

CITY OF OAKLAND
AGENDA REPORT

FILED
OFFICE OF THE CITY CLERK
OAKLAND

2008 JUN -5 PM 6:19

TO: Office of the City Administrator
ATTN: Deborah Edgerly
FROM: Finance and Management Agency
DATE: June 17, 2008

RE: **Informational Report Regarding the Revision of the Civil Service Board's
Personnel Manual (Civil Service Rules)**

SUMMARY

Over the last few years, the City Administrator has been in the process of a complete revision and update of its civil service rules, which had fallen out of step with modern personnel practices and laws. With the approval of the rule revisions by the civil service board, after extensive meet and confer with the unions, that process is now essentially complete. The City achieved most of its original goals through this process – streamlining civil service processes while preserving the basic Charter-granted protections of a civil service system. Indeed, the collaborative process with the City's unions, while lengthy and often contentious, actually achieved broader reform in some areas than was originally proposed by the City.

This report, which is for informational purposes, summarizes some of the major changes in the civil service rules, and describes the process through which these changes were achieved. No Council action is requested or required. A separate report, concurrently filed, seeks Council approval on appeal of a broader certification rule for certain entry level classifications – a Rule on which the Civil Service Board tied 2-2. Pursuant to Municipal Code Section 2.08.030 (Ordinance No. 8979), if the Civil Service Board (CSB) rejects a rule change proposed by the City Administrator, the change may be made with the approval of the Council.

Although great progress has been made, the Rules are, and should henceforth be, an evolving document. At its last meeting, the CSB requested further revisions to Rule 10, which governs dismissals of employees. The changes requested relate to pre-disciplinary due process requirements imposed by state law. Those changes have been drafted and will soon be circulated for meet and confer. In all other respects, the current round of civil service rule revisions is now complete. However, to maintain a modern and effective personnel system, the rules should be continuously evaluated and amended where necessary in order to stay current with modern principles of personnel administration.

FISCAL IMPACT

Since this report is informational only, no fiscal impacts are included.

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BACKGROUND

The Oakland City Charter provides for a “comprehensive personnel system based on merit...for the purpose of providing an equitable and uniform procedure for dealing with personnel matters; to serve the mutual interests of the people, the City as an employer and its employees through accepted modern concepts and practices of public personnel administration; to attract to municipal service the best and most competent person available; to assure that appointments are based on merit and fitness as ascertained by practical competitive examination and by records of achievement; and to provide the employees security of tenure, with advancement or promotion within the service, where practicable, from among employees having appropriate qualifications...” (Charter section 900) The charter establishes the Civil Service Board “to be responsible for the general supervision of the personnel system” and to “exercise administrative discretion vested in them by this Charter, or by ordinance.” The Charter further requires that “the competitive Civil Service shall include all offices and employments in City government” except those enumerated in Charter section 902. The Charter further provides that “the Council shall by ordinance provide a modern system of personnel administration for the competitive civil service.” (Charter section 904)

In 1974, the Council adopted Ordinance No. 8979 C.M.S. (Municipal Code 2.08.030) implementing the Charter mandate to create a civil service board, a personnel manual (otherwise known as civil service rules), and establishing basic civil service procedures. Section III of Ordinance No. 8979 C.M.S. sets forth the powers of the Civil Service Board, delegating to the Board the power to “review and approve changes to the Personnel Manual...proposed by the City Manager, provided that changes in which the Board does not concur may be made with the approval of the Council.”

For over a decade, the City of Oakland – like many other cities and counties – has been considering changes to its Civil Service Rules designed to modernize and streamline hiring, promotion, classification and other merit system human resource functions. Until the Civil Service Board’s recent adoption of these rules, the City operated with a set of Rules that was adopted in 1971. The City attempted to update the rules in 1996, when it hired the consulting firm Shannon Davis to recommend changes to bring the Rules into compliance with current laws. Unfortunately those recommendations were never adopted. In 2002, the “Moving Oakland Forward Strategy 6-A” (MOFA) report made recommendations for best practices in all areas of government and reiterated the need to address the City’s outdated rules.

In 2004, the Council directed once again that the civil service rules be updated. Consistent with best practices throughout the state, and the recommendations of the Moving Oakland Forward report, and in consultation with the Council, the City Administrator proposed and the City Attorney drafted a comprehensive revision of the civil service rules. The proposed revisions were completed in April 2006. These revisions were developed with the following stated objectives:

- Correct or delete any references which are not in compliance with current law;
- Update the various Rules to reflect current City policy and achieve streamlined processes to expedite hiring;

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- Update Rules to incorporate fair, effective, and modern personnel practices;
- Harmonize Rule provisions with union contracts and administrative instructions; and
- Reorganize the Rules to make them clearer, more readable and user-friendly.

Prior to presenting the proposed changes for adoption by the Civil Service Board, all of the City's unions demanded meet and confer pursuant to the Meyers Milius Brown Act -- the governing state labor law. It has long been established that civil service rule changes are subject to bargaining to the extent they impact on the "wages, hours and other terms and conditions of employment." Because the proposed rules strongly impacted the promotional rights of existing employees, appellate rights of employees, discipline, leaves and other bargainable matters, the City agreed to meet and confer with the unions.

Meetings with the Unions began in April 2006 and continued until August 2007. The parties went through the personnel manual rule by rule, line by line, discussing the technical language, the City's personnel practices, best practices, surveys of practices in other jurisdictions and related topics. A state mediator, Anne Song-Hill, was brought in to assist the parties in March 2007.

The process, although lengthy, was productive. At the conclusion of the process, only six significant issues remained unresolved. Consistent with Ordinance No. 8979 C.M.S., those matters were submitted to the Civil Service Board for resolution. At a series of meetings beginning August 27, 2007, and continuing until April 2008, the parties presented arguments to the Board regarding the areas of disagreement. Ultimately, the Board and parties resolved five of these issues in a manner acceptable to the City Administrator. On the sixth issue, the use of continuous testing and broader certification rules for certain entry-level jobs, the Board tied 2-2, and the rule change failed. Pursuant to Ordinance No. 8979 C.M.S., the City Administrator's appeal of that rule is before the Council this evening under a separate agenda item.

WHY CHANGING THE CIVIL SERVICE RULES WAS NECESSARY

Changes in the Civil Service Rules were critical for a number of reasons. First and foremost, the Rules had not undergone substantial revision in over 30 years; many of the changes delete outdated rules and allow Oakland to adopt some of the best practices in human resource systems found throughout the state. These practices reflect changes in the job market, modern understanding of exam validity and the government's commitment to provide high quality services to residents, consistent with the more limited available resources in the post-Prop 13 era.

The rule changes adopted by the Civil Board will provide greater efficiency as the City faces high job vacancy rates and no anticipated relief with respect to retirement and attrition. It is currently projected that the City will need to fill significant numbers of sworn and non-sworn vacancies annually in the next few years. A number of factors contribute to the vacancy rate, including inadequate staffing in the Office of Personnel Resource Management (OPRM) in the context of the complexity of the hiring and classification processes. When the process to amend these rules began, the average time from the start of recruitment to the certification of an eligible

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list was 119 days. During that period, there were up to 40 steps from the initiation of the request to fill a position through completion of the hiring. The changes made are intended to streamline a number of these processes and eliminate duplicative hearings and discussions.

Second, and equally important, the workplace landscape has changed greatly since the Rules were originally adopted due to the emergence of public sector bargaining rights. Virtually every employee covered by the rules is also covered by a union MOU, and those MOUs contain many rights that overlap and supersede the civil service rules. Discipline, for example, is covered by every MOU; the MOUs permit employees to grieve and arbitrate disciplinary actions. MOUs also address leaves and other traditionally bargainable subjects. At the same time, the corresponding provisions in the Civil Service Rules are often obsolete. Hence, one of the goals of revising the Rules was to separate traditionally bargained rights, which are appropriately governed by MOUs, from core merit system issues of selection and classification, which are more appropriately reserved to the Civil Service Rules.

Third, although the Rules have not been amended for decades, some City *practices* have changed to incorporate modern systems. As a result, some of the old Civil Service Rules did not reflect current City practices. For example, the Rules and MOUs with the major city unions provide for a “rule of 4 *names*” when certifying individuals from an eligible list to vacant City positions. Yet, for many years, the City had effectively utilized a certification rule of “4 *ranks*” to provide greater choice and avoid arbitrary tie-breaking. The Rules also provided that most personnel decisions are made by the Civil Service Board. Over time, operational decisions and necessity to act have required they be delegated to the Personnel Director, with later ratification by the Civil Service Board.

Finally, as a practical matter, the City’s Civil Service Rules had fallen into disrepair. At the outset of the negotiations, the parties could not even agree on which Rules were actually in effect. In some cases, two versions of the same provision existed in the Rules without a clear indication of which language is most current. The City undertook a major effort to recover records of past civil service resolutions, but many records remain lost, probably due to the 1989 earthquake, when the building which housed the personnel office was destroyed.

KEY ISSUES AND IMPACTS

MAJOR CHANGES IN THE RULES

The following are some of the substantive rule changes in the new rules:

1. Governance – This is the single most overarching change. The old rules were written in a time when civil service boards generally played a larger role in the day to day operation of municipal governments. As the scope and complexity of human resources needs have grown, operational functions have generally been assigned to human resource departments – in the case of Oakland, the City’s Office of Personnel Resource Management. In fact, in 2001, the CSB expressly delegated a number of functions, including classification, to the Personnel Director, subject to later ratification by the

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Board. The general thrust of the changes made in this rule revision is to transfer most operational decisions to the Personnel Director while preserving the Civil Service Board as an oversight and appellate body.

2. **Transparency** – The old Rules were vague about public posting for documents such as eligible lists, and in practice the City did not post eligible lists. The new rules clearly require public access to eligible lists. The new rules also require that a number of human resources functions performed by the Personnel Director be ratified by the Civil Service Board in open session. This will provide Board oversight and public notice while formally transferring day to day administration to the Personnel Director. Finally, the civil service rule revision process has generated efforts to increase access to job announcements and to revitalize the Civil Service Board website. Currently, all jobs available in the City of Oakland are posted on the web every Monday and remain posted until the closing date for application. Although improving public access to recruitment information and the activities of the CSB do not require rule changes, they are in line with the proposed changes regarding transparency in human resources functions.
3. **Promotional Opportunities** – The old Rules contained a narrow definition of “promotion” anchored in the concept of strict promotional paths. Specifically, promotion was defined as a change “to a position of another class in the same or similar series, for which a higher maximum rate of pay is provided.” This often resulted in an insufficient pool of internal candidates for a promotional position. Moreover, the City has an interest in accessing the outside market to ensure vacancies are filled by the most qualified applicants, whether they are internal or external. As a result, for years the City has predominantly utilized examinations open to outside applicants. Unfortunately, the old Civil Service Rules provided preference points for internal candidates only on closed promotional exams. The proposed revisions eliminate the distinction between open and closed exams. Instead, they provide preference points for all qualified internal candidates competing in a selection process. This rule change balances the City’s strong interest in partnering with employees and promoting the professional growth of our staff, with the public’s interest in ensuring the City hires the best candidates for the job.
4. **Veterans’ Preference** – The old Civil Service Rules provided preference points for veterans competing in open examinations within five years of release from active duty. The proposed changes eliminate the five year timeline, but limit the preference to external applicants. Put another way, once an applicant has used the preference and obtained a job with the City, the preference is exhausted.
5. **Exam Rating and Certification** – The old Rules required that the City certify the top four *names* on an eligible list to hiring departments for interview. The rule of four names was also incorporated in at least two MOUs, SEIU and Local 21, and both unions had filed grievances based on those provisions, which were resolved through the rule-change negotiation. In addition, the old Rules provided a single tie-breaking mechanism: ties are broken by comparing scores on parts of the examination given progressively lesser weights. However, many modern exams now contain one “part” only. Moreover,

modern testing principles suggest that it is not appropriate to distinguish among candidates with statistically similar scores, much less the same score. Distinguishing between candidates with the same test score, absent further process, is arbitrary. Perhaps for these reasons, for many years, the City has not broken ties, but has certified the top four *ranks* for department interviews. The rule changes incorporate this longstanding practice. In addition, for the first time, the new Rules explicitly state that a department may reject all certified applicants received and request a list from the next four ranks. The new, broader rule is still more restrictive than certification rules used in comparable jurisdictions – many of which utilize “rule of the list,” meaning that any applicant who passes the exam may be interviewed and selected by the hiring department. (See Attachment A.)

6. Temporary Employees – The Charter and old Rules both allowed for provisional employees to fill permanent vacancies for up to 120 days when there is no eligible list. The old Rules also provided for limited duration appointments for emergency assistance and absences; however, limited duration appointments cannot be used for permanent vacancies. Since the Rules were last revised, grant funded positions have become significantly more widespread and changes in the type and scope of services offered to the public have created the need for additional forms of temporary employment, which were provided in large measure in AI 562. The new Rules incorporate the substance of AI 562. In addition, the new Rules make special provision for grant funded positions lasting up to three years (the typical grant cycle). Under the old Rules, the conclusion of a grant could result in “bumping” of permanent city workers by those hired specially for the grant. The new Rule provides that, upon the conclusion of the grant, the appointments of individuals employed under the grant will be terminated and these individuals will have no bumping rights.
7. Rule 8: Leaves – As noted, one of the central goals of the rule revision was to separate traditionally bargainable items such as wages, benefits and leaves, from core merit system matters dealing with matters such as classification, examination and certification. Conceptually, in the light of the adoption of public sector bargaining, matters such as wages, benefits and leaves belong in union MOUs, not the Civil Service Rules. Conversely, core merit system matters belong in the Civil Service Rules, not in MOUs. Over the years, many merit system issues have ended up in MOUs and vice versa. Throughout the rule changes, we have attempted to eliminate matters that belong in MOUs. Most notably, we have proposed the elimination of Rule 8, which covers all forms of leaves, upon the completion of the current round of negotiations with the unions over successor MOUs. The Civil Service Board has concurred in this recommendation, and has directed that the City Administrator return to the Board once bargaining is complete.
8. Modern Anti-Discrimination, Reasonable Accommodation and Incompatible Activity Rules -- The old Rules pre-dated domestic partnerships, the ADA, and modern conflict-of-interest laws. All of these matters have been updated to reflect existing laws, the

current Charter, and AIs, with the exception of Rule 8, which will be deleted once MOU negotiations are complete.

REMAINING CHALLENGES

Despite the great amount of effort expended on this project by the City, Unions and CSB, challenges remain. First and foremost, the City Administrator firmly believes that greater flexibility in certification rules (broader rules) are necessary in entry level high-volume and difficult to recruit classifications, to ensure that OPRM can keep pace with the demand to fill open positions. The appeal pending before the Council this evening is one significant step in the direction of addressing that issue. In addition, the CSB rejected a rule that would have allowed for rule of the list in selected *promotional* classifications. That issue is not before the Council presently, but the City Administrator may wish to again bring that issue before the CSB at a later date, once we have an opportunity to see how the new rules operate.

Due to the desire to implement the critical changes in classification, examinations, certification and appointment, few changes were made to Rule 6 (Probationary Periods), Rule 7 (Performance Evaluations), Rule 9 (Layoffs) and Rule 10 (Disciplinary Actions). These matters are also addressed in MOUs and a variety of AIs and procedure manuals. At the request of the Unions, at the April 10, 2008 meeting, the CSB directed staff to make changes to Rule 10 to reflect *Skelly* (pre-disciplinary due process) requirements of state law. In the process, the City has taken the opportunity to draft a broader re-write of that rule to clarify the disciplinary process. That proposed re-write is currently being reviewed by the City Attorney's Office, and will be subject to further meet and confer.

CONCLUSION

From 1971 to the present, the Civil Service Rules fell substantially behind changes in the law and in the workplace. While great progress has been made in updating the Rules, review and changes in the Rules should be an ongoing process, driven by the City's need to recruit and hire the best candidates quickly and efficiently. Now that the Rules provide a modern framework for personnel decisions, it is incumbent upon the City to develop further policy initiatives in keeping with modern personnel practices, and to seek amendments to the Rules when appropriate. OPRM will continue to keep the Council apprised of civil service rule change issues through the quarterly vacancy report.

SUSTAINABLE OPPORTUNITIES

There are no sustainable opportunities identified in this report.

DISABILITY AND SENIOR CITIZEN ACCESS

The Personnel Manual has been revised to comply with the American with Disabilities Act (ADA) and other applicable Federal and State laws.

RECOMMENDATION(S) AND RATIONALE

Since this report is informational only, there are no recommendations.

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ACTION REQUESTED OF THE CITY COUNCIL

Since this report is informational only, there is no action requested of the City Council.

Respectfully submitted,

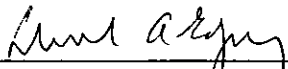


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APPROVED AND FORWARDED TO THE
CITY COUNCIL:


Office of the City Administrator

Attachment A
Regional Civil Service Rules Survey Results

Regional Jurisdictions	Supplemental Questionnaire as sole assessment tool to create eligible list	Under what rule/authority	Certification Rule	Other
County of Alameda	YES	Recruitments must have oral unless approved by the Commission.	Top of 5 scores, plus 1 for additional vacancy.	Sup Q assessment performed by SMEs.
City of Berkeley	YES	City has discretion. No rule or guidelines.	Rule of the list	Sup Q assessment performed by SMEs and/or the HR Analyst. Included in announcement.
City of Fremont	YES	City has discretion. No rule or guidelines.	Rule of the list	Sup Qs screened before hiring interview. Included in announcement.
City of Hayward	Rarely	City has discretion. No rule or guidelines.	Rule of the list	Sup Qs may be used for entry level classifications (e.g., laborer, water meter reader, etc.). Included in announcement.
City of Richmond	YES	City has discretion. No rule or guidelines.	Groups of ranks (A, B or C) for open. Rule of list for promo.	Authority implicit in developing selection mechanisms. Included in announcement.
City and County of San Francisco	YES	City has discretion. No rule or guidelines.	Rule of list for certain classes, top 3 scores for others	Authority implicit in developing selection mechanisms. Included in announcement.
City of San Jose	YES	City has discretion. No rule or guidelines.	Rule of list	
City of Santa Rosa	YES	City has discretion. No rule or guidelines.	Departments request a reasonable number of candidates	Sup Qs are used often. Assessors are HR Analysts and SMEs. Include notice in announcement.
County of San Mateo	YES	County has discretion. No rule or guidelines.	Top 7 names, plus 1 for additional vacancy	
City of Santa Clara	YES	Commission determines examination weights.	Top 10 scores for open exam. Top 5 for promo.	The Commission must approve changes in examination weights.

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INTRODUCTION

This Personnel Manual sets forth Personnel Rules of the Civil Service Board (hereafter “Rules”) which generally describe the employment relationship between the City of Oakland and its employees. These Rules apply to all City and Port of Oakland employees, except where otherwise indicated in these Rules, or where an applicable Memorandum of Understanding (“MOU”) specifically conflicts with a Rule, in which case the MOU provision shall govern. The competitive civil service consists of all employees who are not in positions exempted by action of the Civil Service Board or exempted by section 902 of the City Charter as it may be amended.

These Rules were established to conform with and be complementary to the City Charter. In cases of conflict between a Rule and the City Charter, the Charter shall prevail.

No person shall be discriminated against in any aspect of employment, including but not limited to, recruitment, examination, hiring, promotion and discipline, on the basis of race, color, religion/religious creed, marital status, national origin/ancestry, gender, gender identity, pregnancy, sexual orientation, physical or mental disability, medical condition, AIDS/HIV status, military or veteran status, age, citizenship or on any other status protected by federal, state or local law.

The City’s labor relations policies are governed by the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. The City has enacted Employer-Employee Relations Resolutions which specify the City’s local rules, rights and obligations regarding labor relations. Under the City’s Employer-Employee Relations Resolutions (EERR) and the MMBA, the City recognizes certain employee organizations as the exclusive representative for purposes of labor relations. For represented employees, the City meets and confers with employee labor representatives regarding wages, hours and others terms and conditions of employment, and provides advance notice of certain matters as specified by the Employer-Employee Relations Resolutions. Whenever any amendments to these Rules fall within the scope of bargaining under the MMBA, EERR or other applicable laws, they shall be subject to meet and confer.

RULE 1 - DEFINITIONS

Section 1.01 – Glossary of Terms.

The words and terms described in this section, to the extent that they are used in these Rules and elsewhere in documents relating to Civil Service processes, unless the context otherwise requires, shall have the following meanings:

- (a) Absence – an absence occurs when there is an incumbent, and that individual is expected to be off the job for a period of 120 days or less.
- (b) Allocation - the official determination of the class in which a position in the competitive civil service shall be deemed to exist and the assignment of such position to the appropriate class in the competitive civil service.
- (c) Applicant - a person who has filed an application for examination.
- (d) Appointing Authority - any official or group of officials having authority by legislation or Charter, or lawfully delegated authority to make appointments to or cause a removal from any position in a specified department, division or office of the City government.
- (e) Appointment - the designation of a person by due authority to become an employee in a position, and her/his induction into employment in such position.
- (f) Board - the Civil Service Board of the City of Oakland.
- (g) Candidate - a person participating in a selection process.
- (h) Certification - the Personnel Director's transmittal to a hiring department of names of available candidates for employment from a list of eligibles in the manner prescribed in these Rules.
- (i) Charter - the Charter of the City of Oakland.
- (j) Class or Class of Positions - a position or group of positions for which a common descriptive job title may be used, as defined by similar education, experience, knowledge, duties, qualifications and compensation schedule.
- (k) Classification Plan - an orderly arrangement of titles and descriptions of separate and distinct classes in the competitive civil service.
- (l) Competitive Civil Service - all positions now existing or hereafter created under any of the City departments, boards or commissions enumerated by the City Charter, but not including those positions specifically exempted from the competitive civil service by section 902 of the Charter or otherwise exempted by the Board.

Attachment B
Personnel Manual – Civil Service Board April 10, 2008

- (m) Class Title - the designation given to a class, to each position allocated to such class and to the incumbent occupying any such position. Its meaning is set forth in the corresponding class specification.
- (n) Clear and Convincing Evidence - proof that is so clear, explicit and unequivocal as to leave no substantial doubt in a reasonable mind.
- (o) Compensation - the salary and wages earned by or paid to any employee in remuneration for services in any position, but does not include allowances for expenses authorized and incurred as incident to employment.
- (p) Compensation Plan - a series of schedules of salaries and wages established for the several classes of positions in the classification plan, and the method of administration.
- (q) Competitive Examination - an examination, either assembled or unassembled, in which one (1) or more candidates are in competition, either with each other or against a standard established by the Personnel Director as the minimum acceptable which candidates must possess in order to competently perform the duties of a position.
- (r) Conclusion of Appointment - the involuntary separation of a non-permanent, and non-probationary employee for any reason authorized by these rules other than discharge, removal or layoff.
- (s) Day – a day shall be a calendar day unless otherwise specified. A working day shall be any day that the City is regularly open for business.
- (t) Demotion - a change of an employee in the City service from a position of one (1) class to a position of another class for which a lower schedule of pay is prescribed.
- (u) Discharge - separation from employment as a disciplinary measure or for failure to maintain requirements of minimum qualifications.
- (v) Domestic Partner – a person who has registered for a Certification of Domestic Partnership and who is in a committed relationship with a City employee, in which two (2) cohabiting, unrelated people over the age of 18, share common responsibility for the necessities of life and have resided together for at least six (6) months prior to registering for a Certificate of Domestic Partnership.
- (w) Eligible - a person whose name is recorded on an eligible list or reinstatement list.
- (x) Eligible List - any of the lists of names of persons who have been found qualified through suitable examination for employment in a specific class of position in the competitive civil service arranged in rank order.

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- (y) Employee - a person legally occupying a position in the City service in accordance with applicable rules and procedures of the City and shall include officers as provided in or designated pursuant to section 400 of the Charter.
- (z) Examination - all the tests of fitness, taken together, that are applied to determine the eligibility of applicants for positions of any class in the competitive civil service.
 - i. Assembled Examination - an examination in which applicants are called together in one (1) or more designated places to compete in tests according to procedures established and controlled by the Personnel Director.
 - ii. Unassembled Examination - an examination in which applicants are subject only to general controls as to the manner in which required material is submitted to the examining staff for review and rating, and usually not involving the calling of applicants together.
- (aa) Final Earned Rating - the final percentage attained by a candidate in an examination - as computed in accordance with section 4.10.
- (bb) Layoff - the separation of a non-probationary employee from the competitive civil service without fault on her/his part and by reason of lack of work or funds, resulting in the placement of her/his name on a reinstatement (laid-off) list.
- (cc) New Position - a position created through the authorized addition of a position not previously existing.
- (dd) Part-time Employee - a person occupying a position in the City service under one (1) of the following conditions:
 - i. Classified - employee working in a classified position on a permanent basis, working less than the normal hours of the normal work week for that department.
 - ii. Exempt - employee working in an exempt position on a part-time basis.
- (ee) Permanent Employee - an employee who has satisfactorily completed a probation period and whose regular appointment has been approved by the appointing authority.
- (ff) Position - an individual employment in a particular class.
 - i. Limited Duration - a position created for a specific purpose or due to an urgent need of limited duration.
 - ii. Exempt - a position not included in the competitive civil service by reason of Charter or exemption by the Board.
 - iii. Permanent - a position in the competitive civil service, which has required or which is intended to require, the services of an incumbent without interruption for a period of more than 120 calendar days.

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- iv. Temporary - a position in the competitive civil service which has required, or is intended to require, the services of an incumbent for a period not to exceed 120 calendar days, except as otherwise provided in these Rules.

- (gg) Promotion - the change of an employee in the competitive civil service from a position of one (1) class to a position of another class, for which a higher maximum base rate of pay is provided in the compensation plan and which involves increased or more complex duties.

- (hh) Promotional List - a list of names of persons arranged in order of ratings/scores, as provided by these Rules, who have been found qualified for promotion to a higher position or positions.

- (ii) Reclassification - the reassignment or change in allocation of an individual position on the basis of significant changes in the kind or difficulty of duties and responsibilities of such position.

- (jj) Reassignment – The voluntary or involuntary assignment of any employee from one position to another position in the same or similar class under the jurisdiction of a single appointing authority.

- (kk) Reassignment to Accommodate a Disability – reasonable accommodation of an employee with a disability through assignment to a vacant, funded position pursuant to section 5.10 of these Rules.

- (ll) Redesignation - the designation of the incumbent in a position without affecting her/his status in the position in event of a title change.

- (mm) Re-employment - the re-employment of a permanent employee who has resigned in good standing to a position in the same or similar class from which he/she resigned, within an allowable time period as provided by section 5.11 of these Rules.

- (nn) Reinstatement List - an eligible list of names of persons, arranged in the order as provided by these Rules, who have occupied positions in the competitive civil service, who have been separated from the competitive civil service as a result of layoff and who are entitled to have their names certified to appointing authorities under the provisions of these Rules.

- (oo) Removal – separation due to failure to complete probation.

- (pp) Resignation – the voluntary separation of an employee from employment.

- (qq) Restricted Examination - an examination limited to specific full-time or part-time City employees who meet the minimum qualifications of the class to be examined.

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- (rr) Selection Process – the process of evaluating applicants for the competitive civil service. The selection process includes recruitment, application, screening, examination, certification, interview, appointment and the probationary process.
- (ss) Separation - the cessation of a person's employment from City service, including but not limited to resignation, medical separation, retirement, conclusion of appointment, removal, and discharge.
- (tt) Series - a subdivision of a group in the classification plan, being a collection of classes in one occupational group having similar duties but usually at different pay schedules.
- (uu) Shall and May - "shall" is mandatory and "may" is permissive.
- (vv) Suspension - the temporary removal of an employee from her/his position with loss of pay and accrual of seniority as a disciplinary measure.
- (ww) Temporary Vacancy – a vacancy where there is an incumbent, but that individual is expected to be off for more than 120 days.
- (xx) Test - one part of an examination.
- (yy) Transfer – the transfer of a classified employee from a position under the jurisdiction of one appointing authority to a position under another appointing authority. Transfers are with the consent of the employee and the approval of the Personnel Director and the consent of the appointing authorities concerned, provided the positions are in the same or similar class.
- (zz) Weight - the numerical value given to each part of an examination designating the relative worth and used in computing a final score or rating.
- (aaa) Y-rated Salary – when an employee is reallocated to a classification with a lower base rate of pay, the salary of an employee is fixed at the rate the employee was earning at the time of the reallocation until the salary rate for the position to which the employee is reallocated reaches or exceeds the level of salary that the employee is receiving.

RULE 2 - ORGANIZATION, RULES AND PROCEDURES

Section 2.01 – Duties of City Administrator and Personnel Director. The City Administrator shall be responsible for the administration of the personnel system in accordance with Charter section 901. The City Administrator shall appoint a Personnel Director who shall have the following duties, subject to the direction of the City Administrator:

- (a) Direct the efficient operation of the Personnel Department of the City;
- (b) Prepare and maintain the Personnel Manual;

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- (c) Prepare, maintain and, subject to Board approval, amend the position classification plan, including detailed classification descriptions;
- (d) Administer the selection process for positions in the competitive civil service and maintain eligible lists of qualified candidates;
- (e) Act as Secretary to the Civil Service Board; and
- (f) Perform other duties as the City Administrator may assign.

Section 2.02 – Civil Service Board Duties. The functions and duties of the Civil Service Board are as follows:

- (a) Enforce, through general supervision of the personnel system, the provisions of these rules;
- (b) Review and approve amendments to the Personnel Manual proposed by the City Administrator, except those that are administrative in nature, subject to and in accordance with OMC 2.08;
- (c) Study, investigate and research into such areas and matters as the City Administrator, or the Council through the City Administrator, or the Board of Port Commissioners, may request, or as it may deem advisable;
- (d) Make reports and recommendations in writing thereon and formulate policy recommendations or recommended changes to the Personnel Manual for the better realization of the objectives of the personnel system as set forth in the Charter,
- (e) Approve exemption of positions from the competitive civil service;
- (f) Perform the appellate duties and functions set forth in these Rules;
- (g) The Board, or its designated representative, may, upon its own initiative, make such inquiries and investigations as it may deem to be warranted regarding the administration and effect of the provisions of the City Charter as related to matters of personnel management, and of the rules adopted in accordance therewith, and make such recommendations therewith, and make such recommendations to the appropriate authorities as in its judgment may be warranted; and
- (h) Perform such other duties and functions as the City Administrator may from time to time request.

Section 2.03 – Civil Service Board Composition. The Board shall consist of seven (7) members who will be appointed pursuant to section 601 of the Charter, and who shall serve without compensation. Members shall be appointed for a term of four (4) years, said terms to commence upon the date of appointment. An appointment to fill a vacancy shall be for the unexpired term only. [OMC 2.08.030]

Section 2.04 – Vacancy and Removal on Civil Service Board. A vacancy on the Board will exist whenever a member dies, resigns, or is removed, or whenever an appointee fails to be confirmed by the Council. A member may be removed pursuant to section 601 of the Charter. Cause for removal shall include: conviction of a felony, misconduct, incompetence, inattention to or inability to perform duties, and unexcused absence from meetings. [OMC 2.08.030]

Section 2.05 – Officers, Meetings of Civil Board. Each year at its first regular meeting in July, the Board shall elect a chairperson and vice-chairperson from among its members. The Board

shall meet at least once each month in City Hall, at an established time suitable for its purpose. Such meetings shall be designated regular meetings. Meetings called by the Mayor or City Administrator, and meetings scheduled for a time or place other than for regular meetings shall be designated special meetings. Written notice of special meetings shall be given to the Board members, the Council, the City Administrator, the Board of Port Commissioners, and the press at least forty-eight (48) hours before the meeting is scheduled to convene. [OMC 2.08.030]

Meetings of the Board shall be open and shall provide opportunity for public comment on any agenda item and in open forum. The Board shall have authority to meet in closed session pursuant to the Brown Act and the City's Sunshine Ordinance and lawful notice of closed session shall be given.

Section 2.06 – Civil Service Board Procedures. The Board shall, in consultation with the City Administrator and with the approval of the Council, establish procedures for the conduct of its meetings and hearings. Assuming at least a quorum of the Board is present, a majority vote of those members present is required for the adoption of any procedural or appellate motion. A quorum shall consist of four (4) members of the Board. The Board shall make its reports, findings and recommendations in writing unless otherwise requested. All reports, findings and recommendations shall be submitted to the City Administrator. The City Administrator shall forward such reports, findings and recommendations to the Council, or the Board of Port Commissioners, as appropriate. [OMC 2.08.030]

Section 2.07 – General Appeal Procedure. Except as provided elsewhere in these Rules, appeals shall be filed with the Secretary to the Board. The appeal shall be scheduled for the next regularly scheduled meeting of the Board and may be continued by the Board. At the meeting, the appointing authority, employee and/or affected union shall have an opportunity to present their positions, either orally or in writing. The Personnel Director or her/his designee shall also have an opportunity to be heard by the Board. The Board shall issue a final decision regarding the dispute.

Section 2.08 – City Attorney Duties. The City Attorney shall provide staff counsel to the Board, including in disciplinary appeal hearings, subject to applicable due process and ethical obligations.

Section 2.09 – Staffing for Civil Service Board. The City Administrator shall provide the Board with assistance from City employees under her/his jurisdiction.

Section 2.10 – Port Department. The Board of Port Commissioners is hereby authorized to establish personnel rules and procedures consistent with Ordinance 8979 and the Charter and to provide for administration of such rules for employees of the Port Department. Until the Board of Port Commissioners adopts such personnel rules and procedures, the rules of the Board, insofar as they are consistent with OMC 2.08.050, shall remain in effect with respect to Port employees.

RULE 3 - CLASSIFICATION OF POSITIONS

Section 3.01 – Competitive Civil Service. All positions in the City shall be in the competitive civil service except those positions designated in section 902 of the City Charter or otherwise exempted by the Board. All positions in the competitive civil service shall be under the jurisdiction of the Board. No appointment to positions within the competitive civil service shall be made except in accordance with these Rules.

Section 3.02 - Definition of Classification Plan.

- (a) Classification of Positions: All positions in the competitive civil service shall be grouped into classes, and each class shall include those positions sufficiently similar in respect to their duties, functions, and responsibilities so that similar positions may be assigned similar titles and embraced within the same class specifications, so that similar requirements as to training, experience, knowledge, skill, and ability, and same rates of pay are applicable. The purpose of such classification is to provide uniform standards, uniform pay scales and an orderly means of regulating the status of incumbents. The classification plan fixes titles of positions to their proper classes so that all positions with the same titles may be in the same class. The classification plan shall identify job series and feeder classes, where applicable.
- (b) Preparation and Amendment of Classification Plan: The classification plan, including class specifications, shall be prepared, maintained and, subject to Board approval, amended by the Personnel Director.
- (c) Purpose and Effect of Class Specifications: Each class specification describes the main characteristics and qualification requirements of positions in the class and gives examples of specific duties which employees holding such positions may properly be required to perform. Class specifications provide a basis for determining the relationship among classes, including the series to which a classification belongs, where applicable. The class specification is descriptive and explanatory, but not restrictive. The listing of particular examples of duties does not preclude the assignment of other tasks of related kind or character or skills.
- (d) Performance of Higher Level Duties: When an employee is assigned to perform duties of a higher class for training purposes, the Personnel Director must be informed and such training is subject to her/his approval as to the individual working out of classification. The basis for approval shall be that benefit accrues to both the employee and the City as a result of this training. Such training shall not be of more than six (6) months' duration.
- (e) Application of Specifications to Positions: In determining the class to which a position should be allocated, the specification of each class shall be considered in its entirety

and in relation to the specification of other classes in the classification plan; and the position shall be related to other positions of its kind in the City service.

- (f) Statement of Minimum Qualifications: The statement of qualifications in a class specification is intended to be used in determining the admissibility of applicants to competitive examinations, and as an aid in the preparation of such examinations. The minimum qualifications may also be used in determining the relationship between positions in one class and positions in other classes. The Personnel Director, after consultation with the appointing authorities, shall determine desired combinations of training and experience as minimum qualifications for the respective classes and, subject to Board approval, these minimum qualifications shall become part of the class specification.

Section 3.03 - Title of Positions. The class title of a position shall be used to designate such position in all budgets, payrolls, and other official records in connection with all personnel transactions. No employee shall be appointed, employed or paid under any title or position other than that to which he/she was appointed, except in cases of acting pay.

Section 3.04 - Administration and Maintenance of the Classification Plan.

- (a) Responsibilities of the Personnel Director and the Board: The Board shall oversee and the Personnel Director shall administer and maintain the classification plan.
- (b) Creation of New Classifications: New classifications shall be subject to meet and confer to the extent required by law and shall become effective upon approval by the Board. In recommending the establishment of a new classification, the Personnel Director shall submit to the Board a class title and specification for such classification. The date of the Board's action shall be included on new class specifications.
- (c) Amendments to Class Specifications: Amendments to existing class specifications that fall within the mandatory scope of bargaining shall be subject to meet and confer. In the event that the affected union agrees with the proposed amendments, the amended class specification shall be effective upon approval of the Personnel Director, subject to ratification on a consent calendar at the next regularly scheduled meeting of the Board.

In the event that the City and affected union do not come to agreement on the proposed amendments, the amendments shall be calendared for approval at the next regularly scheduled meeting of the Board. The union shall have the opportunity to be heard by the Board at such meeting before the proposed amendment is effective.

The date of the Board's action shall be included on amended class specifications.

- (d) Classification Studies: The Personnel Director may initiate and conduct classification studies of any positions in the competitive civil service when he/she deems such study

necessary, and shall recommend a change in classification where the facts warrant such action.

An appointing authority may submit to the Personnel Director requests for classification studies of positions within her/his jurisdiction.

An employee who contends that he/she is working outside of her/his classification or who contends that her/his position has been improperly classified may submit to the Personnel Director a request for a classification study. The Personnel Director shall review such requests and take further action as he/she deems appropriate, subject to appeal to the Board as provided in section 3.04(e) of these Rules.

- (e) Appeal to Board regarding Changes in Classification: In the event the Personnel Director has made a decision regarding a change to an employee's classification or regarding an employee's request for review of her/his classification, and the affected employee does not agree with this decision, the employee or affected union shall have an opportunity to be heard by the Board before the Personnel Director's decision becomes effective. The employee shall file an appeal with the Secretary to the Board within fifteen (15) working days of notice of the Personnel Director's decision. A letter sent to the affected employee's address of record via regular and certified mail, or hand delivered to the affected employee, shall constitute notification. At the hearing, the appointing authority, employee and/or affected union shall have an opportunity to present their positions, either orally or in writing. The Personnel Director or her/his designee shall also have an opportunity to be heard by the Board. The Board shall issue a final and binding decision regarding the classification issue in dispute.
- (f) Quarterly Updates: For both employee and employer initiated classification studies, the Personnel Director shall provide quarterly updates to the Board and the affected employee. For any classification studies pending for more than one (1) year, the update shall be accompanied by an explanation for the delay. An employee may request an update on her/his employee request for classification study at any time.

Section 3.05 – Treatment of Incumbents as a Result of Reclassification of Positions. In the event of a classification study, incumbents may be upgraded, downgraded or unchanged. Should an incumbent be upgraded or downgraded, the following shall occur:

- (a) Upgrading of Position: When a position is reclassified to a class of higher grade, the incumbent may be assigned to the class of higher grade without examination providing he/she has performed the duties of the class for one year prior to the inception of the classification study. The department head must attest to the fact that the employee has performed these duties for a period of one year. No classification study shall be performed if the incumbent has served less than one year in the position.
- (b) Downgrading of Position: When a position is reclassified to a class of lower grade, the incumbent may be assigned to the position of a lower grade at no loss in salary at the

time of the downgrading. The salary shall be "Y-rated" until such time as it becomes equivalent to the salary paid the classification. The employee shall be placed on the laid-off list of her/his former class and shall have priority re-employment rights to the classification from which he/she was downgraded for a period of two (2) years from the date of the Board's action changing the classification.

- (c) Redesignation: When a position is retitled to a class of the same grade, the incumbent shall be redesignated to the new classification without loss in status.
- (d) Notification: When a position is reclassified to a class of a lower or higher grade, the incumbent, her/his appointing authority, and the affected union (when applicable), shall be notified in writing at least two (2) calendar weeks in advance of the reallocation. A letter sent to the affected employee's address of record via regular and certified mail, or hand delivered to the affected employee, shall constitute notification.

Section 3.06 – Conditions for Accepting an Exempt Classification into the Competitive Civil Service. In the event that classifications, which were previously exempted from the competitive civil service, are to be included in the competitive civil service, the following procedure shall be followed:

- (a) The Personnel Director shall review the classification to determine that its organizational structure, job design, and compensation meet the standards established for other City classifications. If these standards are met, the classification shall be placed in the competitive civil service in the same manner as any new classification.
- (b) In the event a position in such a classification has an incumbent, and the incumbent meets the minimum requirements for the classification, has lawfully served for at least one year in the position performing the same or similar duties, and has standard or above performance ratings, the Personnel Director shall grant permanent status in the competitive civil service.
- (c) Should a position be occupied by an incumbent whose service is less than one year and/or does not possess the minimum qualifications, such employee shall be declared a provisional employee and may continue in that status for a period not to exceed 120 days from date of such declaration. The position shall then be treated as being vacant and open to competitive examination. Upon appointment of a candidate from an eligible list, the classification shall be deemed classified.

RULE 4 - APPLICATIONS, RECRUITMENT, EXAMINATIONS, SELECTION, AND ELIGIBLE LISTS

Section 4.01 – Recruitment. The City shall utilize the broadest feasible recruitment methods for attracting Oakland residents and other qualified and diverse applicants. Recruitments may be open, promotional or may be restricted to City employees, depending on the City's needs. The City will give reasonable notice to all of its employees concerning the City's employment

opportunities. Announcements of recruitments for positions shall be posted on the Personnel website weekly and supplied to all department heads, who shall post and/or distribute such notices.

Section 4.02 – Applicants for Selection Process. All applicants for positions in the competitive civil service will be required to participate in a competitive selection process, which shall be based on merit and fitness as ascertained by practical competitive examination and by records of achievement. The City will make City of Oakland application forms available to all prospective applicants. Once submitted to the City, applications shall not be returned. Applicants must submit applications on or before the filing deadline stated in the job announcement. An applicant's failure to provide complete and accurate information on all application materials may be grounds for immediate disqualification in the application process, and may result in dismissal from employment.

Section 4.03 – Names of Applicants Withheld. Names of applicants shall not be made public prior to examination, except by permission of the Personnel Director.

Section 4.04 – Background Checks. As part of the selection process, applicants shall, upon request, be required to supply references, and may be required to submit to a thorough background check by the City. Applicants may be required to submit to testing for illegal drug use, where permitted by law.

Section 4.05 – Eligibility to Compete In Competitive Examination Process. Except as provided in section 4.06, the competitive examination process shall be open to all applicants who meet the minimum qualifications, and any standards or requirements of state or federal law.

Section 4.06 – Basis for Rejection of Applications. The Personnel Director may refuse to examine and/or certify an applicant who is found to lack any of the requirements established for the position for which application is made, for any violation of these Rules, or for the following reasons:

- (a) Applicants not currently employed by City:
 - i. The applicant's past employment record is of such a nature that would indicate unsuitability for public employment including incompetence, misconduct, or unsatisfactory service;
- (b) All applicants:
 - i. The applicant has practiced, or attempted to practice, any deception or fraud in her/his application, or in demonstrating her/his eligibility or in securing her/his appointment.
 - ii. The applicant has been convicted of an offense which excludes the applicant from eligibility for the position based on applicable law or which in the judgment of the Personnel Director, renders the applicant unsuitable for the position. The Personnel Director shall take into consideration the following:

- (1) Whether or not the conviction is job related to the position the applicant is seeking.
 - (2) The nature of the job he/she is applying for and the seriousness of the crime committed.
 - (3) The time elapsed since conviction and the applicant's demonstrated behavior pattern during that time.
- iii. The applicant has made a false statement or has omitted material facts on the application.
- iv. The applicant is a current user of illegal drugs as defined by state law.

If the applicant's name is placed on the eligible list before the Personnel Director becomes aware of any false statements made on the application, the applicant's name shall be stricken from the eligible list. If, after the applicant has been appointed to a position, such false statement is discovered, it shall be considered cause for discharge.

Section 4.07 – Announcement of Selection Process to Fill Vacancy. Notice of a selection process for employment shall be given at least ten (10) working days in advance of the last date for filing applications. The announcement of the selection process shall list the minimum education, experience, and license requirements for application, and any other information as is necessary to adequately inform prospective applicants about the selection process. The minimum rating and/or score for which eligibility for the position may be achieved will be established by the Personnel Director, in keeping with the provisions of section 4.10 of these Rules.

Section 4.08 – Type and Scope of Competitive Examination. Examinations may be assembled or unassembled, in part or in their entirety.

All examinations shall be designed for the purpose of determining the qualifications of applicants for positions, and shall be practical and shall fairly test the fitness of the persons examined, and shall take into consideration elements or requirements of education, experience, knowledge and skill, aptitude, character, personality, physical fitness and any other element or requirements pertinent to the job and the specifications, as determined by the Personnel Director.

Section 4.09 – Administration of Examinations. Each examination shall be conducted by the Personnel Director or by her/his designee. Due diligence shall be used to ensure fairness, prevent collusion and/or fraud in the examination process, and to comply with these Rules. Dates for any examinations may be postponed or canceled by the Personnel Director. The Personnel Director may order a new recruitment and examination process in the event that the examination generates an insufficient number of eligible candidates to certify the number of candidates specified under the certification rule.

Section 4.10 – Ratings of Results of Examinations. The Personnel Director shall use generally accepted examination methods in rating and/or scoring the results of examinations and in determining the relative standings of the candidates.

Candidates shall be required to attain a score of not less than 70% on each part of the examination. In all examinations the 70% used, representing the minimum passing score, need not be the arithmetic 70% of the total possible score, but may be an adjusted score based on a consideration of the difficulty of the test, the quality of the competition, and the needs of the competitive civil service. Any such adjusted score shall be established before the identification of the candidates' examination papers.

The final earned rating and/or score of each person competing in any examination shall be determined by the weighted average of the earned ratings and/or scores on all parts of the examination, according to the weights for each part established by the Personnel Director; the weights of each portion of the exam shall be provided to applicants in advance of the conduct of the examination.

Section 4.11 – Oakland Residents Preference in Examinations. A City of Oakland resident who competes in an examination process for a position in the competitive civil service shall be given an additional five (5) points on her/his final examination score, provided that he/she initially scores a passing score on the examination and has been a City resident for a minimum of one (1) year as of the date of the establishment of the eligible list for that examination. This preference shall not apply to recruitments for sworn members of the Police and Fire Departments. The applicants must submit satisfactory written proof of residency as determined by the Personnel Director.

Section 4.12 – Veterans' Preference in Examinations. A qualifying veteran who competes in an examination for a position in the competitive civil service shall be given an additional five (5) points on her/his final examination score, provided that he/she initially scores a passing grade on the examination. For the purposes of this Rule, a "veteran" means any person who has served full time for 181 days or more in the armed forces in time of war; or in time of peace in a campaign or expedition or service in which a medal has been authorized by the government of the United States, who has been discharged or released under conditions other than dishonorable, but does not include any person who served only in auxiliary or reserve components of the armed forces.

Section 4.13 – Disabled Veterans' Preference in Examinations. "Disabled Veteran" means a veteran who was disabled as a result of such service. Proof of such disability shall be deemed conclusive if it is of record in the United States Veterans Administration. Such veterans who become eligible for certification from eligible lists by attaining the passing mark established for the examination shall be allowed additional credits amounting to 7.5 points on open examinations. Dates of military service shall be defined as those established in section 4.12 of these Rules.

Section 4.14 – Veterans' Preference Entitlement Exhausted Upon Acquiring Permanent Appointment. The exercise of the preferences in section 4.12 and section 4.13 shall be exhausted upon one (1) permanent appointment from an eligible list and the completion of the required probationary period. The application of any other veterans' credits on any other examination shall be automatically cancelled.

Section 4.15 – Seniority Credit for Permanent Employees. Seniority credit shall be given on the final examination score for permanent employees who compete in examinations so long as the employee's overall rating is at least "fully effective" or equivalent in the most recent performance appraisal leading up to the date of the examination. In addition, an employee shall have maintained a record clear of any disciplinary action (excluding reprimands) for a period of one year prior to the date of examination. To receive this credit, employees must be in permanent status at the time of application and examination, on an approved leave of absence, or on a reinstatement list. Credit shall be calculated as of the date of the job announcement as follows:

- (a) An employee who has completed ten (10) or more full years of City service and who successfully competes in an examination shall receive up to an additional five (5) points added to her/his final examination score.
- (b) An employee who has completed fewer than ten (10) years of City service shall receive an additional number of points, less than the five (5) points cited in sub-section (a) above and prorated in accordance with her/his number of completed years of City service, added to her/his final score.

Current City employees who qualify for an examination shall be permitted to take such examination during working hours, if the examination is scheduled during working hours and the employee provides three (3) working days notice to her/his immediate supervisor. If the announcement of examination does not permit three (3) days notice, the employee shall notice her/his supervisor within 24 hours of being notified of the examination.

Section 4.16 – Eligibility for Promotional Examination. At the discretion of the Personnel Director, promotional examinations may be administered to candidates who meet the minimum qualifications or occupy appropriate classifications designated by the classification plan. Only employees who are eligible to receive credit pursuant to 4.15 may compete in a promotional examination.

Section 4.17 – Eligibility for Restricted Examination. The Personnel Director may order an examination limited to specific full-time and part time City employees who meet the minimum qualifications of the class to be examined.

Section 4.18 – Notice and Review of Results of Examinations. All persons competing in any examination shall be given notice of their final score/rating and rank, or their failure to attain a place upon the eligible list.

A candidate who is a current City employee may, upon request, inspect her/his own examination papers and the grading thereof during the first 30 days after the Personnel Director has established the eligible list. Candidates who are not current employees do not have a right to inspect their examination papers.

Section 4.19 – Appeal of Examination Results. Applicants may appeal the results of an examination or any of its parts to the Board. Such appeal may be sustained only upon a clear and convincing showing that:

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- (a) A mechanical and/or electronic error or error not involving judgment or discretion was made in grading, scoring, or computing, or
- (b) An examination rating and/or score was the result of fraud or bias on the part of an examiner or rater.

Test content is not subject to appeal.

Any appeal must be filed with the Personnel Director no later than thirty (30) days after the establishment of the eligible list resulting from the examination. The Personnel Director's decision may be appealed to the Board within thirty (30) days. In the event the Personnel Director does not act upon the appeal within thirty (30) days, the appellant shall have an additional thirty (30) days to appeal the matter directly to the Board. The decision of the Board shall be final. No person previously appointed shall be displaced as a result of any correction ordered by the Personnel Director or the Board.

Section 4.20 – The Establishment of Eligible Lists. The Personnel Director shall provide for an eligible list, from which vacancies shall be filled, for a period of probation before employment is permanent, and for promotion on the basis of merit, experience and record. (Char. Sec. 900)

Each eligible list shall consist of the names of all persons who have shown by examination that they possess the qualifications which entitle them to be considered for appointment or promotion to any position in the class for which such list is established. Eligible lists shall be made public after the list has been established by the Personnel Director.

From the reports of the scoring and/or rating of the examination process, the Personnel Director shall prepare or cause to be prepared an eligible list showing the names of candidates who have obtained ratings and/or scores equal to or greater than the minimum required in each stage of the examination process, whose final earned rating is 70 or more, and who have been accepted as meeting all other requirements for eligibility, arranged in order of their relative ratings or scores. The Personnel Director may determine the total number of persons who shall constitute the list of eligibles.

Eligible lists shall become effective upon approval by the Personnel Director. There shall be two (2) kinds of eligible lists resulting from examinations: (1) Open eligible lists, which result from open examinations and which shall expire one year from that date of approval; and (2) restricted or promotional lists, which result from closed restricted or promotional examinations and which shall expire two (2) years from that date. The Personnel Director shall have the authority to extend the duration of an eligible list or to cancel such list prior to expiration. However, no list shall be extended for a period exceeding four (4) years from date of initial approval. When there is more than one eligible list for a particular class, the two (2) lists may be combined and the names of eligibles may be entered on the combined list at the discretion of the Personnel Director. A name occurring on a combined list shall be removed on the date on which the original list would expire. In the event that there are insufficient names to certify to the appointing authority or no eligible list exists, the Personnel Director may designate alternative lists including a transfer or eligible list for comparable classes.

Section 4.21 – Declined Offer of Appointment. An eligible who is notified that he/she is being offered an appointment is required to respond to the Appointing Authority within five (5) working days of the date of notification. The Appointing Authority may extend the time response period. An eligible who has failed to respond within the time limits shall be considered to have declined the offer of appointment.

After being offered an appointment, an eligible may decline appointment without losing her/his eligibility for future appointment by providing in writing reasonable grounds for declining an offer within the time periods set forth above.

Section 4.22 – Removal of Names from Eligible Lists. Names of eligibles will be removed from any eligible list for any causes as set forth in section 4.06, and may be removed for any of the following:

- (a) The eligible has been appointed through certification from any such list to fill a vacancy in any department, except as provided by section 5.07;
- (b) The eligible has declined a formal offer of appointment and has failed to respond to the appointing authority in accordance with section 4.21 of these Rules;
- (c) The eligible has waived a hiring interview three (3) times for a permanent position in any given class;
- (d) The eligible has failed to respond to her/his communication regarding availability for employment; or
- (e) The eligible does not possess or has failed to maintain the qualifications required by law and the terms of the position announcement.

Section 4.23 – Restoration of Names to Eligible Lists. Names removed from any eligible lists may be restored to the list, for just cause, upon a request made in writing to the Personnel Director. The Personnel Director's decision may be appealed to the Board.

RULE 5 - CERTIFICATION AND APPOINTMENT

Section 5.01 – Power of Appointment and Types of Appointments. All appointments to positions in the competitive civil service shall be made by the respective appointing authorities under and in conformity with the provisions of the City Charter and these Rules, by appointment from an eligible list, reinstatement, re-employment, transfer, reassignment, or temporary appointment (see guidelines in appendix A).

There are three (3) types of vacancies in the City service to be filled by appointments: permanent vacancies, temporary vacancies, and absences. Permanent vacancies shall be filled by: appointment from an eligible list, reinstatement, re-employment, transfer or reassignment. Temporary appointments shall be made in accordance with section 5.06 of these Rules.

Except as specifically provided in these Rules or in applicable MOUs, temporary appointments shall be at will and shall not attain permanent status.

Section 5.02 – Procedure for Certification to Fill Vacancies in the Competitive Civil Service.

Whenever a vacancy is to be filled other than by transfer, reassignment (including reassignment to accommodate a disability), demotion or re-employment, the appointing authority shall request the certification of names to the class of position for which the vacancy exists. Upon receipt of this request, the Personnel Director shall certify eligibles for the appropriate class in the following order: (1) reinstatement list; (2) promotional or restricted list; (3) open list.

In case of certification from a reinstatement list, the Personnel Director shall certify the names in rank order on the list, in accordance with section 9.03 of these rules.

Except in the case of a reinstatement list, the Personnel Director shall certify, whenever possible, the top four (4) ranks on the eligible list for the vacancy, with an additional two (2) ranks for each additional vacancy. The appointing authority shall interview all available and willing certified eligibles. If the appointing authority does not select for appointment any of the certified eligibles, he/she may request additional ranks as set forth above.

As provided in section 4.20, if no appropriate eligible list exists, then the Personnel Director may certify from such other eligible lists, as he/she deems most appropriate.

Section 5.03 – Selective Certification. The Personnel Director shall certify the highest ranking eligibles willing to accept employment. However, the appointing authority or Personnel Director may require additional and special qualifications and experience for the position. The appointing authority must provide a statement of valid reasons for such additional and special qualifications and experience, subject to approval by the Personnel Director. Upon approval by the Personnel Director, notice of these special qualifications shall be a term of the job announcement. The Personnel Director shall certify the highest ranking eligibles who possess the necessary qualifications for selective certification in accordance with section 5.02 of these Rules. The Personnel Director's decision to conduct a selective certification recruitment may be appealed to the Board within 10 working days of the posting of the job announcement.

Section 5.04 – Limit on Certifications. No person shall be certified from an eligible list more than four (4) times for the same or a similar position, except at the request of an appointing authority, provided that certification for a temporary appointment shall not be counted as one of such certifications.

Section 5.05 – Certification to Position in Lower Class. Any person on an eligible list may, with the approval of the Personnel Director, be certified to a class of position lower than that for which he/she was examined, provided such position is one having similar duties and responsibilities and provided further, that no eligible list exists for the lower class. Acceptance of such position shall not result in removal from the original eligible list.

Section 5.06 – Temporary Appointments.

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- (a) **Provisional Appointments:** A Department Head, with the approval of the Personnel Director, subject to ratification of the Board, may make provisional appointments, in the absence of an eligible list, for any position in which a vacancy may occur. No such provisional appointment shall continue after regular appointment from an eligible list, nor, in any event, shall such appointments continue for more than 120 calendar days. Provisional appointees may not be placed in permanent employment without successfully competing in a selection process.

In cases where the appointing authority desires to fill a vacancy by provisional appointment, candidates must be eligible to compete in the examination for that vacancy.

- (b) **Limited Duration Appointments:** Whenever a department requires assistance because of a special project, employees' absence due to sick or other leave or vacation relief, or a temporary increase in the workload, appointments of a limited duration may be made from an appropriate eligible list for the duration of such work. The acceptance or rejection by an eligible of this type of appointment shall not affect her/his standing on the eligible list.

The request and certification shall specifically state the date beyond which such appointment shall not extend, insofar as is known; and on such date, the employment of the person shall cease, unless sooner terminated. Appointments of over a year are construed as being of a permanent nature, and as such, the rules affecting permanent appointments will apply.

- (c) **Temporary Contract Service Employees:** The Personnel Director may appoint an employee to the temporary contract service employee classification for a maximum of 960 hours per fiscal year for one of two (2) types of assignments. Employees may be assigned to a division or a project on a regular basis up to the maximum 960 hours; or, assignments may be on an occasional or short-term (less than 30 days) basis. These assignments usually require specialized skills such as performance arts, short-term project management and transcription services. This classification may not be used for ongoing or repetitive use. Temporary contract service employees may not be placed in permanent employment without successfully competing in an examination process.
- (d) **Exempt Limited Duration Employees:** The Personnel Director may appoint an employee to the exempt limited duration employee classification to meet the City's need to fill positions with: (1) limited funding cycles of one year or less; (2) special projects that are longer than 6 months in duration, yet still short-term; or, (3) positions where the duties and responsibilities have not been fully defined. Exempt limited duration appointments may not exceed one year.

Regular appointment employees who accept exempt limited duration appointments will continue to receive the same fringe benefits they received in their regular appointment. Exempt limited duration employees do not accrue seniority. Exempt

limited duration employees may not be placed in permanent employment without successfully competing in a selection process.

- (e) **Temporary Agency Assignments:** The Personnel Director may contract with temporary agencies to provide temporary services in the event of an emergency, a special project or under unusual circumstances when help is needed immediately and for short duration. If temporary personnel are required for more than 30 days, it is preferable to make a provisional or limited duration appointment. Temporary agency assignments may not exceed 120 days. Temporary agency employees are not City employees and are not eligible for retirement, health or other fringe benefits.

- (f) **Grant Funded Limited Duration Appointments:** The Personnel Director may appoint grant funded limited duration employees to meet the City's need to fill classified positions that are funded by grants lasting up to three (3) years. Grant funded limited duration appointments shall come from an appropriate eligible list, and shall not exceed three (3) years. The acceptance or rejection by an eligible of this type of appointment shall not affect her/his standing on the eligible list.

Upon completion of a probationary period, grant funded limited duration appointments shall attain permanent status with the following exception: in the event of a layoff or the conclusion of the grant, a grant funded limited duration employee shall have no right of appointment to any classified position.

Section 5.07 – Reassignment of Employees. An appointing authority may at any time assign any employee under her/his jurisdiction from one position to another position under her/his jurisdiction in the same class. The appointing authority may also, with the approval of the Personnel Director, reassign an employee in a position in the competitive civil service to a position of a similar class under her/his jurisdiction for which the maximum base rate of pay is the same.

Section 5.08 – Transfer of Employees. The transfer of a classified employee from a position under the jurisdiction of one appointing authority to a position under the jurisdiction of another appointing authority may be made with the consent of the employee and the approval of the Personnel Director and the consent of the appointing authorities concerned, provided the positions are in the same or similar class.

Section 5.09 – Transfer List. Any permanent classified employee may request a transfer from one department to another in her/his current classification, provided the employee meets the qualifications for the position. A transfer list may be maintained and employees may, upon written application to the Personnel Director, have their names made available to department heads for consideration of appointment to vacancies for which they would be eligible as defined by these Rules. Names of employees may also be placed on the transfer list upon request of the department head concerned, with notice to the employee. Vacancies may, with the consent of the department head, be filled from the transfer list.

Section 5.10 – Reassignment to Accommodate a Disability. When an employee who has a disability is unable to perform the essential functions of her/his job, with or without reasonable accommodation, the appointing authority shall, where required by law, reassign the employee to a vacant, funded position for which the employee meets the minimum qualifications, and is able to perform the essential functions of the job, with or without reasonable accommodation. Such reassignments shall have priority over any individuals on existing eligible lists.

Section 5.11 – Re-employment After Resignation. Any permanent employee who has resigned from service in good standing shall, upon her/his written request, be considered for re-employment to a position in the same or similar class in the competitive civil service, within two (2) years of the date of such separation. A longer period of time from separation date to re-employment may be approved by the Personnel Director and appointing authority, for highly qualified former employees and for positions where recruitment is difficult.

Such re-employment shall be made without additional examination, and must have the approval of the appointing authority and the Personnel Director. Re-employment as herein defined, may take precedence over eligible lists; but in no way shall it be made mandatory for any appointing authority to re-employ former employees. Appointment shall otherwise be made in the manner as for original employment as defined in other sections of these Rules.

RULE 6 - PROBATIONARY PERIOD

Section 6.01 – Probationary Period. Every person appointed or promoted to a permanent position in the competitive civil service after certification from an eligible list, shall serve a period of probation while occupying such position, which shall be considered a part of the test of fitness. Former employees who are re-employed under the provisions of these rules shall be required to serve a period of probation of six (6) months from the date of re-employment.

The probationary period shall be an essential part of the selection process, and shall be utilized for the most effective adjustment of a new employee and for the removal or demotion of any probationary employee whose performance does not meet the required standard of performance.

Section 6.02 – Duration of Probationary Period. For entrance appointments the duration of such probationary period shall be for a period of twelve (12) consecutive months of active service, with the exception of the rank of Police Officer whose probationary period shall be for eighteen (18) months. The probationary period for persons appointed on a promotional basis shall be six (6) months.

An employee accepting a regular entrance appointment who has served on a limited duration appointment in the same class immediately prior to her/his regular appointment shall have that period of time counted as part of her/his probationary period. Rights and privileges shall accrue from the beginning date of limited duration appointment and shall be considered the original appointment date. (C.S. Res. 38851)

Section 6.03 – Interruption of Probationary Period. If an employee is laid off during the probationary period and subsequently reappointed to the same class, he/she shall be given credit for the portion of the probationary period previously completed.

If an employee is transferred during her/his probationary period from a position under the jurisdiction of one appointing authority to a position under the jurisdiction of another appointing authority, the second appointing authority shall grant credit for the portion of the probationary period previously completed.

Section 6.04 – Performance Rating During Probationary Period. Department heads shall file an approved report of performance at the end of the third and fifth months of employment for each employee serving a six-month probationary period. For probationary employees who have been required to serve a twelve-month probationary period, the department head shall file with the Personnel Director a report of performance for each employee at the end of the third, fifth, eighth, and eleventh months of employment. This section does not preclude the filing of additional reports at any other time during the employment of any individual.

Upon a favorable report, the appointment of the employee shall be deemed to be permanent at the expiration of the probationary period. In the event of an unfavorable report, the appointing authority shall notify the Personnel Director and the employee, at least five (5) working days in advance, that he/she will be removed from the position no later than the final date of the probationary period.

Section 6.05 – Removal or Demotion of Employee During The Probationary Period. At any time during the probationary period (entrance appointment to a classified position – one year; police officer – 18 months; entrance and restricted entrance appointment to a higher or equal classification – one (1) year; or a promotional appointment – six (6) months) an employee may be removed from her/his current position by the appointing authority, provided that:

- (a) Upon removal by the appointing authority, such probationer's name shall be removed from the eligible list from which he/she was certified, and he/she shall be considered permanently separated from that position without right of appeal to the Board except as set forth in section 6.06.
- (b) If the employee has served in the City in another position in the competitive civil service, the employee shall be notified in writing by the Personnel Department within five (5) working days of removal that he/she may be reinstated to the prior classification from which promotion was made. The employee has five (5) working days from date of notification to respond in writing, stating her/his wish to be so reinstated.
- (c) Reinstatement to the former classification will be based on the circumstances of the removal from the most recent appointment during the probationary period and the employee's work record as determined by the appointing authority.

- (d) If reinstatement is effected by the appointing authority, the employee shall be appointed to a vacant position in the former classification. If none is immediately available, it shall be the responsibility of the appointing authority to provide such a vacancy as expeditiously as possible without violating the rules of any applicable Memorandum of Understanding or the Personnel Manual concerning layoffs and without the necessity of creating an additional position.

Section 6.06 – Limited Rights of an Employee During Probationary Period. The right of an employee to appeal to the Board because of her/his permanent separation from her/his position during the probationary period shall be limited to the following:

- (a) Failure of the appointing authority to comply with section 6.04 of these Rules;
- (b) Failure of the appointing authority to comply with section 6.05 of these Rules;
- (c) Discrimination against an employee during such probationary period on the basis of race, color, religion/religious creed, marital status, national origin/ancestry, gender, gender identity, pregnancy, sexual orientation, physical or mental disability, medical condition, AIDS/HIV status, military or veteran status, age, citizenship or on any other status protected by federal, state or local law.

Section 6.07 – Procedure to Be Used In Appeals and Hearings Under Section 6.06. Whenever an employee who has been permanently removed from her/his position during the probationary period desires to appeal under the provisions of section 6.06, the following order of procedure shall govern:

- (a) Order of Procedure in Appeals:
 - i. The appeal must be filed in the office of the Personnel Director within five (5) working days from the date that notice of removal was filed upon the affected employee. A letter sent to the affected employee's address of record via regular and certified mail, or hand delivered to the affected employee, shall constitute notification.
 - ii. The appeal must be submitted in writing, and if the appellant desires to waive a public hearing, such a waiver must be in writing.
 - iii. The appeal shall state the sub-section of section 6.06 of these rules upon which it is based and a statement of the facts upon which such appeal is based.
 - iv. Within seven (7) working days from the filing of this appeal, the appointing authority shall submit to the Board in writing its response.
 - v. At the first meeting of the Board after the filing of the appeal and the City's response, the appeal shall be received and a date for the hearing shall be set. The appeal hearing shall be held at the next meeting of the Board, unless continued by the Board.
 - vi. Not less than five (5) working days before the date the appeal is scheduled for hearing, the Board shall send:

- a. A written notice giving the date, time, and place of such hearing to the appointing authority, to the appellant or her/his attorney and/or representative, and to the City Attorney;
 - b. A copy of the appeal to the appointing authority and the City Attorney; a copy of the answer of the appointing authority to the appellant or her/his attorney or representative.
- vii. Hearings on appeals may be open to the public. However, upon motion of a directly interested party, the Chairperson of the Board may exclude from the hearing room any witnesses not at the time under examination; except that a party to the proceeding and/or her/his counsel, or other persons conducting her/his case cannot be excluded.
- viii. The technical rules of evidence shall not apply. However, all testimony and exhibits offered must be relevant and bear upon the act of removal. Any testimony or exhibits that do not meet these criteria may be excluded. The Board shall consider the objection of either side to the introduction of evidence.
- ix. Hearings may be continued beyond the period originally scheduled or recessed until a future date agreeable to the Board and the parties for good reason. Provided, however, that if such request is made by the appellant or her/his attorney of record and the Board sustains the appeal, the Board may rule that the appellant shall receive no pay for the period of time during which such continuance was granted.
- x. Based on the evidence presented at the hearing, the Board shall render its decision which may be:
- a. to sustain the action of the appointing authority concerned;
 - b. to sustain the appeal and reinstate the appellant in accordance with subsection xi below.
- xi. The words "probationary period" as defined in section 6.01 of these rules shall be construed to mean a period of probation consistent with the letter and spirit of these rules; if an appeal is sustained hereunder, the Board may determine that there has been an interruption in the probationary period from the date of the cause giving rise to the appeal hereunder, to the date of the decision by the Board, and the probationary period of the appellant may be extended by the length of such interruption.
- (b) **Burden Of Proof:** In any appeal under this section, the burden of proof shall be upon the appellant, and the evidence in support of the allegations made in such appeal must be clear and convincing.

RULE 7 - PERFORMANCE EVALUATIONS

Section 7.01 - Establishment of Performance Evaluation System. A system of performance evaluation is established to provide a fair, impartial, and objective means for rating and reporting the service and performance of each employee in the competitive civil service.

The performance evaluation plan, embodying significant factors and factor degrees for the various classes of positions, shall have reference to the quality and quantity of work done, and other characteristics which shall be considered in rating and reporting the ability, performance and efficiency of the respective employee and the value of the employee to the City service.

The following rules and the supplemental manual of procedures and factors define the *performance evaluation standards and procedures which shall be used in connection with* eligibility for advancement, layoff, re-employment, promotion, demotion, dismissal from the service, or as a recommendation for reduction in pay within the salary range for the classification, and in other decisions relating to the status of employees. Such plan shall primarily be a means, whereby individual employees may regularly review their performance with their supervisors, and for ascertaining and encouraging the improvement in service by the employees, for recognizing superior performance, and in providing effective supervision of employees.

Section 7.02 – Official Copy of Employee Performance Evaluations. The system of performance evaluations, as approved by the Board, shall be maintained in separate manual form.

The Personnel Director shall provide each appointing authority with copies of the performance evaluation plan and shall prescribe the forms to be used. The performance evaluation plan in the office of the Personnel Director shall be open for the inspection of the employees during business hours.

Section 7.03 – Participants in the Performance Evaluation Procedure. The performance evaluation for permanent employees in the competitive civil service shall be made annually by a rating supervisor and a reviewing supervisor in each organizational unit or division within each department, as designated by the appointing authority of each department.

Each rating supervisor, designated by the department head of each department, shall be the person who is immediately responsible for the work of the employee; that is, the first person in authority who has supervisory responsibility and who either regularly oversees, reviews and checks the work of the employee or who is most closely acquainted with her/his daily performance during the period of time for which the performance evaluation is conducted. The reviewing supervisor, designated by the department head, shall be the next higher supervisor in line of authority above the rating supervisor, who has personal knowledge of the work and performance of the employee in the unit or division to which the employee is assigned.

Section 7.04 - Assistance by the Personnel Director. The Personnel Director shall be responsible for distributing employee performance evaluation forms, instructing the evaluating and reviewing supervisors regarding the performance evaluation procedure, recording final performance ratings for individual employees on the appropriate records, and obtaining

widespread understanding among the employees of the objectives and characteristics of the performance evaluation procedures.

Section 7.05 - Open Records of Performance Evaluations. The performance evaluations of the respective employees in each department shall be open at all times to said employees for review of their own file and for the inspection by the Personnel Director.

The performance evaluations of employees as maintained by the Personnel Director respecting each department likewise shall be open to the respective employees for review of their own file and to the appointing authority and to the superior officers in the department. Any employee shall be entitled to be informed by the Personnel Director only as to the performance evaluations recorded for herself/himself and those employees who work under her/his supervision.

RULE 8 - VACATIONS AND LEAVES OF ABSENCE

Section 8.01 - Vacation Leave. Authority For. The following rules shall govern vacations and leaves of absence, in accordance with the provision of Ordinance No. 8546 C.M.S., passed by the City Council May 16, 1972:

"The Board is hereby authorized to make rules and regulations governing leaves of absence and vacations for all employees in the Classified Civil Service whose leaves of absence and vacations are not otherwise provided for by ordinance or resolution of Council. Unless otherwise provided for by ordinance or resolution of Council, those employees not in the Classified Civil Service shall be allowed the rights and privileges granted to the employees in the Classified Civil Service."

- (a) Purpose. The purpose of annual vacation leave is to enable each eligible employee to return to her/his duties mentally and physically refreshed. All employees in the Competitive civil service, other than those excluded in section (b) shall be entitled to earn annual vacation leave. (C.S. Res. 41664 - 6/6/72)

- (b) Exclusions. The provisions of this section do not apply to the following:
 - i. Employees who are covered by Charter provision.
 - ii. Employees who work on a temporary, intermittent, or seasonal basis.
 - iii. Employees who work on an exempt part-time basis.
 - iv. Employees whose leaves of absence and vacations are otherwise provided for by MOU, ordinance or resolution adopted by the Council.

- (c) Specific Inclusions
 - i. City employees: Persons employed on an exempt part-time basis who have worked a reasonably fixed pattern and who have worked at least 1040 hours in the preceding anniversary year.

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- ii. Port employees: Persons who are employed on an exempt part-time basis' and who have worked at least 1,730 hours in the preceding calendar year, and not less than 140 hours in any month during the year.
- iii. Employees who work on a permanent part-time basis in a classified position and who have worked at least 50 percent or more of each normal work week during the preceding calendar year. (C.S. Res. 41934 - 4/24/73)

Vacation and sick leave credits should be determined on a pro-rated basis according to the time spent in part-time work, in relation to the normal work week for the class.

(d) Times At Which Vacation Leave Shall Be Taken.

- i. The times at which an employee shall take her/his vacation leave during the calendar year shall be determined by her/his department head, with due regard for the wishes of the employee, and particular regard for the needs of the department. If circumstances are such that a department head cannot permit an employee within her/his department to take an annual vacation leave or any part of such leave within a particular calendar year, the employee shall have the right to take the deferred vacation during the following calendar year, in addition to her/his then current vacation.

City employees must take vacation leave in units of not less than one day at a time.

Port employees must take vacation leave in units of not less than one week at a time, provided that under special circumstances the department head may grant a lesser unit of leave, subject to approval by the Personnel Director. (C.S. Res. 41934 - 4/24/73),

- ii. All vacations shall be computed and taken on a calendar year basis.
- iii. Employees shall be allowed to take vacation according to the following schedules, with the approval of their department head. The time of which shall be determined with due regard for the employee's wishes and particular regard for department needs. Provided, however, that no employee shall take vacation leave before such leave has been earned.
 - a. After her/his fifth calendar year of continuous service, 15 working days.
 - b. After her/his fifteenth calendar year of continuous service, 18 working days.
 - c. After her/his twentieth calendar year of continuous service, 20 working days.

(e) Rate at Which Vacation Leave Shall Accrue For Full-Time Employees.

- i. For employees during their first four (4) calendar years of service with the City of Oakland, vacation leave shall accrue at the rate of ten-twelfths working days per month.

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- ii. For employees who have completed four (4) calendar years of service with the City of Oakland, vacation leave shall accrue at the rate of one and one quarter working days per month.
 - iii. After completion of fourteen calendar years of service, leave shall accrue at the rate of one and one-half working days per month; after completion of nineteen calendar years of service, leave shall accrue at the rate of one and two-thirds working days per month.
 - iv. For purposes of computing the rate of accrual of vacation leave, a break in service of less than two (2) years shall have no effect. A break in service in excess of two (2) years shall mean that the employee so re-employed shall, for purposes of computing vacation leave, be treated as a new employee.
 - v. For the purpose of computing length of service in determining eligibility for vacation at the higher accrual rate, time spent on extended military leave shall be counted as time spent in the service of the City.
 - vi. An employee who works under the four-day work week plan shall accrue vacation leave on the same basis as he/she would accrue vacation leave under the five-day work week schedule. All vacation time used shall be charged by the actual hours taken. (C.S. Res. 42204 - 5/14/74)
- (f) Deferred Vacation. Each employee who is entitled to ten or more working days vacation in any calendar year may, with the approval of her/his department head, defer such vacation to the succeeding calendar year. (C.S. Res. 41799 - 12/12/72)
- (g) Effect Of Leaves Of Absence Without Pay Upon Vacation. No employee who shall take a leave of absence without pay or a period in excess of fifteen working days shall earn vacation credits for such period.
- (h) Computation of Vacation Leave upon Termination or Extended Military Leave.
- i. Compensation for Unused Vacation for Terminated Employee. After six months or more of continuous service, an employee terminates or is terminated, such employee, or her/his estate, shall be paid for earned vacation leave which he/she has accumulated.
 - ii. Method of Payment for Unused Vacation. Upon termination of City service or commencement of extended military leave, an employee shall be paid in a lump sum for such unused vacation time as he/she has accrued. Payment shall be made on the following basis: For purposes of computation it shall be assumed that there are 250 working days in a year. The employee's actual annual salary divided by 250 determines the daily workday rate multiplied by the actual number of working days of vacation due the employee at termination shall be the amount paid to the employee.

For the purpose of computing the number of working days of vacation due an employee upon termination, an employee shall be allowed credit for one full day if he/she has served one-half or more of the total number of calendar days in the month in which he/she terminates, plus the credit earned before that month; but no allowance shall be granted for service of less than this amount.

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- iii. Limitation Upon Benefits. No employee, or her/his estate, shall be paid for unused vacation in excess of forty-seven working days.

- (i) Supplemental Vacation Benefits.
 - i. Sick leave credits may be accrued up to a maximum of one hundred and fifty days for sick leave use.
 - ii. Employees who accrue and maintain this maximum are eligible to earn supplemental vacation based on the following scale:
 - a. Employees who accrue six (6) additional days of sick leave credit over and above the maximum during a calendar year are eligible for one additional day's vacation.
 - b. Employees who accrue twelve (12) additional days of sick leave credit over and above the maximum during a calendar year are eligible for two (2) additional days of vacation.
 - iii. Determination of eligibility for supplemental vacation will be made at the end of each calendar year, and any sick leave credits above one hundred and fifty days will be reduced to zero at that time. Supplemental vacation shall be taken as a part of the employee's next scheduled vacation.
 - iv. Employees who are or become eligible for supplemental vacation on the basis of accrual of one hundred and twenty days sick leave pursuant to section 8.01(1) as it was on June 30, 1969, shall continue to be eligible to earn supplemental vacation at that rate for a period of three (3) years from July 1, 1969; effective July 1, 1972, an employee must have accumulated one hundred and fifty days sick leave in order to be eligible for supplemental vacation under section 8.01(1) as hereby amended. (C.S. Res. 40835 - 7/15/69)

Section 8.02 - Sick Leave - General. Each full-time employee, other than those whose sick leave is governed by Charter, shall be entitled to take sick leave, with full pay, in case of her/his illness or disability, or serious illness within her/his immediate family, in accordance with the provisions contained in Section 8.02 (a) through 8.02 (k) of this rule. In addition, Port employees shall be entitled to use accumulated sick leave in case of urgent personal business, in accordance with the provisions set forth in section 8.02 (1) of this rule.

- (a) Purpose of Sick Leave. It is the purpose of this rule to establish provisions, which will enable the ill employee to remain off her/his job until he/she is well enough to work, and to avoid subjecting coworkers to illnesses, which might be contagious. Sick leave, under this rule, is a privilege which the employee can exercise only in the event of her/his bona fide illness or disability, or serious illness within her/his immediate family, except that Port employees only may be allowed additional use of sick leave as outlined in section 8.02 (1) of this rule. (C.S. Res. 41687 - 7/11/72)

- (b) Rate At Which Employees Shall Earn Sick Leave.
 - i. Each employee, upon completion of three (3) months of service with the City, shall be credited with three (3) working days of sick leave credits with pay.

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- ii. When the original sick leave credit has been granted, as provided in Section (1) above, each employee shall thereafter be credited with one working day of sick leave credit with full pay for each month of service.
- iii. For the purpose of this rule, a month of service shall mean thirty calendar days.

(c) Accumulation Of Sick Leave Credits. Such sick leave with pay, as provide for in Section, which is not used shall be cumulative. Sick leave credits may be accumulated, not to exceed one hundred and fifty working days. When the maximum of one hundred and fifty working days have been accumulated and a portion of it is subsequently used, it may be re-accumulated at the applicable earning rate provided in Section (b). (C.S. Res. 30835 - 7/15/69)

(d) Disposition of Sick Leave Credits of Terminated Employees.

Except as hereinafter set forth, if an employee terminates or is terminated for any reason whatsoever, all accumulated sick leave shall be cancelled; provided, however, that such employee who returns to work with the City of Oakland within one year of such termination shall be again credited with the amount of accumulated sick leave he/she had at the time he/she terminated. An employee who is re-appointed or reinstated in this manner shall earn sick leave at the rate of one working day per month, unless her/his previous service with the City of Oakland amounted to less than three (3) months service.

If an employee with not less than ten years total City of Oakland employment, uninterrupted by a single period of absence in excess of one year, terminates or is terminated for any reason, he/she shall be paid a lump sum on the basis of 33-1/2% of accumulated sick leave credit. For this purpose, a day's pay will be computed in the manner set forth in Section 8.01 (h) (2) of these rules. (C.S. Res. 41374 - 7/20/71)

(e) Family Illness - Immediate Family Defined.

- i. Each employee who is otherwise eligible to take sick leave may, in the event of serious illness in her/his family, take a maximum of five (5) working days family sick leave in any calendar year. Such family sick leave shall be charged against the employee's accumulated sick leave credits.

In extreme or unusual circumstances, the appointing authority, with the approval of the Board, may grant additional family sick leave time against earned sick leave credits and may, under extreme or unusual circumstances, authorize family sick leave for other than members of the immediate family.

- ii. The immediate family of an employee shall include wife, husband, mother, father, child, sister, brother, grandfather, and grandmother.

(f) Limitations on Sick Leave. Sick leave shall not be granted to an employee who is absent from duty due to an injury incurred while regularly working for an employer other than the City of Oakland.

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- (g) Leave Without Pay Effect Upon Sick Leave Credits. An employee who is granted a leave without pay or a period of thirty calendar days or more shall not earn sick leave credits for such time, except as elsewhere noted.
- (h) Verification of Illness - Abuse of Sick Leave. A department head may require of any employee under her/his jurisdiction, who has been on sick leave for one or more working days, a doctor's certificate or other authoritative verification, certifying that the illness was bona fide. He/she also may require that the employee be examined by the City Physician for the purpose of determining whether he/she is, in fact, well enough to return to her/his regular duties. The employee concerned shall be considered on sick leave status until the City Physician releases her/him for duty.

Obvious abuses of the sick leave privilege will result in suspension of those privileges for a period of six months. Determination of abuse and the suspension of privileges will be made by the Civil Service Department and the City Physician, and any such suspension shall be by order of the Board. Further disciplinary action by the appointing authority may be taken where deemed appropriate.

- (i) Required Method of Reporting Illness. In order to receive compensation for the period, in which he/she is on sick leave, the employee shall notify her/his immediate supervisor or a higher supervisor prior to or within one hour after the employee's regularly scheduled time for reporting to work. If the circumstances involved clearly are such as to make this impractical, the employee shall report her/his illness at the earliest possible time. Failure to do so is cause for denying sick leave with pay.
- (j) Compulsory Sick Leave. If, in the opinion of the appointing authority an employee is unable to perform her/his work properly due to illness, he/she may direct that the employee be examined by the City Physician. If the City Physician finds that the employee is physically or mentally unfit to properly perform her/his duties, to appointing authority may, subject to the approval of the Board, compel such employee to take sufficient leave of absence as will enable her/him to recuperate or regain her/his health so that he/she may again properly perform her/his duties.
- (k) Return to Duty from Extended Sick Leave. In all instances employees returning duty after extended sick leave (ten days or more), or when due to the nature of injury or illness, it is in the best interest of the City service medical clearance must be obtained from the City Physician prior to return to duty. Persons on sick leave may be called in by the City Physician for review and evaluation of their anticipated return to duty date. (C.S. Res. 38851 - 6/30/64)
- (l) Personal Leave for Port Employees. Up to (4) days of accumulated sick leave per year may be used by Port employees for urgent personal business. These four (4) days are not accumulative. However, if not used, this time will be counted as sick leave, in which case it can be carried from year to year. Using sick leave for personal business is defined as necessary transactions that might affect an employee's economic well being,

or personal welfare, and which cannot be carried out during off-duty hours. At least forty-eight (48) hours prior notice shall be given except in case of extreme emergency. (C.S. Res. 416!18 - 7/10/72)

Section 8.03 – Maternity Leave. An appointing power may grant a maternity leave without pay to any employee under her/his jurisdiction, subject to the following regulations:

- (a) No leave may be granted for a period exceeding one year.
- (b) A department head may require an Employee to take a leave of absence at as any time during her Pregnancy for reasons of health and safety, upon recommendation of the City Physician; or for reasons of unsatisfactory work performance due to the Employee's physical condition.
- (c) Before returning to duty following a maternity leave, an employee shall present to the City Physician a statement from her own physician stating that she is physically able to return to work. (C.S. Res. 4347-7 - 10/11/79)

Section 8.04 - Injury on Duty.

- (a) Combining Benefits of Workmen's Compensation Act and Sick Leave.
 - i. When an employee is disabled, whether temporarily or permanently, by injury or illness arising out of and in the course of her/his duties, he/she shall become entitled to leave of absence while so disabled, for a period not exceed ninety (90) days, including Saturdays, Sundays, and holidays, and such leave shall not be deducted from her/his accumulated sick leave; provided, however, that such sick leave for said period of not to exceed ninety (90) days including Saturdays, Sundays, and holidays, shall not be at full pay, but shall be in such amount as, when added to her/his disability indemnity under the Workmen's. Compensation Act of the State of California, will result in a payment equal to her/his full salary or wage; and provided further, that such leave, if interrupted by return to duty, shall in no event exceed in the aggregate ninety (90) days, including Saturdays, Sundays, and holidays, for each injury or illness.
 - ii. If the specific disability continues with or without interruption for a period in excess of ninety (90) days, including Saturdays, Sundays, and holidays, such employee may thereafter take as much of her/his accumulated sick leave as, when added to her/his disability indemnity payments, will result in a payment to her/him of not more than her/his full salary or wage. Her/his accumulated sick leave shall be reduced in proportion to the amount of salary or wage paid in excess of the indemnity payments and shall be computed on a working-day basis.
 - iii. If an employee whose disability continues, with or without interruption, beyond ninety (90) days, including Saturdays, Sundays, and holidays, elects to receive thereafter only the disability indemnity payments provided for in the Labor Code,

he/she must so advise the City Attorney's office (or the Port Attorney's office if he/she is an employee of the Port of Oakland) within seven (7) days before the first payment of salary chargeable to her/his accumulated sick leave is made. If he/she does not so elect, he/she shall receive her/his full salary to the extent of her/his accumulated sick leave, and her/his accumulated sick leave will be reduced in proportion to the amount of salary or wages paid in excess of disability indemnity. When her/his accumulated sick leave is exhausted, he/she still is entitled to receive disability indemnity as provided in the Labor Code.

- (b) Reports to Board. When an employee has been injured in the line of duty and he/she receives compensation in accordance with the provisions of any Workmen's Compensation Act of the State of California, the appointing power shall submit reports to the Board giving the following information, (1) The date such employee was taken out of service; (2) The date such employee returned to duty, with a brief statement as to the extent of disability, if any; (3) If the employee is unable to return to duty and is awarded a permanent total disability, the date of such award, with a report of termination of appointment.

Section 8.05 - Leave of Absence on Disability Retirement. Every employee retired by the Board of Administration but not the Oakland- Municipal Employees' Retirement System because of disability, in accordance with Section 33 of the Charter and the provisions of Ordinance No. 713 C.M.S., shall be granted a leave of absence during the period of her/his disability. Such leave shall be reported to the Board, but shall not require approval by the Board. If the disability for which such employee was retired ceases to the extent that he/she is able to perform the duties of the position held by her/him when retired for disability, and he/she is otherwise qualified for employment by the City, such employee shall have the definite and absolute right to be returned to a position in the same class as that occupied by her/him at the time of her/his retirement; and he/she shall be entitled to such other privileges as are provided for in these rules.

Section 8.06 - Family Death Leave. Leaves of absence with pay due to a death in an employee's immediate family is allowed, and such leave shall not be charged against vacation or sick leave to which an employee may be entitled, but shall be in addition thereto.

- (a) Eligibility for Family Death Leave. In order to be eligible for family death leave, an employee must have worked full-time for the City of Oakland for a period of time in excess of three (3) months.
- (b) Schedule of Allowances. In the event of a death within her/his immediate family, an employee may be permitted to remain absent from duty with pay for such time as hereinafter specified:
- i. If the service is within the Bay Area, three (3) working days with pay will be allowed.
 - ii. If the service is outside the Bay Area but within 300 miles of Oakland, not to exceed four working days with pay.

- iii. If the service is more than 300 miles but less than 600 miles from Oakland, not to exceed five working days with pay.
 - iv. If the service is more than 600 miles from Oakland, not to exceed eight working days with pay. (C.S. Res. 38851 - 6/30/64)
- (c) Exceptional Cases. In special or unusual cases the department head, with the approval of the Board, may grant a family death leave to allow an employee to attend funeral or memorial services for someone other than those included within the definition of the immediate family under Section, 8.02 (e) (2) of the Sick Leave Rule. It is the intent of this provision to cover the kind of situation in which someone other than immediate kin has raised the employee, or due to unusual circumstances has a very close relationship with the employee.
- (d) Procedure for Requesting Leave. In order to qualify for Family Death Leave, the employee shall obtain the approval of her/his immediate supervisor or a higher supervisor prior to going on leave of absence. If the circumstances are such- as to clearly make this impracticable, he/she shall notify her/his supervisor at the earliest possible time. Failure to do so may be cause for denying leave with pay.

Section 8.07 - Miscellaneous Leaves of Absence. Miscellaneous leaves of absence other than vacation and sick leave may be granted by the appointing authority, subject to the approval of the Board, unless otherwise provided. Department heads may grant leaves of absence without pay for periods not in excess of three working days; provided, however, that no employee shall be granted a total of more than five working days of such leave without pay in any one calendar year.

- (a) Procedure for Granting Leaves of Absence. An employee may be granted a leave of absence only if...
- i. The employee makes a written request to her/his department head at least five working days prior to the effective date of the request, stating her/his specific reasons for the request.
 - ii. The appointing authority recommends the request and forwards it to the Board prior to the effective date of the requested leave. Leaves of absence without pay of three working days or less need only be reported to the office of the Board in writing. The other steps are necessary for this type of leave.
- (b) Limitation Upon Leaves of Absence Without Pay. No single leave or absence without pay, other than leaves to accept exempt positions in the City service or classified positions in the City service classified positions in the City service financed in whole or in part by Federal or tax exempt foundations, may be granted for a period in excess of one year. Leaves of absence to fill exempt positions in the City service or classified positions in the City service financed in whole or in part by Federal or tax exempt foundations shall be granted for the entire period during which the employee serves in such positions. (C.S. Res. 39635 - 11/30/65)

A leave of absence may be extended, upon the recommendation of the appointing authority and the approval of the Board.

- (c) Reasons for Which Leaves of Absence without Pay May Be Granted. Leaves of absence without pay may be granted for reasons which, in the opinion of the appointing authority and the Board, appear to be proper and in the best interest of the City, such as ...
- i. To permit the employee to receive additional education of such nature that will improve the employee's job performance and increase her/his worth to the City.
 - ii. To permit the employee, because of her/his particular abilities or her/his outstanding competence, to assist another governmental jurisdiction, and which in a direct way will enhance the prestige of the City of Oakland.
 - iii. To permit the employee to take care of urgent or most important personal business which cannot feasibly be accomplished by someone else.
 - iv. To permit employee to settle domestic problems.
 - v. To permit the employee to take an exempt position in the City services.
 - vi. To permit the employee to retain promotional and seniority rights to her/his permanent position upon accepting appointment to a classified position in the City service under a program financed in whole or in part by Federal or tax exempt foundations. (C.S. Res. 39653 – 11/30/65)
- (d) Leaves of Absences With Pay. In addition to those leaves absence with pay which are provided for elsewhere in these rules, a leave of absence with pay may be granted to an employee under special circumstances which, in the opinion of the best interests of the City to do so. In no case shall leave with pay be granted in excess of three working days in any calendar year. Requests for such leave must be considered at a regular meeting prior to the effective date of the leave.

Leave of absences with pay may be granted to an employee who has been selected for jury: duty and from which he/she cannot be excused. Leave with pay for unexcused jury duty is not subject to the time limitation expressed above. Leave of absence with pay for jury duty may be approved by the appointing authority without reference to the Board, and will not be counted as regular leave with pay. An employee who serves on jury duty shall be paid her/his regular salary for the period of such duty but shall be required, under the provisions of the Charter, to turn over to the City Treasurer all fees, which he/she receives as payment for such jury duty.

To be eligible for a leave of absence with pay for other than jury duty, the employee must have served the City continuously for a period of not less than six months and her/his services must have been thoroughly satisfactory.

Section 8.08 - Return to Duty Following Leave. Every leave of absence shall be upon the condition that the employee taking the leave shall, subject to these rules, have the definite and absolute right, upon her/his return to her/his employment on the termination of her/his leave, to be reinstated to a position in the same class as that occupied by her/him at the time of the

commencement of such leave, and he/she shall be entitled to such other privileges as are provided for in these rules. Any employee who fails to return to perform her/his regular duties by the date indicated in her/his leave, provided such leave has not been extended by action to the Board, may be terminated.

An employee whose probationary period is interrupted as a result of taking a leave of absence shall, upon return, be given credit for the portion of probationary service previously completed. (C. S. Res. 43473 – 10/11/79)

Section 8.09 – Authorization to Approve Leaves. The Personnel Director is authorized to act for the Board in approving sick leaves, family death leaves, and all leaves of absence without pay, not exceeding 30 days.

Section 8.10 - Military. Leave of Absence. Military leave of absence shall be granted City employees in accordance with the military and Veteran's Act of the State of California, a copy such act to be found in the office of the Board.

RULE 9 - SENIORITY, LAYOFF, CHANGE IN STATUS, RESIGNATIONS

Section 9.01 - Layoffs. Whenever there shall be need for a layoff, the staff shall be reduced in accordance with the procedure set forth in section 9.02 of these rules.

Layoffs shall be on a Citywide basis by prescribed classification; provided, however, that incumbents who are selectively certified may not be displaced by other employees lacking the skills required for the selective certification to the position. Among employees possessing the requisite skills for selective certification the provisions of section 9.02 shall apply. The criteria applied in determining the particular employee(s) to be transferred or laid off from the initiating or directly affected department shall be those as specified in section 9.02 (a & b).

Employees who are laid off shall have their names placed on the appropriate reinstatement list in reverse order of dates of layoff; and they shall be entitled to reappointment to positions in the same classes where such positions are to be refilled during the period of their eligibility on the reinstatement list, or to similar classes for which no reinstatement list exist.

Section 9.02 - Layoff Procedure. Whenever it becomes necessary to reduce a staff under the provisions of section 9.01 of these rules, no permanent employee in the affected class shall be laid off while there are employees without status in the same class. Employees without status in such class shall be terminated in the following order: (1) temporary; (2) probationary.

In conducting a layoff, the appointing authority shall first communicate with the Personnel Director regarding the class of position to be considered. The appointing authority shall obtain from the Personnel Director a list of the employees, compiled on a City-wide basis, who will be affected by the layoff, together with the combined score for efficiency and seniority of each permanent employee to be laid off; copies of same shall be provided to those other appointing authorities whose employees may be involved. A permanent employee shall be notified in

writing and by direct submission at least ten (10) working days prior to the date of layoff, and the notice shall contain the reason for the layoff. The appointing authority shall immediately render a written report to the Personnel Director on such form as he/she may prescribe, such report to state the name or names of the employees so laid off and reasons for the layoff.

The method for computing layoff points shall be as follows:

- (a) Seniority Credit: Credit in the class of layoff shall be granted at the rate of one point for each month of service in that class. Credit in a class that has been abolished, combined, divided, or otherwise altered shall be granted at the same rate when the Personnel Director determines that such class was equal to or higher in level than the class of layoff, otherwise credit for service in such class shall be computed at the rate of one-half point per month. Service that is less than full time shall receive seniority credit on a pro-rata basis.
- (b) Efficiency: For failure to maintain an acceptable standard of performance, there shall be computed in the layoff or demotion score of an "overall" performance rating of "Unacceptable," any time within the preceding twelve (12) months, a minus thirty-six (36) points. For a rating of "Needs Improvement" any time within the preceding twelve months (12), minus twelve (12) points.
- (c) Order of Layoff When Combined Scores are Equal: As between two (2) or more employees having the combined score for efficiency and seniority, at their last evaluation, the order of layoff shall be determined by giving preference for retention in the following sequences: (1) employee with highest overall report of performance rating; (2) employee with greatest actual time in class in which the layoff is being made and in classes with the same or higher maximum salary; (3) employee with greatest total time in City service; (4) employee who received the highest score on the entrance examination in the classification; (5) employee whose application for the position in the subject classification was first received.
- (d) Reversion to Former Classification: City employees who possess permanent status in one classification and who, either through open or promotional examination, are appointed to a position in another classification, in the event of layoff from that class, shall have the right to be reinstated to a position in their former classification. This right shall extend to both personnel with tenure in a class so affected, and to individuals serving probationary periods in such class at the time of layoff.

To implement the above, that employee in the lower classification with the least number of seniority and efficiency points shall be laid-off.

Section 9.03 – Reinstatement List. Permanent employees who are laid off will have their names kept on a reinstatement list for three (3) years from the date of layoff. Names shall be placed on the reinstatement list in reverse order of layoff. The reinstatement list will be used by the Personnel Director when a vacancy arises in the same or lower classification of position. The Personnel Director shall use this list before any other type of appointment. The name of any

permanent employee on a reinstatement list who has remained on the list for three (3) full years shall be removed from the list and that person shall lose all civil service status. The Personnel Director, in her/his discretion, may extend the active period of the reinstatement list.

Section 9.04 – Return of Laid-off Probationary Employees to Eligible Lists. Probationary employees who have been laid off will not have their names placed on a reinstatement list. Rather, they may have their names restored to the eligible list from which they secured appointment, in the order of their original general score on such list; provided, however,

- (a) If the eligible lists from which such persons received appointment have expired or been canceled, the probationary employee shall have no restoration rights;
- (b) Such persons whose names have been restored to an eligible list may have their name transferred to an appropriate list, from such date and in such order as the Personnel Director may determine.
- (c) All probationary employees who have been laid off and subsequently appointed to a new position in the same class shall complete their probationary period in that class. Probationary employees who are appointed to different class must serve the entire probationary period required in that class. If a probationary employee is appointed to a lower class in the same job series, then he/she will serve remaining portion of her/his probationary period.

Section 9.05 – Resignation. Employees are free to resign from their employment, but are encouraged to give at least two (2) weeks notice. Once a resignation becomes effective, it is irrevocable except that the Personnel Director may, in her/his discretion, permit a resignation to be rescinded. The Personnel Director may, in her/his discretion, require employees separating from City employment to undergo an exit interview.

Whenever (a) an allegation is made that the resignation is due to undue pressure or threats, or (b) in the opinion of the Personnel Director resignations within any organization are excessive, it shall be her/his duty to investigate causes of such resignations and report the same to the appointing authority and the Board.

Section 9.06 - Retirement. Any person who is employed in the City service who shall become eligible to retire, and whom shall be retired or pensioned under the provisions of any present or subsequent retirement laws shall be deemed, for the purposes of these rules, to have been separated from the City service in good standing.

Section 9.07 – Medical Separation. An employee who becomes unable to perform the essential assigned functions of her/his position due to a disability or other medical condition may be medically separated. Prior to medical separation, the City will determine what accommodations, if any, will be reasonably provided to the employee in accordance with City policy, applicable law and section 5.10 of these Rules, and may determine whether the employee may be eligible for disability retirement, if appropriate. Except by mutual consent, an employee shall not be medically separated while on any authorized leave of absence.

Proof of the employee's disability is required and is subject to verification by the City. When the City requests a medical opinion as verification of disability, the City shall pay the reasonable costs of the medical examination(s) requested. If the employee has passed her/his probationary period, a letter sent to the affected employee's address of record via regular and certified mail, or hand delivered to the affected employee, shall constitute notification. Proof of service shall accompany the notice of intent. The notice shall: (a) inform the employee of the action intended, the reason for the action and the effective date; and (b) inform the employee of the right to respond and to whom to respond within ten (10) calendar days from the date of issuance of such notice of intent, in accordance with the instruction given by the City in the written notice provided to the employee. After review of the employee's timely response, if any, the City shall notify the employee of any action to be taken. An effective date of separation shall be at least ten (10) calendar days after the date of issuance of the notice of intention to separate or timely receipt of the employee's response, if any, whichever is later. Medical separation may be appealed to the Board.

Section 9.08 – Separation Due to Absence Without Leave. Absence from duty without proper authorization in excess of five (5) continuous working days shall constitute abandonment of the position and shall be reported to the Personnel Director and recorded as an automatic resignation. The appointing authority shall notify the employee at her/his last known address by regular and certified mail and notify her/his emergency contact on the form prescribed by the Personnel Director.

If the employee contacts the Personnel Director within 30 days of the mailing of such notice and establishes to the satisfaction of the Personnel Director that the absence was in fact authorized or that the absence and failure to seek or obtain authorization was due to unavoidable factors entirely beyond the control of the employee, the Personnel Director may order such employee reinstated. Should the Personnel Director decline to reinstate the employee, he/she shall notify the affected employee in writing of the determination and the basis for his/her determination. The employee may appeal the matter to the Board within 15 days of the date such letter is mailed or otherwise delivered. The decision of the Board shall be final and not be reconsidered.

Failure to appeal as set forth above shall result in the employee being separated and the cancellation of all current examination and eligibility status.

RULE 10 - DISCIPLINARY ACTIONS, APPEALS AND HEARINGS

Section 10.01- Disciplinary Action. All persons holding positions in the Classified Civil Service shall be subject to suspension, fine and also removal from office or employment by the City Administrator, or, in case of persons employed in the office of the Auditor-Controller or Board, for misconduct, incompetence, or failure to perform their duties under or observe the rules and regulations of the department, office, or Board; but subject to the appeal of the aggrieved party to the Civil Service Board as herein provided.

Any chief official, any subordinate officer, and any superintendent or foreman in charge of municipal work may temporarily suspend any subordinate then under her/his discretion for incompetency, neglect of duty or disobedience of orders, but shall within twenty-four (24) hours thereafter report the fact in writing to the City Administrator, Auditor-Controller, as the case may be, and furnish a copy of the report to the subordinate suspended, upon her/his request therefore. The City Administrator, Auditor-Controller or Board shall thereupon, if demanded by the subordinate suspended, hear evidence for and against her/him, and shall thereupon affirm or revoke such suspension according as he/she or it finds the facts to warrant.

Employees in the competitive civil service may be dismissed, demoted, fined, or suspended without pay for just cause.

When an employee in the competitive civil service has failed or fails to perform the duties of her/his position in a satisfactory manner, or has committed any act or acts to the prejudice of the public service, or has failed to perform any act or acts it was her/his duty to perform, or whose service rendered is below satisfactory standards, or who otherwise has become subject to disciplinary or other corrective measures, the appointing authority or her/his designated department heads shall have the power and it shall be their duty to take action, subject to the provisions of the Charter and these rules, in one of the following ways:

- (a) To reprimand the employee and record such reprimand in her/his personnel file.
- (b) To suspend the employee without pay.
- (c) To demote the employee to a lower class of position than that currently filled by her/him.
- (d) To fine the employee.
- (e) To discharge the employee from the public service.

Section 10.02 - Procedure in Disciplinary Actions. The department head shall notify the Personnel Director, in the manner and form prescribed by her/him, whenever any employee is suspended without pay, indicating the reasons therefore and the duration of the suspension. In case of any suspension, the employee shall have the right of hearing or investigation by the appointing authority or the Board, in accordance with the procedures described in the Charter and these rules.

Section 10.03 - Appeal of Disciplinary Action. Permanent employees shall have the right to appeal from the final notice of discipline involving suspension, fine, demotion or discharge. The notice of appeal must be received by the Secretary to the Board within ten (10) working days from the date the final notice of discipline was served upon the appellant, or the right to proceed to the next appeal level under these Rules shall be forfeited and the discipline shall become final. The appeal shall address each of the reasons for the disciplinary action enumerated in the written notice and may provide any relevant additional information.

The appeal shall be submitted to the Secretary to the Board. The Board shall decide whether it shall hear the appeal itself or whether the appeal shall be heard by an independent Hearing Officer. In cases in which the appellant has requested a public hearing, the Board shall hear the appeal.

Section 10.04 - Procedures for Hearings by the Board. In the event that the Board decides to hear the appeal itself, the following procedures shall apply:

A hearing date will be set after the appeal is initially received by the Secretary to the Board. The request for appeal must contain the following items: (1) Cover sheet, including appellant's name, address, and telephone number; name, title, address, telephone number of appellant's representative, if any (Representative's telephone number will suffice in the absence of appellant's number); (2) A list of available days for hearing dates; (3) An estimate of the number of hours required for case presentation.

Appellant representatives and the City Attorney must provide two (2) complete hearing packets to the Board's secretary by at least one week prior to the scheduled hearing. Appellant's failure to provide such information may, at the Board's discretion, result in the rescheduling of the hearing. Packets must include the following items: (1) A chronology of events; (2) An agreed upon Statement of Facts; and (3) Statement of Facts in Dispute.

The City Attorney shall also present to the Board a copy of the Notice of Intent to Impose Discipline, and Notice of Discipline with accompanying materials. In the event the City Attorney and the Appellant's representative are unable to meet on the above items, the Appellant's representative must submit their version of the facts at least one week prior to the hearing.

The City Attorney and the Appellant's representative are required to meet at least one hour prior to the hearing to finalize exhibit packets which must include the following: (1) A list of exhibits, if any; (2) Pre-marked exhibits (if any exhibits are to be submitted). Additional exhibits may be submitted during the hearing, if they were not available to a party prior to the hearing. No documents submitted to the Board for consideration shall be considered public records, unless consented to by all parties or otherwise required by law.

The hearing may be continued for good reason beyond the date originally scheduled or recessed to a future date agreeable to the Board and the parties. However, if a continuance is requested by the appellant or her/his representative, and the Board shall later sustain the appeal, the Board may rule that the appellant shall receive no back pay for the period of time during which such continuance was granted.

Hearings shall be closed to the public unless the appellant requests a public hearing in writing. In the event that a hearing is public, upon motion of a directly interested party, the Board may exclude from the hearing room any witnesses not at the time under examination, except that a party to the proceeding and her/his counsel cannot be excluded.

Hearings shall be tape-recorded. Copies of the tape will be available to the appellant, if desired, for no charge. Transcripts of the taped proceedings will be available upon request at the requesting parties' expense. Board subpoenas will be issued upon the request of either party. Subpoenas may be secured by contacting the Secretary to the Board.

The Board shall convene the hearing, receive evidence through testimony and documents and make findings of fact and conclusions about the discipline. Technical rules of evidence shall not apply. However, all testimony and exhibits must be relevant to the issues in contention, and the Board may exclude any evidence which it deems to be irrelevant. The Board shall consider and rule on any objection by either party. Closing arguments shall be oral; provided, however that either party may elect to submit a closing brief. Briefs are to be submitted to the Board within a time set by the Board. Briefs submitted after the deadline shall not be considered by the Board.

The Board will make no assumptions of innocence or guilt. The Board will be guided in its decision by the weight of the evidence as it appears to it at the hearing.

The Board has the power to sustain, overrule, reduce or, consistent with due process, modify the discipline, award back pay and determine the extent of back pay to be awarded, if any, based on the circumstances, and take any other appropriate action. The Board's determination will be issued in writing, within thirty (30) working days of the conclusion of the hearing, unless post-hearing briefs are to be submitted, in which case the Board's determination will be issued within thirty (30) working days of timely receipt of the post-hearing briefs. Copies of the Board's determination shall be forwarded to the appellant and her/his representative, City Attorney's Officer and the affected City department. The Board may request that either or both parties present proposed findings of fact and conclusions of law within ten (10) working days of the Board's determination. The opposing party shall have the right to agree or object to the proposed findings. The Board's decision shall be the final decision of the City but is reviewable by writ of mandamus in accordance with applicable law.

Section 10.05 - Procedures for Hearing by a Hearing Officer. In the event that an appeal is to be heard by a Hearing Officer, the following procedures shall apply:

(a) Hearing Officer Selection and Authority.

The Hearing Officer shall be selected by the Board in accordance with selection procedures established by the Board which ensure that the Hearing Officer is independent, neutral and un-biased.

Hearings shall be closed to the public. The costs of the Hearing Officer shall be borne by the City. Hearings shall be tape-recorded. Copies of the tape will be available to the appellant, if desired, for no charge. Transcripts of the taped proceedings will be available upon request at the requesting parties' expense.

The Hearing Officer shall have the authority to convene the hearing, receive evidence through testimony and documents and to make findings of fact and conclusions about the discipline. Closing arguments shall be oral; provided, however that either party

may elect to submit a closing brief following the presentation of closing arguments. Briefs are to be submitted to the Hearing Officer within twenty (20) calendar days of the close of the hearing. Briefs submitted after the deadline shall not be considered by the Hearing Officer.

The Hearing Officer shall render written findings and recommendations to the Board within thirty (30) calendar days of the close of the hearing. If post-hearing briefs are submitted, the recommendation shall be submitted to the Board within thirty (30) calendar days after timely receipt of the brief(s).

The Hearing Officer shall provide the Board the following documents, which shall constitute the official hearing record: (1) A summation page delineating the case name; issue; brief summary of the case; and her/his recommendation; (2) a complete written report documenting the findings; (3) any documentary evidence, written motions and briefs submitted; (4) the cassette tape(s) of the hearing.

(b) Civil Service Board Responsibilities.

After receiving a Hearing Officer's recommendation, the Board Secretary shall schedule the case for the next available Board meeting. The Board will make every effort to schedule a case within thirty (30) days of receiving the Hearing Officer's recommendation.

In reviewing a decision, the Board shall review the hearing record and may review the recording of the hearing. The Board may accept or reject the Hearing Officer's recommendation. The Board has the power to sustain, overrule, reduce or, consistent with due process, modify the original discipline, award back pay and determine the extent of back pay to be awarded, if any, based on the circumstances, and take any other appropriate action.

The Board's determination will be issued in writing, within ten (10) working days of the conclusion of the Board's review of the Hearing Officer's recommendation. Copies of the Board's determination and the recommendation of the Hearing Officer shall be forwarded to the appellant and her/his representative, the City Attorney's Office and the affected City department. The Board's determination shall be the final decision of the City but is reviewable by writ of mandamus in accordance with applicable law.

RULE 11 - PROHIBITIONS AND PENALTIES

Section 11.01 - Frauds Prohibited. Under all provisions of these Rules, no person shall, by representation or action, maliciously or corruptly by himself/herself or in cooperation with any other person or persons:

- (a) Willfully and falsely mark, grade, estimate, or report upon the examination or proper standing of any person examined or certified pursuant to the City Charter or these rules pertaining to the competitive civil service, or the performance evaluation, or the service ratings of any employee, or aid in so doing, or willfully make any false representation concerning the same, or concerning any person examined;
- (b) Impersonate any other person, or permit or aid in any manner any other person to impersonate her/him in connection with any examination, appointment, or application, request for examination or other matters covered by these Rules;
- (c) Defeat, deceive, or obstruct any person in respect to her/his rights in relation to any examination, appointment in the competitive civil service or other matters covered by these Rules;
- (d) Furnish any person any special or secret information for the purpose of either improving or injuring the prospects or chances of such person in connection with any examination, appointment or other matters covered by these Rules;
- (e) Directly or indirectly give, render, pay, offer, solicit or accept money, service, or other valuable consideration for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the competitive civil service.
- (f) Make false accusations, falsify documents or make false representations regarding matters covered by these Rules.

Section 11.02 - Penalty. Any person violating any of the provisions of this Rule or any rule hereunder shall be deemed guilty of a misdemeanor, and for any such offense may, upon conviction thereof, be suspended, reduced in grade, or dismissed from the service.

RULE 12 - INCOMPATIBLE ACTIVITY OF CITY EMPLOYEES

Section 12.01 – Incompatible Activities. Incompatible Employment. Each officer and employee shall, during her/his hours of active duty, devote her/his whole time, attention and efforts to her/his office or employment, and he/she may not be required to perform any service except for the benefit of the City. No officer or employee of the City may engage in any employment, activity or enterprise which has been determined to be inconsistent, incompatible or in conflict with her/his duties or with the duties, functions and responsibilities of the department or other agency in which he/she is employed.

The City Administrator or the City Attorney, or the Auditor, as to personnel under their respective jurisdictions, shall declare the activities which will be considered inconsistent, incompatible or in conflict with, or inimical to, the duties of such personnel as City employees. In making this determination, consideration shall be given to employment, activity or enterprise which: (a) involves the use for private gain or advantage of City time, facilities, equipment and

supplies, or the badge, uniform, prestige or influence of one's City office or employment; or (b) involves receipt by the officer or employee of any money or other consideration for the performance of any act required of her/him as a City officer or employee; or (c) involves the performance of an act in other than her/his capacity as City officer or employee which act may later be subject directly or indirectly, to control, inspection, review, audit or enforcement by her/him or by the agency in which he/she is employed. (Charter section 1201)

Employees who violate section 12.01 may be subject to disciplinary action up to and including termination and, where appropriate, may be subject to prosecution under state or federal law.

Section 12.02 – Community Activities. Employees may participate in community or civic activities on their own time. When there is a possibility or appearance of an incompatibility between the employee's public duties and private interests, the employee must bring the situation promptly to the attention of the immediate supervisor for review and resolution. Managers and supervisors shall counsel employees as appropriate upon becoming aware of possible conflicts of interest.

RULE 13 - RECORDS

Section 13.01 - Records Open to the Public. Except as provided in these rules, state law or the Sunshine Ordinance, the records of the Office of Personnel Resource Management, the minutes of the meetings of the Board, annual and special reports, the classification and compensation plans, and the official roster are hereby declared to be public records, and shall be open to public inspection at the Office of Personnel Resource Management under reasonable conditions during business hours. However, the Personnel Director shall have the authority to withhold information dealing with employee personal records and special reports, which are protected by privacy rules and laws, or are otherwise exempt from disclosure under state and local laws.

Material used or to be used in tests, confidential reports regarding applicants or eligibles, and the names and identity of special examiners who may be temporarily employed by the City shall be considered confidential and not open to the public.

Section 13.02 - Disposition of Records. Minutes of Board meetings shall be considered permanent records.

SAVINGS CLAUSE

If any part of these Rules is determined to be illegal or unconstitutional, such part shall be severed from these Rules and the remaining Rules shall be given full force and effect.

APPENDIX A - GUIDELINES FOR FILLING VACANCIES

All vacancies in authorized, non-sworn, classified and exempt positions shall be filled according to the following guidelines:

1. If a permanent vacancy occurs in an exempt position:
 - a. The duties may be reallocated among existing positions; or
 - b. The position may be left open; or
 - c. The position may be filled by appointment.

2. If a temporary vacancy or absence occurs in an exempt position:
 - a. The duties of the position may be reallocated temporarily among other positions; or
 - b. The position may be left open for the duration of the temporary vacancy or absence; or
 - c. The position may be filled by assignment of a current employee on an "acting" basis in accordance with pertinent Memorandum of Understanding and administrative policy; or
 - d. The position may be filled by a Temporary Contract Service Employee or an Exempt Limited Duration Employee.

3. If a permanent vacancy occurs in a classified position, and there is no eligible list:
 - a. The position may be left open; or
 - b. The position may be filled permanently by transfer or re-employment; or
 - c. The position may be filled by provisional appointment, not to exceed 120 days. If no eligible list is posted before the 120-day period expires, additional provisional appointment(s) of different individual(s) may be made; or
 - d. The position may be filled by assignment of a current City employee on an "acting" basis, in accordance with relevant Memorandum of Understanding and administrative policy, pending completion of the recruitment process; or
 - e. The position may be filled by means of a temporary agency assignment, if appropriate, for a period not to exceed 120 days, pending completion of the recruitment process.

4. If a permanent vacancy occurs in a classified position, and an eligible list exists:
 - a. The position may be left open; or
 - b. The position may be filled permanently by transfer, re-employment or appointment from an eligible list.
 - c. If an active reinstatement list of laid off employees exists at the time of filling the vacancy this list must take priority over all other lists.

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5. If a temporary vacancy occurs in a classified position, and there is no eligible list:
 - a. The position may be left open for the duration of the vacancy; or
 - b. The duties of the position may be temporarily reallocated among existing positions;
or
 - c. The position may be filled by provisional appointment, not to exceed 120 days. If no eligible list is posted before the 120 day period expires, additional provisional appointment(s) of different individual(s) may be made; or
 - d. The position may be filled by assignment of a current City employee on an "acting" basis, depending on the length of the vacancy and in accordance with relevant Memorandum of Understanding provisions and administrative policy; or
 - e. The position may be filled by means of a temporary agency assignment, if appropriate, for a period not to exceed 120 days.

6. If a temporary vacancy occurs in a classified position and an eligible list exists:
 - a. The position may be left open for the duration of the vacancy; or
 - b. The duties of the position may be reallocated temporarily among existing positions;
or
 - c. The position may be filled by limited duration appointment from an eligible list; or
 - d. In the event that no person on the eligible list is willing to accept a limited duration appointment: (i) the position may be filled by provisional appointment not to exceed 120 days. Additional provisional appointment(s) of different individual(s) may be required if the temporary vacancy exceeds 120 days; or (ii) the position may be filled by assignment of a current City employee on an "acting" basis in accordance with relevant Memorandum of Understanding provisions and administrative policy; or (iii) the position may-be filled by means of a temporary agency assignment, if appropriate, for a period not to exceed 120 days.

7. If an absence occurs in a classified position and there is no eligible list for that classification:
 - a. The position may be left open for the duration of the vacancy; or
 - b. The duties of the position may be temporarily reallocated among existing positions;
or
 - c. The position may be filled by assignment of a current City employee on an "acting" basis, depending on the length of the absence and in accordance with relevant Memorandum of Understanding provisions and administrative policy; or
 - d. The position may be filled by means of a temporary agency assignment, if appropriate, for a period not to exceed 120 days.

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8. If an absence occurs in a classified position and an eligible list exists:
 - a. The position may be left open for the duration of the absence; or
 - b. The duties of the position may be reallocated among existing positions; or
 - c. The position may be filled by limited duration appointment from the eligible list.
 - d. In the event that a limited duration appointment is not practical due to the brief nature of the absence or because no person on the list is willing to accept a limited duration assignment, the position may be filled by: (i) assignment of a current City employee to the position on an "acting" basis, in accordance with relevant Memorandum of Understanding provisions and administrative policy; or (ii) the position may be filled by means of a temporary agency assignment, if appropriate, for a period not to exceed 120 days.