 16 after consultation with affected, recognized employee organizations.

25-16.17 Construction

- a. Nothing in Rule 16 shall be construed to deny any person or employee the rights granted by Federal and State law.

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- 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 Rule 16.
- c. The provisions of Rule 16 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)."