

**CITY OF OAKLAND AGENDA
REPORT (SUPPLEMENTAL)**

TO: Finance and Administrative Services Committee
ATTN: Chairperson, Danny Wan
FROM: John Russo, City Attorney
DATE: December 14, 2004
RE: An Updated Report Regarding Proposed Revisions to the Personnel Manual of the Civil Service Board

SUMMARY

This report provides a follow-up to requests for further information from the Committee following the October 12, 2004 meeting where the Committee reviewed and discussed preliminary recommendations for revisions to the Personnel Manual of the Civil Service Board (here referred to as the "Civil Service Rules"), and from the continued meeting of November 9, 2004 where the Committee issued instructions to further attempt a meeting with SEIU Local 790 and the Port of Oakland management. This report further seeks direction on specified policy issues.

In this report, we provide the following material as requested by the Committee:

1. List of policy questions to be considered by the Committee;
2. Detailed summary of policy issues and recommendations, location in the proposed rules of recommended changes, and preliminary comments of OPOA, IAFF Local 55, IFPTE, Local 21, and the Port of Oakland management, to policy issues;
3. Matrix of proposed rule changes and conflicting MOU provisions from labor agreements with IAFF Local 55, OPOA, SEIU Local 790, IFPTE Local 21 and potentially conflicting Administrative Instructions and the City's Performance Appraisal System, Supervisor's Guide;
4. List of comparable public agencies' use of Civil Service Boards and Hearing Officers; and
5. Redlined version of new rules showing changes made since rules were presented to Committee on November 9, 2004.

The policy issues to be determined involve issues regarding the scope of the Civil Service Board's duties, and other issues identified in Exhibit 1.

FISCAL IMPACT

We are not aware of any fiscal impact of these proposed revisions to the Civil Service Rules.

BACKGROUND AND OBJECTIVES

At the meetings on October 12, and November 9, 2004, the committee made some substantive comments which have been incorporated into the rules. The changes we made to the rules can be seen in the redlined version, Exhibit 5, which shows the differences in the rules from the version reviewed by the Committee on November 9, 2004. The Committee also asked about MOU provisions and Administrative Instructions that might conflict with the proposed rules, and that information is contained in Exhibit 3. The Committee requested information about whether other comparable public agencies use both a Civil Service type board as well as hearing officers, and a summary of that information is contained in Exhibit 4.

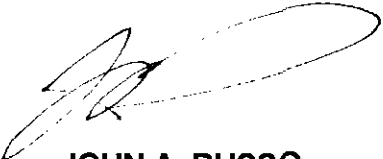
The Committee also directed that the City meet with the major interested unions and the Port of Oakland management and report back their comments regarding the proposed rules. We have met with OPOA, IAFF Local 55, IFPTE, Local 21, Port of Oakland management, and their comments about the policy issues are summarized in Exhibit 2. On October 12, 2004 the City Attorney's Office, outside counsel and the Personnel Director offered to meet with SEIU, Local 790 regarding the rules and were informed that the union could not meet until after the November 2, 2004 elections. On October 26, 2004, the Personnel Director again asked the union if they wanted to meet regarding the rules and was informed that the matter was not a high priority for Local 790 while the elections were pending. On November 17, 2004 the Personnel Office set up a meeting with Local 790 for November 23, 2004, and outside counsel emailed a current copy of all materials related to the project to union representatives in anticipation of the meeting. The meeting set for November 23, 2004 was canceled by Local 790 because of a commitment to hand out food baskets to the community and laid-off City of Oakland employees. A new meeting date is currently set for December 1, 2004 and the City hopes to gather sufficient input from Local 790 to present its position to the finance committee on December 14.

The proposed revisions to the Civil Service Rules raise some policy questions which are now posed along with comments by all of the major unions (except Local 790) and the Port of Oakland management. We are now seeking direction on whether the proposed rules need any further revision before they are submitted to the City Council for approval.

PROPOSED REVISIONS

An update of major proposed revisions and a list of policy issues requiring resolution are contained in the attached Exhibits.

Respectfully submitted,



JOHN A. RUSSO
City Attorney

CITY OF OAKLAND
Civil Service Rules Revision Project
December 14, 2004

Policy Issues to be Considered by the Finance Committee

1. Shall Port employees be covered by the Civil Service Rules?
2. Shall the need for approval, oversight or action by the Civil Service Board be eliminated for specified duties, and shall the Personnel Director have exclusive responsibility for specified duties?
3. Shall the Personnel Director be given exclusive responsibility for amending the Civil Service Rules in the future?
4. Shall the Rules be changed regarding probationary employees as specified?
5. Shall the Board's other functions be maintained and altered as specified?
6. Shall the Rules contain a non-exclusive list of grounds for discipline?
7. Shall the Rules eliminate the requirement of a pre-disciplinary hearing for suspensions of 5 days or less and provide only the hearing required by law?
8. Shall the Board be given the specified authority in disciplinary appeals?
9. Shall the Rules be changed regarding Performance Appraisals as specified?
10. Shall the Rule regarding Veterans' Preferences in Examinations be changed as specified?
11. Shall the Rules be changed to allow the Personnel Department to give department heads the top ten ranks of eligible candidates (rather than only the top four names) with an additional rank for each vacancy?
12. Shall the Rules add a nepotism policy permitting the City to take reasonable steps to avoid inappropriate working relationships between relatives?
13. Shall the Rules define the work week as 40 hours?
14. Shall the Rules provide a special process for terminating employees who are physically unable to perform their duties?

CITY OF OAKLAND
Civil Service Rules Revision Project

Matrix Showing Policy Issues to be Considered by the Finance Committee
(with comments from unions and Port of Oakland)

1. Shall Port employees be covered by the Civil Service Rules, and shall the following exceptions be made in the Rules for Port employees?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
<p>a. Classify all Port employees separately as "Port employees" but keep them under the jurisdiction of the Civil Service Board</p>	<p>The Old Rules do not specify which employees are covered by the Rules.</p> <p>New Rule 1.01 states the Rules apply to all City employees including Port of Oakland employees except where otherwise indicated in the</p> <p>New Rule 4.02 provides that Port of Oakland employees and City employees shall have separate and distinct classifications.</p>	<p>None</p>	<p>None</p>	<p>Union does not represent any Port employees; No unified position at this time</p>	<p>Port is concerned about consistency with Ordinance 8979 and wants to ensure that its separate personnel rules that cover subjects also covered by the City rules, will prevail.</p>

<p>b. Eliminate the ability of Port employees and City employees to place their names on crossover transfer lists</p>	<p>The Old Rules do not address the issue of whether City employees' names may be placed on transfer lists for Port positions and whether Port employees may place their names on transfer lists for City positions.</p> <p>New Rule 6.08 provides that Port employees may not be placed on <i>transfer lists for City positions</i> and City employees may not be placed on transfer lists for Port of Oakland positions.</p>	<p>None</p>	<p>None</p>	<p>No unified position at this time</p>	<p>No objection</p>
<p>c. Eliminate crossover "bumping" rights in the event of layoffs.</p>	<p>The Old Rules do not address the issue of whether City employees slated for lay off may "bump" into Port positions, or vice versa.</p> <p>New Rule 12.03 provides that, in the event of a lay off, City employees shall have no right to revert to a position which is held by a Port employee and Port employees shall have no right to revert to a position which is held by a City employee.</p>	<p>None</p>	<p>None</p>	<p>No unified position at this time</p>	<p>No objection</p>

2. Shall the need for approval, oversight or action by the Civil Service Board be eliminated for the following duties, and shall the Personnel Director have exclusive responsibility for the following duties?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
a. Preparation of class specifications	<p>Old Rule 3.02(c) requires Board approval for preparation of class specifications.</p> <p>New Rule 4.02(b) provides that the Personnel Director shall prepare class specifications and eliminates need for Board approval.</p>	None	None	None	No objection so long as Port rule on subject prevails
b. Determination of minimum qualifications for class specifications	<p>Old Rule 3.02(c)(4) requires the Personnel Director to recommend combined training and experience for classifications and receive Board approval before the minimum qualifications become part of the class specification.</p> <p>New Rule 4.02(b)(ii) eliminates the requirement of Board approval for the minimum qualifications for the class specifications.</p>	None	None	None	No objection so long as Port rule on subject prevails
c. Oversight of administration and maintenance of the classification plan.	<p>Old Rule 3.05 states that the Board "shall direct" and the Personnel Director shall be responsible for the work of administering and maintaining the classification plan.</p> <p>New Rule 4.04(a) deletes the reference to Board direction and provides that "the Personnel Director shall be responsible for administering and maintaining the classification plan."</p>	None	None	No specific objection, but stated concerns about City's need for oversight of Personnel Director's actions by neutral body to preserve the	No objection so long as Port rule on subject prevails

				integrity of the competitive merit system	
d. Reallocation of a position from one class to another, subject to have disputes regarding classification issues heard by the Board.	<p>Old Rule 3.05(a) states that the Personnel Director shall recommend to the Board the reallocation of any position from one class to another class when there is a change of duties of such position and the Board must approve such reallocation.</p> <p>New Rule 4.04(b) states that the Personnel Director may initiate reclassification of positions when she/he deems it is warranted. However, if an employee disputes a reclassification or seeks a reclassification, such disputes shall be heard by the Board (See New Rule 4.04(f).)</p>	None	None	Suggested that, while an appeal regarding reallocation of a person is pending, the reallocation not be implemented	No objection so long as Port rule on subject prevails
e. Providing notice to employees whose positions have been reallocated to a different classification.	<p>Old Rule 3.06 requires that the Board provide to the incumbent two-week notice of the reallocation of a position to a different class.</p> <p>New Rule 4.05(c) retains the 2-week notice requirement but require that the notice be given by the Personnel Director.</p>	None	None	Suggested that the notification provision include notification being made to the affected union	No objection so long as Port rule on subject prevails
f. Making changes in class titles where the change does not affect the duties or pay rate of the position.	<p>Old Rule 3.05(e) requires Board approval for any change in class title.</p> <p>New Rule 4.04(e) states that the Personnel Director may make changes</p>	None	None	None	No objection so long as Port rule on subject prevails

	in class title which do not involve changes in job duties or pay rate without Board approval				
g. Making changes in minimum qualifications for current classifications	<p>Old Rule 3.05(e) requires Board approval for changes in minimum qualifications for current classes.</p> <p>New Rule 4.04(e) eliminates that approval requirement.</p>	None	None	None	No objection so long as Port rule on subject prevails
h. Classifying positions of temporary employment	<p>Old Rule 3.05(d) requires that whenever the Council authorized temporary employment, a copy of the authorizing resolution would be filed with the Board and the Board would immediately classify such positions of temporary employment.</p> <p>New Rule 4.06 provides that whenever temporary positions are authorized, such positions shall be classified by the Personnel Director.</p>	None	None	None	No objection so long as Port rule on subject prevails
i. Making exceptions regarding the standards for eligibility for promotional exams	<p>To be eligible to compete for a promotional exam, a candidate must have maintained an overall service rating of standard or above for one year prior to the exam. Old Rule 4.14 provides that the Board may make exceptions in such cases where the efficiency of</p>	None	None	None	No objection so long as Port rule on subject prevails

	<p>an employee has been rated below standard but has improved his performance within the year.</p> <p>New Rule 5.12(c) deletes this exception entirely.</p>				
j. Determining the number of persons on eligibility lists	<p>Old Rule 4.22 provides that the Board may determine the total number of persons on an eligible list.</p> <p>New Rule 5.17 provides that the Personnel Director may determine the number of persons on the eligible list.</p>	None	None	None	No objection so long as Port rule on subject prevails
k. Designating alternative eligible lists when no appropriate regular eligible list exists.	<p>Old Rule 4.25 provides that the Board may designate alternative eligible lists when no appropriate eligible list exists.</p> <p>New Rule 5.17 eliminates Board involvement and allows the Personnel Director to compile new eligibility lists when the current list has fewer than four names, and allows the appointing authority to request review of alternative eligibility lists.</p>	None	None	None	No objection so long as Port rule on subject prevails
l. Certifying names from alternative eligibility lists	<p>Old Rule 5.03 provides that the Personnel Director needs Board</p>	None	None	None	No objection so long as Port

	<p>approval to certify for appointment names from alternative eligibility lists.</p> <p>New Rule 6.02 permits the Personnel Director to do this without Board approval.</p>				rule on subject prevails
m. Granting or denying requests from an appointing authority to require special qualifications for a position	<p>Old Rule 5.04 provides that, when an appointing authority wishes to require additional and special qualifications for positions in specific departments, Board approval is required.</p> <p>New Rule 6.03 eliminates the requirement of Board approval and replaces it with Personnel Director approval.</p>	None	None	Suggested that this be made subject to appeal to the Civil Service Board; stated concerns about City's need for oversight of Personnel Director's actions by neutral body to preserve the integrity of the competitive merit system	No objection so long as Port rule on subject prevails
n. Making provisional appointments	<p>Old Rule 5.07 provides that the Board has the power to make provisional appointments without examination in the absence of an eligible list.</p> <p>New Rule 6.05 gives this power to the Personnel Director.</p>	None	None	Suggested need for Civil Service Board oversight or approval when provisional appointments are made because such appointments	No objection so long as Port rule on subject prevails

				often become permanent, resulting in circumvention of the competitive hiring system	
o. Extending the period of time between the separation date and re-employment date in the case of an employee who has resigned and wishes to be re-employed	<p>Old Rule 5.10 provides that, when an employee who has resigned wishes to return to City employment, he/she may do so within 2 years of resignation, but the Board may approve a longer period of time between resignation and re-employment for highly qualified employees.</p> <p>New Rule 6.09 gives this duty to the Personnel Director rather than the Board.</p>	None	None	None	No objection so long as Port rule on subject prevails
p. Making rules regarding leaves and vacation	<p>Old Rule 8.01 provides that the Board is authorized to make rules governing leaves and vacation for all classified employees.</p> <p>The New Rules delete this provision.</p>	None	None	None	No objection so long as Port rule on subject prevails
q. Receiving reports of employee injuries on the job	<p>Old Rule 8.04 (b) requires that the Board be given reports regarding any employee injured on the job.</p> <p>The New Rules delete this provision.</p>	None	None	Want Civil Service Board to receive reports so that Board can determine	No objection

				whether there are excessive on-the-job injuries which may trigger an investigation into the causes	
r. Receiving reports of employees who retire due to disability	Old Rule 8.05 requires that the Board be given reports about employees who retire due to disability. The New Rules delete this provision.	None	None	Same as above	No objection
s. Approving leaves of absence with pay and without pay	Old Rule 8.07 requires Board approval of leaves of absence without pay and extensions of such leave. Old Rule 8.09 requires Board approval for leaves in excess of 30 days. New Rule 9.15 provides that the Personnel Director gives this approval, not the Board.	None	None	None	No objection so long as Port rule on subject prevails
t. Investigating the reasons for excessive resignations	Old Rule 9.03 requires the Personnel Director to investigate and report to the Board excessive resignations. The New Rules delete this requirement.	None	None	Want Civil Service Board to receive reports so that Board can determine whether there are excessive resignations in a department which may trigger an	No objection

				investigation into the causes	
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3. Shall the Personnel Director be given exclusive responsibility for amending the Civil Service Rules in the future, and the Civil Service Board be given the duty of making recommendations to the Personnel Director for changes to the Rules?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
The Personnel Director shall maintain and amend the Civil Service Rules and the Civil Service Board may make recommendations for changes to the Personnel Director	The Old Rules do not state specifically who shall be responsible for maintaining or amending the Civil Service Rules. New Rule 3.01(2) provides that it shall be the Personnel Director's responsibility to prepare, maintain and amend the Personnel Manual (a/k/a/ Civil Service Rules)	None	None	Suggested that the process for amendment of the Rules be the same as with other Boards and Commissions; concerned that the Civil Service Board maintain oversight of changes to Rules	Concern is that Personnel Director may not have authority to make changes to the Civil Service Rules because they are established by ordinance

4. Shall the Rules be changed regarding probationary employees as follows?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
a. Probationary employees have no	Old Rule 6.06 provides probationary	None	None	Want to maintain	No objection

<p>right to appeal release from probation and are "at will"</p>	<p>employees a limited right to appeal to the Board their release from probation based on (a) failure of the appointing authority to give quarterly performance ratings to the employee; (b) failure to comply with Old Rule 6.05; or (c) discrimination based on a protected class.</p> <p>New Rule 7.01 states that probationary employees have no right to appeal release from probation and are not entitled to be provided with a reason for release from probation. It provides probationary employees are "at-will."</p>			<p>the probationary employees' right to appeal the failure to do performance appraisals; believe that managers should take the consequences of failure to do performance appraisals; probationary employees must be given notice of whether they are meeting standards before they are released</p>	
<p>b. Subject to approval by the Personnel Director, the appointing authority may extend probation by up to 90 days.</p>	<p>The Old Rules do not provide for extensions of probation.</p> <p>New Rule 7.03 provides that a probationary period may be extended up to 90 days by the appointing authority subject to approval by the Personnel Director.</p>	<p>None</p>	<p>None</p>	<p>None</p>	<p>No objection so long as Port rule on subject prevails</p>
<p>c. Periods of paid leave of more than 10 days and unpaid leave of any length automatically extend the probationary period.</p>	<p>The Old Rules do not address any extension of probationary period during leaves.</p>	<p>None</p>	<p>None</p>	<p>None</p>	<p>No objection</p>

	New Rule 7.04 provides that periods of paid leave of more than 10 days and unpaid leave of any length automatically extend the probationary period.				
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5. Shall the Board's other functions be maintained and altered as follows?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
a. Board retains the duty of hearing disciplinary appeals (subject to changes addressed below:	<p>The Old Rules 2.09-2.10 addressed the Board's procedure for hearing disciplinary appeals.</p> <p>The procedure for hearing disciplinary appeals is now addressed in New Rule 13.05.2.</p>	None	None	None	No objection
b. Board retains the duty of hearing appeals by employees regarding changes in the employee's classification or reallocation of the employee's position to another classification	<p>Old Rule 3.05(b) provides employees and appointing authorities an opportunity to be heard by the Board before changes in classifications become effective.</p> <p>New Rule 4.04(f) provides that employees who dispute issues regarding their classification have a right of appeal to the Board.</p>	None	None	None	No objection so long as Port rule on subject prevails
c. Board retains the duty of hearing appeals regarding examination	Old Rule 4.21 provides a right of appeal to the Board from the results of	None	None	None	No objection so long as

results, limited to disputes about scoring, but not about test content	<p>an examination if the appellant demonstrates by clear and convincing evidence that there was a mechanical error in scoring the exam or there was fraud or bias in the exam.</p> <p>New Rule 5.16 retains this right of appeal but states that test content is not subject to appeal.</p>				Port rule on subject prevails
d. Board retains the duty of determining whether a new or merged classification should be created.	<p>Old Rule 3.05(b) provides that the Personnel Director recommends the establishment of a new classification and the Board approves and classifies the position.</p> <p>New Rule 4.04(d) retains this language.</p>	None	None	None	No objection so long as Port rule on subject prevails

6. Shall the Rules contain a non-exclusive list of grounds for discipline?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
Create list of non-exclusive grounds for discipline	<p>Old Rule 10.01 refers to a few isolated grounds for employee discipline (i.e., incompetency, neglect of duty or disobedience of orders).</p> <p>New Rule 13.03 sets forth a non-</p>	None	None	Suggested that the "catchall" provision be deleted as unnecessary, ambiguous, and overbroad	No objection

	exclusive list of 25 grounds for discipline and includes a catch-all ground: "any other conduct that is incompatible with City employment."				
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7. Shall the Rules eliminate the requirement of a pre-disciplinary hearing for suspensions of 5 days or less and provide only the hearing required by law?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
For suspensions of 5 days or less, eliminate requirement for a pre-disciplinary and provide instead a non-evidentiary post-disciplinary hearing before the appointing authority but not the Civil Service.	<p>Old Rule 10.02 provides that, in the case of any disciplinary suspension, the employee shall have a right to a hearing or investigation by the appointing authority or the Board.</p> <p>New Rule 13.05.1 addresses pre-disciplinary meetings and provides that employees who receive suspensions of 5 days or less do not have a right to a pre-disciplinary meeting but may have a post-disciplinary meeting to respond to the charges after the discipline is imposed. New Rule 13.05.2 provides employees with a right to an evidentiary appeal hearing only for discipline more severe than a 5-day suspension.</p>	<p>If the MOU does not provide for a pre-disciplinary hearing, OPOA objects that these suspensions will not be resolved through the Skelly (pre-disciplinary) hearing process.</p> <p>OPOA observes that the rule does</p>	IAFF observes that the rule does not clearly state what a "five day" suspension is for employees working 24 hour shifts.	Strong objection to eliminating the right to a pre-disciplinary hearing and appeal of suspensions of 5 days or less	No objection; Port already applies this rule as a matter of practice

		not clearly state what a "five day" suspension is for employees on shifts different from an 8 hour day.			
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8. Shall the Board be given the following authority in disciplinary appeals?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
a. The Board shall have the option to have a disciplinary appeal heard by a Hearing Officer rather than by the Board.	<p>Old Rule 2.09 provides a right to a public appeal hearing before the Board for suspensions, fines or termination. Old Rule 2.10 provides the procedures for the Board's appeal hearing.</p> <p>New Rule 13.05.2 sets forth the Board's disciplinary appeals procedure and allows the Board the option of choosing a hearing officer to hear the appeal in a non-public hearing.</p>	None	None	None	No objection
b. The Board shall establish its own procedure for selecting a Hearing Officer for such appeal hearings.	New Rule 13.05.2.2 sets forth the procedures for the appeal hearing by the hearing officer and provides that the Board shall determine the procedures for selecting a neutral and	None	None	None	No objection

	un-biased hearing officer.				
c. The hearing before the Hearing Officer shall not be public, and shall be advisory to the Board which shall make the final decision.	New Rule 13.05.2.2 provides that the hearing officer's decision will be advisory only and sets forth the procedures for the Board's review of the hearing officer's decision and final decision.	None	None	None	No objection

9. Shall the Rules be changed regarding Performance Appraisals as follows?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
a. Performance appraisals for probationary employees shall be done at least once during the probationary period, but failure to perform a written performance appraisal shall not prevent the City from releasing the employee from probation.	<p>Old Rule 6.04 provides that department heads shall file performance ratings twice during a six-month probationary period and on a quarterly basis during a one-year probationary period for each probationary employee.</p> <p>New Rule 7.05 provides that the department head shall prepare a performance appraisal at least once during the employee's probationary period, but failure to perform a written performance appraisal shall not prevent the City from releasing the employee from probation.</p>	None	None	Suggested that performance appraisals of probationary employees be done early and more frequently than once during the probationary period; suggested that probationary employees retain the right to appeal the failure to do performance appraisals	No objection

<p>b. Employees shall not have a right to appeal the contents of a performance appraisal, but they may submit written rebuttals to their performance appraisals which will be kept in their personnel files.</p>	<p>The Old Rules are silent on the issue of whether there is a right to appeal the contents of an appraisal, but Old Rule 6.06 provide probationary employees the right to appeal to the Board if they are released from probation without having received the required performance appraisals.</p> <p>New Rule 8.03 provides that employees have no right to appeal statements or ratings in performance appraisals but allows employees to submit rebuttals to their performance appraisals which shall be placed in their personnel files.</p>	<p>None</p>	<p>None</p>	<p>Suggested that this language be changed to reflect the performance appraisal system now in place which allows employees an opportunity to grieve issues re: appraisals</p>	<p>No objection</p>
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10. Shall the Rule regarding Veterans' Preferences in Examinations be changed as follows?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
<p>a. Define "veteran" to substantially conform with the state law's definition and eliminate the requirement that the veteran have served in the military within the past five years.</p>	<p>Old Rule 4.18 and 4.19 provide for preferences in examinations to be given to veterans but define a veteran as one released from active duty within 5 years</p> <p>New Rule 5.11.2 defines "veteran" in conformity with Government Code § 18973, to mean any person who has</p>	<p>None</p>	<p>None</p>	<p>None</p>	<p>No objection so long as Port rule on subject prevails</p>

	served full time for 30 days or more in the armed services as defined in the statute.				
b. Eliminate any special preference for disabled veterans and allow all eligible veterans a 5% point credit on examinations.	<p>Old Rule 4.18 provides that eligible veterans receive an additional 5% on the final examination score. Old Rule 4.19 provides that eligible "disabled veterans" receive an additional 7.5% on the examination score.</p> <p>New Rule 5.11.2 provides eligible veterans with an additional 5% on the examination score, but the Rule regarding preferences for disabled veterans has been eliminated.</p>	None	None	No unified position; however some voiced objections to elimination of the special credit given to disabled veterans	No objection so long as Port rule on subject prevails

11. Shall the Rules be changed to allow the Personnel Department to give department heads the top ten ranks of eligible candidates (rather than only the top four names) with an additional rank for each vacancy?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comment	Port
Personnel Department shall give Department heads the top ten ranks of eligible candidates and one additional rank for each vacancy.	Old Rule 5.03 provides that, in the case of certification from open, restricted or promotional lists (except for Fire, Police or Electrical workers), the Personnel Director shall certify to the appointing authority 4 names for any single vacancy; and 2 additional names for each additional	OPOA believes they have a rule of 5 in their MOU and thus are	IAFF Local 55 examination MOU provides for a rule of five, so they	No unified position; but some stated that they believe that increasing the number of ranks of eligible	No objection so long as Port rule on subject prevails

	<p>vacancy.</p> <p>New Rule 6.02 provides that the Personnel Director shall first certify names from a reinstatement list, but if no such list exists, shall certify, whenever possible, the top ten ranks on the eligibility list for the vacancy with an additional rank for each additional vacancy.</p>	not impacted by this rule.	are not impacted by this rule.	<p>candidates certified will undermine the competitive hiring system; the top 4 who scored highest in the examination should be given preference in hiring</p>	
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12. Shall the Rules add a nepotism policy permitting the City to take reasonable steps to avoid inappropriate working relationships between relatives?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comment	Port
<p>Adopt a rule avoiding discrimination based on marital status but permitting City to take reasonable steps to avoid inappropriate working relationships between relatives including refusing to place a relative under the direct supervision of another relative.</p>	<p>The Old Rules do not contain a nepotism policy.</p> <p>New Rule 6.10 provides a nepotism policy prohibiting discrimination based on marital or registered domestic partnership status with another employee or official of the City (except as provided in the section 907 of City Charter). The City retains the right to take reasonable steps to avoid inappropriate working relationships among relatives, including married persons and domestic partners.</p>	None	None	<p>No objection now, but needs further review</p>	No objection

13. Shall the Rules define the work week as 40 hours?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comment	Port
Define the workweek at 40 hours in a 7 day period.	The Old Rules do not define the work week. Some of the MOUs define the workweek for some employees as 37.5 hours; and for other employees as 40-hours. New Rule 11.01 defines the basic workweek as 40 hours in a 7-day period.	None	None	Strong objection; believe that the City's practice is to define the workweek as 37.5 hours	Prefer that rules do not define workweek because existing practice is a 37.5 hour week for some unrepresented employees

14. Shall the Rules provide a special process for terminating employees who are physically unable to perform their duties?

Recommendations	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port
Create a summary process for dismissing employees who are physically or mentally unable to work	The Old Rules do not address this. New Rule 12.08 provides a summary process by which the City may terminate employees who are unable to perform their jobs (with or without reasonable accommodation) due to physical or medical	None	None	Objects; believes that employees who are terminated for medical reasons should	No objection

	incapacity. The process allows the employee an opportunity to respond to a notice of intent to separate, but provides no right of to an evidentiary appeal hearing for the employee after the termination.			be allowed the same right of appeal (including an evidentiary appeal hearing) given to employees who are terminated for disciplinary reasons	
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City of Oakland

Civil Service Rules Revisions Project

December 14, 2004

Chart of Conflicting MOU provisions and Administrative Instructions ("AI") and Performance Appraisal System, Supervisor's Guide

NEW RULE	LOCAL 21 MOU	LOCAL 790 MOU	IAFF Local 55 MOU expiring June 30, 2007 and Promotional MOU expiring June 30, 2007	OPOA MOU expiring June 30, 2006	AI Performance Appraisal System
<p>Rule 1 titled "Introduction"</p> <p>1.01 states that the Personnel Manual covers only classified employees and lists those employees who are exempted from classified service by Charter.</p> <p>1.02 states that Charter and MOU provisions which are inconsistent with the Rules prevail over the Rules.</p> <p>1.03 explains that the City recognizes certain unions and complies with its legal obligations to meet and confer with its unions, and references the City's Employer-Employee Relations Resolution.</p>	<p>Article 1 addresses union recognition</p> <p>Article 4 addresses Union Rights</p>	<p>Article 1 addresses union recognition</p> <p>Article 3 addresses Union Rights</p>	<p>Article 1 addresses union recognition and associational security</p> <p>Art. 12.2 Existing benefits within the scope of representation and not covered by the MOU shall be continued without change unless modified through the meet and confer process</p>	<p>Article I addresses union recognition, association security and union rights.</p> <p>Article X.B. Except for scheduling and performance bargaining unit work, existing benefits or beneficial practices shall not be modified without mutual agreement.</p>	<p>No relevant AIs</p>
<p>Rule 2 titled "Definitions"</p> <p>Most of the old definitions have been retained but some were edited for clarity (some may be revised later)</p> <p>Proposed new definitions are as follows:</p> <p>2.01(o) Confidential Position</p>	<p>No definitions</p>	<p>No definitions</p>	<p>6.2.1 Definitions related to injury and illness.</p> <p>6.3.1 Definitions related to pregnancy, pregnancy disability leave, and bonding leave</p>	<p>No definitions</p>	<ul style="list-style-type: none"> • 567 – Medical Benefits for Domestic Partners • 568 – Medical, Dental, Vision and Leave Benefits for Employees with Domestic Partners

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2.01(q) Domestic Partner 2.01(ss) Y-rated salary					
Rule 3 titled "Organization Rules and Procedures of the Civil Service Board" Note that the Disciplinary Appeals process in the Old Rule has been moved to New Rule 13.	No corresponding MOU provision	No corresponding MOU provision	No corresponding MOU provision	No corresponding MOU provisions	
Rule 4 titled "Classification of Positions" This Rule stayed largely the same; though it was edited and made more concise – some Board responsibilities were removed.	No corresponding MOU provision	14.17 – Position Reallocation – In the event the City, as a result of a classification review, reallocates a position to a classification having a higher salary range, the appointing authority may, with the concurrence of the Personnel Director, grant permanent status to the incumbent without competitive exam or requiring the incumbent to serve a probationary period under certain circumstances. Article 14.12 – Reallocation to Vacant Position – Unit members in police dispatch communications classifications may request to be <i>reallocated to a vacant position in a classification that has a lower maximum rate of pay.</i>	No corresponding MOU provision	No corresponding MOU provision	<ul style="list-style-type: none"> • 530 – Position Authorizations for City Departments • 531 – Position Authorization Change Procedure • 532 – Creation of a New Job Classification • 533 – Deletion of an Existing Job Classification • 534 – Change to Classification • 562 – Filing Open Positions in Non-Sworn Classifications and Applicable Benefits

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<p>Rule 5 titled "Application, Selection, and Eligible Lists"</p>	<p>Article 14.4.1 Announcement of Examinations –</p> <p><i>City agrees to routinely make information regarding exams available for each month, in advance to represented employees.</i></p> <p>14.6 Promotional Exams – 14.6.1 <i>Announcement - City agrees to announce promotional exam in manner required by the Civil Service Rules.</i></p> <p>14.6.2 Seniority points in promotional exams (consistent with NR 5.11.4)</p> <p>14.6.3 Residency – 5% added to score if Oakland resident (consistent with NR)</p>	<p>Article 14.7.1 Announcement of Examinations</p> <p><i>City agrees to routinely make information regarding exams available for each month, in advance to represented employees.</i></p> <p>14.7.2 Conduct – No City employee who is a member of the department in which the current vacancy exists will sit as a voting member of an oral board for promotional exams.</p> <p>14.7.3 Seniority points in promotional exams (consistent with NR 5.11.4)</p> <p>14.7.4 Residency – 5% added to score if Oakland resident (consistent with NR)</p> <p>14.8 Job Vacancies</p> <p>14.8.2 City agrees to post on CityNet a list of current job announcements and openings by classification name</p> <p>14.8.3 City will provide Union on a monthly basis a list of all temporary and exempt employees performing work that is also performed by employees covered by MOU.</p> <p>14.8.4 <i>City agrees to send a copy of all open and promotional job announcements to the Union Business Agent.</i></p>	<p>Promotional MOU Sect. B(4)(5)(6) contains provisions related to eligibility for promotional examinations which are different from rules.</p> <p>Promo. MOU sec.B(7) establishes a 24 month duration for eligibility lists</p> <p>Promo. MOU sect. B(10) provides for composition of examination and outside raters</p> <p>Promo. MOU sect. B(14-19) relate to conduct of examination</p> <p>Promo. MOU Sec. E provides a specific procedure for resolution of disputes over cheating in examinations</p>	<p>No corresponding MOU provision</p>	<ul style="list-style-type: none"> • 535 – Recruitment and Selection of City Employees

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<p>Rule 6 titled "Certification and Appointment"</p> <p>In accordance with Shannon Davis recommendations, a number of the Rules were deleted because they were no longer valid, redundant or unnecessary, or contrary to law. (e.g. Old Rule 5.05, 5.11, parts of 5.10) Other parts of the Rules were edited and clarified to reflect current practice (based on consultation with Daryl Look, Principal HR Analyst and review of Administrative Instruction 562). Old Rules 5.02 and 5.03 (now Rules 6.01 and 6.02) were changed to reflect current practices regarding appointments as stated in Administrative Instruction (AI) 562. Old Rules 5.07 and 5.08 were changed to describe all the categories of limited duration appointments set forth in AI 562, and a provision was added that such appointments are "at will." (See New Rule 6.06.) New Rule 6.07 adds a provision allowing for transfer of employees with disabilities to vacant positions (in compliance with the ADA or FEHA). 6.01 Power of Appointment and types of Appointments</p> <p>6.08 provides Port and City employees cannot be placed on each other's transfer lists.</p>	<p>Articles 14.4.2, 14.5 and 14.6.4 – Certification of Eligibles to Fill Vacancies – when an open or promotional position is to be filled and there is no reinstatement list, the appointing authority shall receive a list of 4 names (or 5 if promotional recruitment) and 2 additional names per each additional vacancy (4 additional names if promotional recruitment). Lesser number may be certified when there is not the required number on eligible list.</p> <p>14.4.3 Transfer List – City must place employee name on transfer list for employees' classification if requested and must consider employees on transfer list prior to filling vacancy.</p> <p>4.13 Exempt Limited Duration and Temporary Contract Service Employees – such employees are defined – <i>it is recognized that the Union is not exclusive representative of such employees.</i> City must provide Union with the names, hire dates, departments and work locations of such employees.</p>	<p>14.6.2 and 14.7.5 – Certification of Eligibles to Fill Vacancies - when an open or promotional position is to be filled and there is no reinstatement list, the appointing authority shall receive a list of 4 names and 2 additional names per each additional vacancy. Lesser number may be certified when there is not the required number on eligible list.</p> <p>14.9 Eligible Lists – In the event an exam fails to produce successful candidates from Union employees, City and Union will meet to discuss whether specific on-the-job or other training should be initiated.</p> <p>14.8.1 City agrees, when requested by employee, to place unit members' names on transfer lists for their classifications, and department shall consider all listed unit members prior to filling vacancy</p>	<p>Promo. MOU Sect. C. provides for rule of five names of eligibles to fill vacancies</p>	<p>No corresponding MOU provision</p>	<ul style="list-style-type: none"> • 562 – Filling Open Positions in Non-Sworn Classifications and Applicable Benefits • 553 Temporary Contract Service Employees • 526 Temporary Services

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<p>Rule 7 titled "Probationary Period"</p> <p>New Rule 7.01 adds provisions to Old Rule 6.01 re: at will employees not being subject to probationary periods and rejection from probation without giving reasons. We have proposed a New Rule 7.03 allowing for extensions of probationary periods. New Rule 7.04 proposes that periods of unpaid leaves and periods of leaves in excess of 10 days will automatically extend the probationary period. New Rule 7.05 proposes that the requirement of quarterly performance ratings during probation be eliminated and be replaced by ratings at least once during probation. New Rule 7.06 modifies Old Rule 6.05 by making the decision to reinstate a separated probationary discretionary with appointing authority and removing the requirement of providing reinstatement later if no vacancy exists.</p> <p>The Old Rules (6.06 and 6.07) provide a limited right to appeal separation by probationary employees to the Civil Service Board on the basis of discrimination and failure to comply with performance rating requirements. We have deleted these rules.</p>	<p>Article 14.2</p> <p>14.2.1 Entry Probationary Period – Probationary period is 12 months but City, at its option, may extend it once by three months and another three months by agreement with the Union.</p> <p>14.2.2 Promotional Probationary Period</p> <p>Promotional probationary period is six months but City, at its option, may extend it once by three months and another three months by agreement with the Union.</p> <p>14.2.4 Probation may be extended if employee is ill or injured for 30 days or more.</p> <p>14.2.5 If probationary employee is not meeting standards, City shall notify him/her before the end of the probationary period. If not notice, the employee becomes permanent.</p> <p>14.3 An employee in a 12-month entry level position shall receive a performance appraisal on or about the end of the 3rd, 5th, 8th, and 11th months of service. An employee in a six-month probationary period receives a report at the end of the third and fifth months of service.</p>	<p>Article 14.4</p> <p>14.4.1. Entry Probationary Period - Probationary period is 9 months but City, at its option, may extend it once by three months and another three months by agreement with the Union.</p> <p>14.4.2 Promotional Probationary Period</p> <p>Promotional probationary period shall not exceed six months.</p> <p>14.5.1.1. An employee in a 9-month probationary period shall receive an appraisal within 14 days after the 2nd, 5th, and 8th months of service and annually thereafter</p> <p>14.5.1.2 An employee in a 6-month probationary period shall receive an appraisal within 14 days after the end of the 3rd and 5th months of service and annually thereafter.</p>	<p>Art. 4.1.1 Entry level promotion is 12 months of active service; City may extend probation by one or three month periods, but no probationary period by extend beyond 18 months.</p> <p>Art. 4.2.1: Probation for promotional position is 6 months. City may extend probation up to three months if employee's evaluation shows at least one rating below standard. An additional 3 months can be added if overall performance rating is below standard. If time is lost due to illness or injury, City may extend probationary period by that amount of time.</p>	<p>Art. VII.G. provides probation is 12 months but City can extend it by 3 months if the 11th month evaluation is below standard in any category. City may extent probation if work time is lost during probation due to illness or injury or POST requirements.</p> <p>Art. IX.C. Probationary employees cannot use arbitration under the MOU to appeal failure of probation.</p>	

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<p>Rule 8 titled "Employee Performance Appraisals"</p> <p>These Rules have been substantially edited and streamlined to reflect current practice and to eliminate unnecessary verbiage. A provision was added in New Rule 8.03 allowing employees to submit rebuttals to their performance appraisals and have them placed in their personnel files and stating there is no right to appeal the contents of a performance appraisal.</p>	<p>Article 14.3 Performance Appraisals</p> <p>Explains purpose of employee service ratings and reports. Permanent employees are to receive annual performance appraisals outlining progress and performance. Each performance appraisal shall include one of the following Overall Ratings: exceeds expectation, fully effective, improvement needed, unacceptable.</p>	<p>Article 14.5 Employee Service Ratings and Reports</p> <p>14.5.1 Explains purpose of employee service ratings and reports. Permanent employees are to receive annual performance appraisals outlining progress and performance</p> <p>14.5.1.4 Notice of Deficiencies – An employee having one or more areas of unacceptable performance may have these areas reviewed and dealt with between the regular annual performance appraisals by the use of oral and written descriptions of deficiencies. Such reviews shall be made through use of disciplinary proceedings and shall be subject to the grievance procedure</p> <p>14.5.2 Performance Appraisals - City will give Union notice and opportunity to negotiate any proposed changes to the Performance Appraisal forms.</p>	<p>No corresponding MOU provision.</p>	<p>No corresponding MOU provision.</p>	<ul style="list-style-type: none"> • 578 – Performance Management System Policy • 579 – Performance Planning and Appraisal Procedures for Unrepresented Employees <p><u>Performance Appraisal System, supervisor's Guide contains provisions for appeal of evaluation ratings or comments to supervisor, appointing authority, Personnel Director and Civil Service Board, (incorporating Civil Service Regulations).</u></p>

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<p>Rule 9 titled "Vacations and Leaves of Absence"</p> <p>This entire section has been substantially revised because the Old Rules did not reflect current practice or law regarding leaves and also omitted several different types of leaves mandated by law. We have proposed a new Rule 9.01, "General Provisions regarding leaves," which requires employees to account for their absences as specific leave types and allows the City to require fitness for duty exams and medical certifications to verify medical conditions. We have modified the vacation and sick leave sections of the Old Rules to reflect current practice. We have added reference to FMLA, pregnancy disability, paid family leave, management leave, administrative leave with pay, specified holidays, personal leave without pay, school leave, jury duty leave, voting time and a section about accommodations for employees with disabilities. We have eliminated Executive Leave as redundant of management leave, and rewritten provisions related to integration of sick leave and workers' compensation benefits.</p>	<p>Article 12 Permanent Part-Time Benefits – Provides that a permanent part-time employee who works 50% of the normal workweek for the full-time class equivalent accrues vacation on a pro-rata basis.</p> <p>Article 10 addresses Vacation as follows:</p> <p>Vacation Leave (10.1) – Entitlement – same accrual rate as in New Rule 9.03</p> <p>(10.3) limitation on accrued unused vacation is 2X the annual vacation rate (compare New Rule 9.03.5);</p> <p>(10.5) Minimum Usage – addresses holiday falling during vacation</p> <p>(10.6) paychecks duration vacation – employee may receive paycheck in advance in certain circumstances)</p> <p>(10.7) Vacation Sell-back – certain employees may sell back to City up to 15 days of accrued vacation each calendar year as long as employee has taken at least 10 vacation days during preceding year (NOTE: compare New Rule 9.03.6 – which allows sell-back of 5 days in a calendar year</p>	<p>Article 9 – Permanent Part-Time Employee Benefits - Provides that a permanent part-time employee who works 50% of the normal workweek for the full-time class equivalent accrues vacation on a pro-rata basis. They are also eligible for Family Death Leave on a pro rata basis</p> <p>Article 10 addresses Vacation as follows:</p> <p>Vacation Leave (10.1) – Entitlement – same accrual rate as in New Rule 9.03 except does not allow for the extra day on the anniversaries of the 5th, 10th, etc. years (unlike Local 21)</p> <p>(10.3) limitation on accrued unused vacation is 2X the annual vacation rate (compare New Rule 9.03.5);</p> <p>(10.4) Vacation Sell-back – employees may sell back to City up to 10 days of accrued vacation each calendar year as long as employee has taken at least 10 vacation days during preceding year (NOTE: compare New Rule 9.03.6 – which allows sell-back of 5 days in a calendar year</p> <p>(10.5) Minimum Usage – addresses holiday falling during vacation</p> <p>10.6 Personal Business Leave – 2 ½ days of accrued vacation can be used for personal business (not provided in New Rules)</p>	<p>Art. 2.6.1: 11 paid holidays, not including the day after Thanksgiving, plus two floating holidays</p> <p>Art. 2.6.3: when any additional holiday is ranted by the City, in lieu holiday compensation will be paid to 24 hour employees.</p> <p>Art.6.1.1.1 Sick leave accrual for 52 hour work week employees caps at 144 hours per year (Rule allows up to 96 hours).</p> <p>Art. 6.1.2 permits accrual of 2,338 hours of sick leave (Rule allows up to 1200 hours).</p> <p>Art. 6.1.2 provides special rules for use of sick leave in cases of industrial injury.</p> <p>Art. 6.1.4 permits conversion of up to 75% of accrued sick leave to service credit for calculating rate of pay upon service retirement</p> <p>Art. 6.3 relates to pregnancy disability leave, bonding leave and sets out leave provisions, return to work following pregnancy and procedures</p> <p>Art. 6.5 provides for catastrophic leave</p> <p>Art. 6.8 provides for transitional work, and procedures</p>	<p>Art. V.A.1 Vacation accrues at the rate of 15 days through year 10; 18 days through year 13; 20 days through year 20; 25 days thereafter.</p> <p>Art. V.B. 1. Sick leave: employees are entitled to 60 days of sick leave at full pay and an additional 60 days at half pay for the duration of the illness or injury.</p> <p>Art. VIII.F. Special pay code applies to officers diagnosed with presumptive condition.</p> <p>Art. VIII.H provides procedure for job assignments for temporarily disabled individuals.</p> <p>Art. IV. Leave of Absence without pay may be granted for up to 180 days for urgent or most important personal business</p> <p>Art. IV.I. 12 paid holidays including Lincoln's birthday, but no floating holidays</p> <p>Art. IV.F. Organization leave permitted to be paid through banked overtime</p> <p>Art. 6.7: Up to 12 working shifts will be paid to bargaining unit members, and can be carried over for one year if not used.</p>	<ul style="list-style-type: none"> • 113 – Leave of Absence – Notification of City Manager's Office • 505 – Vacation Policy • 507 – Year-End Four-Hour Holiday • 516 – Management Leave • 520 – Floating Holiday • 537 – Donation of Vacation Pay to Seriously Ill and Needy City Employee • 545 – Vacation Buy-Back Policy • 1020 – Leave Without Pay in Excess of 30 Calendar Day – Reporting Procedures • 1025 – Negative Leave Balances • 547 Unrepresented City Employees (Sick Leave Buy Back/Conversion Program)

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	<p>(10.8) Personal Business Leave – 2 ½ days per year of accrued vacation for personal business (not provided in New Rules)</p> <p>Article 9 addresses leaves of absence:</p> <p>9.1.1 Sick leave earned at same rate as in New Rule 9.04.1</p> <p>9.1.2 Accumulated Sick Leave (consistent with NR 9.1.3)</p> <p>9.1.3 Use of Sick Leave</p> <p>9.1.3.2 Family Illness – allows employees 12 working days family sick leave in any calendar year (consistent with NR 9.04.5); allows for leave in excess of 12 days/year</p> <p>9.1.3.3 Verification of Leave – requires medical verification of leave for excessive absences</p> <p>9.1.4 Sick Leave Buy-Back – Leaving City – City agrees to compensate in cash employees leaving City service after ten years of service for 331/3% of accrued sick leave. (Not in New Rules)</p> <p>9.1.5 Annual Sick Leave Sell-Back /Conversion – employees may sell back a portion of their unused sick leave or convert it to additional days of vacation under certain circumstances (Not in New Rules)</p>	<p>(10.8) paychecks duration vacation – employee may receive paycheck in advance in certain circumstances)</p> <p>Article 8 addresses leaves of absence:</p> <p>8.1.2 Sick leave earned at same rate as in New Rule 9.04.1</p> <p>8.1.3 Accumulated Sick Leave (consistent with NR 9.1.3)</p> <p>8.1.4 Use of Sick Leave</p> <p>8.1.4.2 Family Illness – allows employees 12 working days family sick leave in any calendar year (consistent with NR 9.04.5); allows for leave in excess of 12 days/year</p> <p>8.1.5 Sick Leave Buy-Back – Leaving City – City agrees to compensate in cash employees leaving City service after ten years of service for 331/3% of accrued sick leave. (Not in New Rules)</p> <p>8.1.6 Annual Sick Leave Sell-Back /Conversion – employees may sell back a portion of their unused sick leave or convert it to additional days of vacation under certain circumstances (Not in New Rules)</p> <p>8.1.7 Performance Appraisal – Where it is clear that employee took sick leave for a valid reason, said absence shall not be taken into account in employee's performance evaluation.</p>	<p>Art. 6.9 Vacation accrues at the rate of 15 days through year 9; 20 days through year 14; 25 days through year 19; 27 days through year 24; 30 days thereafter; with comparable rules for fire suppression shifts</p> <p>6.10 provides special rules for military leave including paid leave, unpaid leave, reinstatement, impact on seniority and PERS contributions</p>		<ul style="list-style-type: none"> • 560 Workers' Compensation Procedures • 561 Fringe Benefits and Accruals for Industrially Injured City Employees • 512 Procedure for Deferral of Vacation • 525 Employee Benefits Applicable to Part-Time Employees

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	<p>9.1.6 Return to Work – If requested by City, employee shall not return to work until he/she submits medical certification authorizing return to work.</p> <p>9.7 FMLA/CFRA and Pregnancy Disability (consistent with NR 9.05 and 9.06)</p> <p>9.4 On the Job Injury Leave and Compensation</p> <p>9.4.1 City-Paid Entitlement – provides no City-paid leave for probationary employees; permanent employees entitled to 60 days paid leave; long term permanent employees entitled to 90 days paid</p> <p>9.4.1.6 Workers Compensation Benefits – discusses integration of benefits with paid sick leave and vacation (compare NR 9.07.3)</p> <p>9.3 Family Death Leave – (consistent with NR 9.09 except requires that employee must have worked 6 months to be eligible)</p> <p>9.5 Military Leave (consistent with NR 9.10)</p> <p>9.12 Management Leave (NR 9.11 to be filled in)</p> <p>9.8 Leave of Absence without Pay – up to one year leave allowed (consistent with NR 9.15 but provides more elaborate process)</p>	<p>8.6 FMLA/CFRA and Pregnancy Disability (consistent with NR 9.05 and 9.06)</p> <p>8.3 On the Job Injury Leave and Compensation</p> <p>8.3.1. City-Paid Entitlement – provides no City-paid leave for probationary employees; permanent employees entitled to 60 days paid leave; long term permanent employees entitled to 90 days paid</p> <p>8.3.1.5 Workers Compensation Benefits – discusses integration of benefits with paid sick leave and vacation (compare NR 9.07.3)</p> <p>8.2 Family Death Leave – (consistent with NR 9.09 except requires that employee must have worked 6 months to be eligible)</p> <p>8.4 Military Leave (consistent with NR 9.10)</p> <p>8.7 Leave of Absence without Pay – up to one year leave allowed (consistent with NR 9.15)</p> <p>8.5 Jury Duty (consistent with NR 9.13)</p> <p>Article 11 Holidays (consistent with NR 9.16)</p> <p>8.3.1.6 Limited/Modified Duty (not provided in New Rules)</p>			

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	<p>9.6 Jury Duty (consistent with NR 9.13)</p> <p>Article 11 Holidays (consistent with NR 9.16)</p> <p>9.2 School Activities Leave (consistent with NR 9.17)</p> <p>9.11 Limited/Modified Duty (not provided in New Rules)</p> <p>9.10 Integration of Disability Insurance Coverage and Paid Leaves (not provided in New Rules)</p> <p>9.9 Disability Insurance (not provided in New Rules)</p>	<p>8.8 Integration of Disability Insurance Coverage and Paid Leaves (not provided in New Rules)</p> <p>8.9 Correctional Officer's Disability</p>			
<p>Rule 10 titled "Wage and Hour Benefits/Overtime"</p> <p>10.1 City's commitment to complying with FLSA</p> <p>10.2 City's designation of FLSA Exempt employees. Provides that non-exempt employees shall be paid overtime compensation, but must have work authorized by a supervisor, and must report overtime work within 24 hours. Violation of rule may result in discipline.</p>	<p>Article 5.5.1 discusses overtime pay</p> <p>5.5.2 discusses compensatory leave (not addressed in New Rules)</p> <p>5.5.3 discusses overtime on holidays</p>	<p>Article 5.6.1 discusses overtime</p> <p>5.6.1.1 Minimum Overtime</p> <p>5.6.1.2 Minimum Overtime Court Appearances</p> <p>5.6.1.3 Compensatory Leave</p>	<p>Art. 2.7: City pays flat overtime payment regardless of actual work done as fixed amount of FLSA overtime.</p>	<p>Art. II.E. Overtime and Compensatory time</p> <p>Appendix A: overtime will be paid in cash for all hours worked over 171 in 28 day work period.</p>	<ul style="list-style-type: none"> • 524 Overtime Authorization and Reporting • 529 Minimum Overtime Guarantee
<p>Rule 11 titled "Attendance/Meal Periods/Rest Periods"</p> <p>11.01 Workweek – defines workweek as 40 hours per week, starting at 12:01 a.m. every Sunday</p>	<p>Article 13.1 Hours of Work – 7 ½ hours per day; 37 ½ hours per week (excluding meal periods)</p> <p>13.1.1 Rest period (consistent with NR 11.04)</p> <p>13.1.2 Lunch period (consistent</p>	<p>Article 12.1 Hours of Work – For Unit SB1 or SC1, the regular daily work schedule is 8 hours; regular weekly work schedule is 40 hours</p> <p>For Unit SD1, the regular daily work schedule is 7 ½ hours per day; 37 ½</p>			

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<p>11.02 City may modify work hours of its employees and may require overtime and standby responsibilities' employees responsible for reporting to work on time.</p> <p>11.03 Meal Periods – employees receive 30-60 minute meal period relieved of duties</p> <p>11.04 Rest Periods – employees receive 15 minute rest periods for each half shift</p>	<p>with NR 11.03)</p>	<p>hours per week</p> <p>13.1.1 Rest period (consistent with NR 11.04)</p> <p>13.1.2 Lunch period (consistent with NR 11.03)</p> <p>12.2 Shifts and Schedules</p> <p>12.2.1 Changes in work schedules and start times shall be posted at least 10 working days in advance</p>			
<p>Rule 12 titled “Layoffs, Resignations, Separations”</p> <p>We propose changes as follows: (1) new Rule 12.01 to state that layoffs are exclusively within Council's right, laid off employees have no right to appeal the layoff decision; (2) Additional tie-breaker rules have been proposed (see new Rule 12.02(c); (3) Provisions re: reinstatement lists were moved from Rule 4.26 and 4.27 to new Rule 12.05 and 12.06. The old layoff rules were edited and streamlined for clarity. Old Rule 9.03 re: resignations has been substantially modified (See New Rule 12.06) deleting the investigation requirement. Old Rule 9.04 re: disability retirement has been moved to New Rule 9.08. Old Rule 9.05 re: demotion due to physical incapacity has been modified and moved to New Rule 6.07. Old Rule 9.07 re:</p>	<p>Article 14.8 Reduction in Force/Layoff</p> <p>The City agrees to keep the Union advised of financial planning that contemplates reduction of personnel as soon as feasible. A reduction in force shall be carried out in accordance with the Personnel Manual and the following principles: (1) it shall be effected on a City-wide basis; (2) employees not subject to layoffs may volunteer to be laid off; (3) a reinstatement list shall remain in effect for three years; and (4) City will provide 60 days in advance a unit listing by classification of employees hire dates and job class service date.</p> <p>See also Special Agreement re: Layoffs (expires June 2005)</p>	<p>Article 14.2 Reduction in Force</p> <p>The City agrees to attempt to accomplish any reduction in force by attrition rather than layoff. The City agrees to keep the Union advised of financial planning that contemplates reduction of unit members at least 6 months in advance. City will provide a listing of classifications that may potentially be reduced at a future date, RIF shall be carried out in accordance with the Personnel Manual and the following principles: (1) it shall be effected on a City-wide basis; (2) employees not subject to layoffs may volunteer to be laid off; (3) seniority shall be a primary factor; (4) at least 2 weeks notice of RIF shall be given; (5) in recall from layoff, the last person laid off shall be the first person recalled; (6) layoff (reinstatement) list shall remain in effect for a period of 3 years; (7) no unit member will be required to take</p>	<p>No corresponding MOU provision.</p>	<p>Art. VIII.E. Layoffs will be accomplished as outlined in Personnel Manual as it existed on June 1, 1981, except for special rules on seniority credit.</p>	<ul style="list-style-type: none"> • 139 – Procedures for Complying with Employee Separation Procedures to Comply with American Disabilities Act (ADA) of 1990 • 522 – Employee Separation Procedures to Comply with State Unemployment Insurance Reporting Requirements • 570 Termination of Employment

NEW RULE	LOCAL 21 MOU	LOCAL 790 MOU	IAFF Local 55 MOU expiring June 30, 2007 and Promotional MOU expiring June 30, 2007	OPOA MOU expiring June 30, 2006	<u>AI Performance Appraisal System</u>
<p>investigations by the Board has been deleted because it is redundant of New Rule 3.02(2).</p> <p>Old Rule 9.06 (incompatible activity of employees) has been modified and moved to New Rule 14.</p> <p>New Rules 12.08 and 12.09 relating to Medical Separations and Separations Due to Absence Without Leave have been proposed to provide a process that complies with the law for the City's separation of employees for medical reasons and employees who are AWOL.</p> <p>12.03 provides no right of reversion from Port classes to City classes and vice versa.</p>		<p>accrued vacation prior to layoff (8) City will not use participants in any welfare-to-work program to replace current unit members; (9) City will provide quarterly reports to Union regarding the City's participation in welfare-to-work programs; (10) further impacts on Union represented positions that may occur as a result of the City's participation in welfare-to-work programs shall be subject to meet and confer</p>			
<p>Rule 13 titled "Disciplinary Actions, Appeals and Hearings"</p> <p>The current Rules and MOUs do not state all potential grounds for discipline. We propose a full delineation of grounds for discipline in New Rule 13.03. New Rule 13.02 sets forth types of disciplinary actions. The disciplinary action of "fine" (as stated in Old Rule 10.01) has been deleted. Old Rule 10.02 sets forth a procedure for disciplinary action, and references appeal rights before the Board as set forth in Old Rule 2.09 and 2.10. We have substantially changed these provisions to bring them into</p>	<p>Article 14.11 Discipline/Just Cause Provides that no employee will be subject to disciplinary action except for just cause. The City will provide a copy of the Skelly notice to the Union.</p> <p>14.12 Sexual Harassment and Violence in the Workplace – employees who violate these policies are subject to discipline</p> <p>Article 15 Grievance and Dispute Resolution Procedure Provides that disciplinary actions (all suspensions, demotions, fines and termination are appealable to</p>	<p>Article 14.19 Discipline</p> <p>14.19.1 Provides that the good cause provisions of the Civil Service Rules shall not be deleted in the absence of meeting and conferring with the Union</p> <p>14.19.2 The City will provide a copy of the Skelly notice to the designated representative of the employee</p> <p>14.19.3 Public safety are entitled to rights under Govt. Code sec. 3508.1</p> <p>14.21 Sexual Harassment and Violence in the Workplace – employees who violate these policies are subject to discipline</p>	<p>Art. 8.11: Dept. shall follow its own investigation procedures, progressive discipline practices and due process procedures.</p> <p>8.17.3 Involuntary transfer of a firefighter/paramedic may occur after progressive discipline and a reasonable period remediation</p> <p>Art. 10.3 Step 5: A suspension, fine or discharge can be appealed to the Civil Service Board and Board may use a hearing officer per App. G, which includes list of hearing officers, describes hearing procedure for both hearing officer and civil service board upon receipt</p>	<p>Art. IX.B. provides an appeal to civil service board for suspension, fine, demotion or termination in accordance with Civil Service rules</p> <p>App. B specifies the procedure for use of hearing officers by Civil Service Board including list of hearing officers, stating that decision is advisory to Board and specifying Board procedure following receipt of advisory decision</p>	<ul style="list-style-type: none"> • 521 – Employee Discipline Due Process Requirements • 523 Disciplinary Guidelines and Procedures • 519 Resolution of Concerns of Unrepresented Employees

NEW RULE	LOCAL 21 MOU	LOCAL 790 MOU	IAFF Local 55 MOU expiring June 30, 2007 and Promotional MOU expiring June 30, 2007	OPOA MOU expiring June 30, 2006	<u>AI Performance Appraisal System</u>
<p>compliance with the law (including pre-disciplinary hearing rights in accordance with the <i>Skelly</i> case and its progeny) (see New Rule 13.05.1). We propose limiting the right of a post-disciplinary appeal hearing to discipline more severe than a 5-day suspension, in accordance with case law.</p> <p>We also propose having the Board have the option of hearing the appeal itself or delegating it to a Hearing Officer for findings, subject to final review and decision by the Board.</p>	<p>arbitration or to the Civil Service Board (which may delegate the hearing to a hearing officer). Lesser discipline (oral warning, written warning, written reprimand) are only appealable up to Step 2 of the grievance procedure. If the Civil Service Board elects to use a hearing officer, it must follow the procedures set forth in Appendix F of the MOU. If arbitration is selected, the decision of the arbitrator is final.</p>	<p>Article 15 Grievance Procedure</p> <p>Provides that disciplinary actions (apparently any kind) are appealable to arbitration or to the Civil Service Board (which may delegate the hearing to a hearing officer). If the Civil Service Board elects to use a hearing officer, it must follow the procedures set forth in Appendix A of the MOU (which is consistent with Local 21's Appendix F procedure)</p>	<p>of advisory decision by hearing officer</p>		
<p>Rule 14 titled "Incompatible Activity of City Employees"</p> <p>Recommended that this be Rule be added – it was formally addressed in Old Rule 9.06 and is modified here.</p>	<p>No corresponding MOU provision</p>	<p>No corresponding MOU provision</p>	<p>No corresponding MOU provision</p>	<p>No corresponding MOU provisions</p>	<ul style="list-style-type: none"> • 590 Political Activity Restriction • 595 Employee Conflicts of Interest / incompatible Employment
<p>Rule 15 titled "Miscellaneous"</p> <p>15.01 Word Usage – addresses Personnel Director's and Board's delegation of duties</p> <p>15.02 Savings Clause</p>	<p>No corresponding MOU provision</p>	<p>No corresponding MOU provision</p>	<p>No corresponding MOU provision</p>	<p>No corresponding MOU provision</p>	

720015

City of Oakland / Civil Service Rules Revisions Project

Cities with comparable populations in Northern California

City	Civil Service Board	Use of Hearing Officer	Limits
Fresno (pop. 451,455)	Yes	Yes	
Los Angeles (pop. 3,819,951)	Yes	Yes	
Long Beach (pop. 475,460)	Yes	Yes	
Sacramento (pop. 445,335)	Yes	Yes	
San Francisco (pop. 776,773)	Yes	Yes	
San Jose (pop. 926,200)	Yes	Yes	Employee must agree to use of hearing officer
Stockton (pop. 243,771)	Yes	Yes	
Counties			
Alameda County (pop. 1,461,030)	Yes	Yes	
Contra Costa County (pop. 1,001,136)	Yes	Yes	Use of ALJ only for discrimination matters
Santa Clara County (pop. 1,678,421)	Yes	No	

Note: Oakland population = 398,844

**PERSONNEL MANUAL
CIVIL SERVICE BOARD
City of Oakland, California**

Recommended Revisions for Review

Finance Committee Meeting – December 14, 2004

Revised as of November 24, 2004

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NEW RULE 1
INTRODUCTION

Section 1.01. 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 employees including employees of the Port of Oakland, except where otherwise indicated in these Rules or where an applicable Memorandum of Understanding ("MOU") specifically conflicts with a Rule or a Port Personnel Rule pertaining to the same subject exists, in which case the MOU provision or Port of Oakland Rule shall govern. As specified herein, some Rules apply only to employees in the "Classified Service classified service." The "Classified Service classified service" consists of all employees who are not in positions exempted by action of the Civil Service Board or exempted by Section 902 and 714 of the City Charter. Positions exempted from classified service by Section 902 and 714 of the City Charter include the following:

(a) Offices required by this Charter to be filled by election or to be appointed by the Mayor and City Council.

(b) One secretary and all professional and administrative assistants in the office of the City Administrator; the Mayor's secretary and an assistant and such other staff as authorized by Council; one secretary and one assistant to the City Attorney and the Auditor respectively; and the heads of such other departments and an assistant to each as may be provided for by ordinance. The City Administrator, the Mayor, the City Attorney, and the Auditor shall respectively appoint such exempt personnel.

(c) Department heads, one secretary to the executive director, the secretary of the board, commercial representatives and freight and cargo handlers and checkers employed by the Port Department; also such others engaged in the handling of ships and shipping as are found by both the Board of Port Commissioners and the action of the Civil Service Board to hold positions peculiar to the operations of the Port as a commercial enterprise. Specifically, the following Port employees will be excluded from the personnel system of the City: Executive Director of the Port and his or her two principal assistants, the Secretary of the Port Board; the Port Attorney and Legal Assistants, chief wharfinger, field and traffic representatives, and all persons employed in the physical or mechanical handling, moving or checking of cargo and freight.

(d) Part-time employees who are regularly employed for less than one-half the established working hours throughout the year; or those who are employed in any seasonal employment for not more than 120 days in any consecutive 12 months.

(e) Individuals engaged by contract.

(f) Such additional positions as may be excepted upon the recommendation of the Council, and approved by the Civil Service Board.

Section 1.02. These Rules were established to conform and be complementary to the City Charter. In cases where there is deemed to be a conflict between a Rule and the City Charter, the Charter shall prevail.

Section 1.03. The City's labor relations policies are governed by the Meyers-Milias-Brown Act (MMBA), Government Code section 3500 et seq. The City has in place an Employer-Employee Relations Resolution which specifies the City's local rules, rights and obligations

regarding labor relations. Under the City's Employer-Employee Relations Resolution and the MMBA, the City recognizes certain employee organizations as the exclusive representative for purposes of labor negotiations. 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 Resolution. Whenever any amendments to these Rules affect the wages, hours or other terms or conditions of employment, they shall be subject to the meet and confer process as established by the MMBA and the Employer-Employee Relations Resolution.

RULE 2

DEFINITIONS

Section 2.01. 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 shall have, unless the context otherwise requires, the following meanings:

(a) Allocation - the official determination of the class in which a position in the classified service shall be deemed to exist and the assignment of such position to the appropriate class in the classified service.

(b) Applicant - a person who has filed an application for examination.

(c) Appointing Authority - any official or group of officials having authority to make appointments to or cause a removal from any position in a specified department, division or office of the City government.

(d) Appointment - the designation of a person, by due authority, to become an employee in a position, and his/her induction into employment in such position.

(e) Board - the Civil Service Board of the City of Oakland.

(f) Candidate - a person participating in an examination.

(g) Charter - the Charter of the City of Oakland.

(h) Class or Class of Positions - a position or group of positions for which a common descriptive job title may be used, and which are defined by similar education, experience, knowledge, qualifications and compensation schedule.

(i) Classification Plan - an orderly arrangement of titles and descriptions of positions under separate and distinct classes in the classified service.

(j) Classified Service - all positions now existing or hereafter created in or under any of the City departments, boards or commissions enumerated by the City Charter, but not including those positions specifically exempted from the competitive service by Section 902 of the City Charter, or otherwise exempted by the Board.

(k) Class Title - the designation given to a class, to each position allocated to such class and to the incumbent of any such position. Its meaning is set forth in the corresponding general duties statements in the class specifications.

(l) 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.

(m) 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.

(n) Competitive Examination - an examination in which one or more candidates are in competition, either with each other or against a standard established as the minimum acceptable which candidates must possess in order to competently perform the duties of a position.

(o) Confidential Position -- Confidential positions are those positions which are privy to management decision-making discussions and memoranda affecting employer-employee relations.

(p) Demotion - a change of an employee in the City service from a position of one class to a position of another class for which a lower schedule of pay is prescribed.

(q) Domestic Partner - a person who has registered for a Certificate of Domestic Partnership and who is in a committed relationship with a City employee, in which two cohabiting, unrelated people over the age of 18, share common responsibility for the necessities of life and have resided together for at least six months prior to registering for a Certificate of Domestic Partnership. In accordance with applicable state law, to be eligible to register as a domestic partner, both persons must be of the same sex or one or both persons must be over the age of 62 and meet the eligibility criteria for old-age insurance benefits under Title II of the Social Security Act as defined in 42 U.S.C. § 402(a) or Title XVI of the Social Security Act as defined in 42 U.S.C. § 1381 for aged individuals.

(r) Discharge or Removal - the separation of an employee from his or her position.

(s) Eligible - a person whose name is recorded on an eligible list.

(t) 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 classified service.

(u) Employee - a person formally occupying a position in the city service in accordance with applicable rules and procedures of the City, and shall include the designation "officer."

(v) Examination - all the tests of fitness, taken together, that are applied to determine the eligibility of applicants for positions of any class in the classified service.

(w) Final Earned Rating - the final percentage attained by a candidate in an examination as computed from the percentage earned in each part of such examination.

(x) Layoff - the separation of a non-probationary employee from the classified service without fault on his/her part and by reason of lack of work or funds or reorganization.

(y) New Position - a position created through the authorized addition of a position not previously existing.

(z) Part-time Employment - a person occupying a position in the City service under 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 a position that is exempt from the classified service on a less than full-time basis.

(aa) Permanent Employee - an employee who has satisfactorily completed a probation period and whose regular appointment has been approved by the appointing authority.

(bb) Position - an individual place of employment in a particular class.

- i. Limited Duration - a position created for a specific purpose due to an urgent need of limited duration.
- ii. Exempt - a position not included in the classified service by reason of Charter exception or exception by the Board.
- iii. Permanent - a position in the classified 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.
- iv. Temporary - a position in the classified service which has required, or which is intended to require, the services of an incumbent for a period not to exceed 120 calendar days.

(cc) Promotion - the change of an employee in the classified service from a position of one class to a position of another class in the same or similar series, for which a higher maximum rate of pay is provided in the compensation plan and which involves increased or more complex duties.

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

(ee) Reallocation or Reclassification - the reassignment or change in allocation of an individual position by raising it to a higher, reducing it to a lower, or moving it to another class of the same level on the basis of significant changes in the kind or difficulty of duties and responsibilities in such position.

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

(gg) 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 these Rules.

(hh) Re-employment List - a list of the names of former employees who had obtained permanent status in the City service and who have requested the privilege of re-employment.

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

- (jj) Resignation - the voluntary separation of an employee from employment.
- (kk) Restricted Entrance - an examination limited to specific full-time City employees who meet the minimum qualifications of the class to be examined.
- (ll) Separation - the voluntary or involuntary termination of an employee's position from City service without regard to cause.
- (mm) 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.
- (nn) Shall and May - "shall" is mandatory and "may" is permissive.
- (oo) Suspension - the temporary separation of an employee from his/her position with loss of pay as a disciplinary measure.
- (pp) Termination of Appointment - the involuntary separation of an employee for cause from a permanent position in the classified service.
- (qq) Test - one part of an examination.
- (rr) Weight - the fixed numerical value given to each part of an examination designating the relative worth and used in computing a general average.
- (ss) Y-rated salary - when an employee is placed in a different position of a different salary range, the salary of an employee is fixed at the rate the employee was earning at the time of the change in placement until the salary rate for the position to which the employee is placed reaches or exceeds the level of salary which the employee is receiving.

RULE 3

ORGANIZATION, RULES AND PROCEDURES OF THE CIVIL SERVICE BOARD

Section 3.01. Duties of City Administrator and Personnel Director. The City Administrator shall be responsible for the administration of the personnel system in accordance with the Charter. The City Administrator shall appoint a Personnel Director who shall have the following duties, subject to the direction of the City Administrator:

- (1) Be responsible for the efficient operation of the Personnel Department of the City;
- (2) Prepare, maintain and amend the Personnel Manual of the Civil Service Board;
- (3) Prepare and maintain the position classification plan, including detailed position description;
- (4) Administer the selection process for positions in the classified service and maintain eligible lists of qualified candidates; and
- (5) Perform other duties as the City Administrator may assign.

Section 3.02. Civil Service Board Duties. The functions and duties of the Civil Service Board are as follows:

- (1) To enforce, through general supervision of the personnel system, the provisions of the Charter and Ordinance 8979, as amended;
- (2) To 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;
- (3) To make reports and recommendations in writing and to 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;
- (4) To approve exemption of positions from the classified service;
- (5) To perform the appellate duties and functions set forth in the Personnel Manual excepting those which are administrative in nature; and
- (6) To perform such other duties and functions as the City Administrator may from time to time request.

Section 3.03. Civil Service Board Composition. The Board shall consist of seven members who will be appointed pursuant to Section 601 of the Charter, and who shall serve without compensation. Two members shall be appointed for a term of one year, two for two years, and three for four years, said terms to commence upon the date of appointment. Thereafter, each appointment shall be for a term of four years, except that an appointment to fill a vacancy shall be for the unexpired term only.

Section 3.04. 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 within ten days of appointment. A member may be removed by the City Council for cause pursuant to Section 601 of the Charter. Cause for removal shall include: conviction of a felony, misconduct, incompetency, inattention to or inability to perform duties, and unexcused absence from meetings.

Section 3.05. Officers, Meetings of Civil Service Board. Each year at its first regular meeting in July, the Board shall elect a chairman and vice-chairman from among its members. The Board shall meet at least once each month in the 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 twenty-four (24) hours before the meeting is scheduled to convene. The Board shall have authority to meet in closed session pursuant to the Brown Act and notice of closed session shall be given pursuant to the Brown Act.

Section 3.06. 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. 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 who shall forward these matters within the province of the Council, or the Board of Port Commissioners, as the jurisdiction may be.

Section 3.07. City Attorney Duties. The City Attorney may represent the City before the Board in matters in which the City has an interest in being heard, including in disciplinary appeal hearings. In addition, the City Attorney may provide legal advice to the Board as needed.

Section 3.08. Staffing for Civil Service Board. The City Administrator shall provide the Board with assistance from City employees under his or her jurisdiction.

RULE 4

CLASSIFICATION OF POSITIONS

Section 4.01. Classified Service. All positions in the City shall be in the classified service except those positions designated in section 902 of the City Charter or otherwise exempted by the Board. All positions in the classified service shall be under the jurisdiction of the Board. No appointment to positions within the classified service shall be made except in accordance with these Rules.

Section 4.02. Definition of Classification Plan.

(a) Classification of Positions: All positions in the classified 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 included 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, and allocates the classes or positions to their respective salary schedules according to a designated pay plan.

Port of Oakland employees and City employees shall have separate and distinct classifications.

(b) Preparation and Content of Class Specifications: Class specifications defining the job duties shall be prepared and maintained by the Personnel Director.

- i. 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 be required to perform. 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.
- ii. Statement of Minimum Qualifications: The statement of minimum 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 Personnel Director, after consultation with the appointing authorities, shall determine desired combinations of training and experience as minimum qualifications for the respective classes and these minimum qualifications shall become part of the class specification.

Section 4.03. 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.

Section 4.04. Administration and Maintenance of the Classification Plan.

(a) Responsibilities of the Personnel Director: The Personnel Director shall be responsible for administering and maintaining the classification plan. The Personnel Director shall determine whether the reallocation of any position from one class to another class is warranted whenever a change in duties and responsibilities of such position makes the class to which the position is allocated no longer applicable. Any reallocation to be made shall be made with notice to the employee concerned and his/her appointing authority.

(b) Reclassification of Positions: The Personnel Director may initiate and conduct classification studies of any positions in the classified service when he/she deems such review is necessary, and may recommend a change in classification where the facts warrant such action. The Personnel Director may require any appointing authority or employees to prepare a statement of the current duties and responsibilities of positions under consideration. An appointing authority may also submit requests for changes in classification of positions to the Personnel Director. The appointing authority may be required to submit to the Personnel Director, the following information:

- i. A full description of the duties and responsibilities of the position.
- ii. Suggestions as to the qualification requirements.
- iii. A suggested title.
- iv. A suggested salary schedule.
- v. A statement regarding any changes in the duties and responsibilities of all positions in the department which may be affected by the creation of the new position.

(c) Employee Requests for Classification Review. Any employee who contends that he/she is working outside of his/her classification or who contends that his/her position has been improperly classified shall make a request for classification review initially to the department head who shall submit the request to the Personnel Director for review. The Personnel Director shall review such requests and make decisions regarding such requests, subject to appeal to the Board.

(d) Creation of New or Merged Classifications. An appointing authority may submit a request to the Personnel Director for the creation of a new or merged classification. In recommending the establishment of a new or merged classification, the Personnel Director shall submit to the appointing authority and to the Board, for its approval, a class title and specification for such classification.

(e) Changes Requiring Formal Approval of the Board The approval of the Board

shall be obtained for the establishment of any new or merged classification and changes in class titles which involve changes in job duties or responsibilities or pay rate. However, the Personnel Director may make changes in class titles which do not involve changes in job duties or pay rate without Board approval.

(f) Appeal to Board regarding Classification Issues 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 his/her classification, and the affected employee does not agree with this decision, the appointing authority, employee or affected union shall have an opportunity to be heard by the Board before the Personnel Director's decision becomes effective. Hearings regarding disputes about classification issues shall be scheduled by the Board. At the hearing, the appointing authority, employee and/or affected union shall have an opportunity to present their positions, either orally or in writing, regarding the Personnel Director's proposed decision. The Personnel Director or his/her designee shall also have an opportunity to be heard by the Board regarding the issue, either orally or in writing. After consideration of the positions of the individuals concerned, within a reasonable period of time, the Board shall issue a final and binding decision regarding the classification issue in dispute.

Section 4.05. Treatment of Incumbents as Result of Reclassification of Positions. In the event of a classification study, the following treatment of incumbents of reclassified positions may take place:

(a) Upgrading of Position: When a position is reallocated to a class of higher grade, the incumbent may be re-designated 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. If the incumbent has served less than one year in the position that has been reallocated, that person shall be laid off and placed upon the reinstatement list for positions of the same class as that from which he/she was so separated. If a position is reallocated to a class of position for which the maximum rate of pay is higher and the incumbent has held the position for less than one year, the position shall be filled by appointment from the reinstatement or eligible list of the class to which the position is reallocated. In the absence of such reinstatement or eligible list, the incumbent shall continue in the position until such time as a reinstatement or an eligible list shall have been created, from which the position can be filled.

(b) Downgrading of Position: When a position is reallocated to a class of lower grade, the incumbent may be re-designated to the position of a lower grade at no loss in salary at the time of the downgrading. Within the discretion of the Personnel Director, the salary may be "Y-rated" until such time as it becomes equivalent to the salary paid the classification. The employee shall be placed on the reinstatement list of his/her former class and shall have priority reinstatement rights to the classification from which he/she was downgraded for a period of two years from the date of the action changing the classification.

(c) Notification: When a position is reallocated to a class of a lower or higher grade, the incumbent shall be notified in writing by the Personnel Director at least two calendar weeks in advance of the reallocation.

Section 4.06. Classification of Temporary or other Non-Permanent Employment. Whenever temporary or other non-permanent positions are authorized, such positions shall be classified by the Personnel Director upon determination of a statement of the duties and responsibilities and the salary schedule of the position.

Section 4.07. Conditions for Accepting an Exempt Position into the Classified

Service. In the event that positions, which were previously exempted from the classified service, are to be included in the classified service, the following procedure shall be followed:

(a) The Personnel Director shall review the position to determine that its organizational structure, job design, and compensation meet the standards established for other City positions. If these standards are met and the position is vacant, the position shall be placed in the classified service in the same manner as any new position or classification.

(b) In the event the position has an incumbent, the Personnel Director shall review the position in the manner described above. If the incumbent meets the minimum requirements for the position, has served for at least one year in the position performing the same or similar duties, and has standard or above performance ratings, the Department Head in concurrence with the Personnel Director may recommend to the appointing authority that the incumbent be granted permanent status in the classified service.

(c) Should the incumbent not meet the requirements as established in Section (b) above, but has more than one year service in the position, such employee shall be placed in a probationary status for one year. Failure to meet these requirements, based on performance appraisals, shall be cause for termination from the position occupied. If in a promotional position, the incumbent may be returned to the previously occupied position upon recommendation of the Department Head, assuming he/she is qualified for the lower position.

(d) If an employee has performed satisfactorily in a position for less than one year but more than eight months, and possesses the minimum qualifications, upon recommendation of the Department Head and the Personnel Director, the employee shall be placed in a probationary status for a period not to exceed 120 days. The employee shall be evaluated, and upon a period of satisfactory performance not to exceed 120 days, the Department Head with concurrence of the Personnel Director shall recommend to the appointing authority that the employee be granted permanent status in the classified service.

(e) If an incumbent has occupied a position for a period of at least 120 days but less than eight months and possesses the minimum qualifications, such employee shall be treated in the same manner as described above except that the probationary status and period of evaluation shall extend from the 120-day period to the end of one year of satisfactory service. Should the employee not perform in a satisfactory manner, based on performance appraisal, such employee shall be terminated.

(f) Should a position be occupied by an incumbent whose service is less than 120 days 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 position shall be deemed classified and the incumbent placed in a probationary status for a period of one year. Should the position be promotional, the probationary period shall be for six months.

Any such action relating to position review, allocation and assignment of any individual to a position and/or classification shall be the determination of the appointing authority based on a recommendation of the Department Head and the Personnel Director.

RULE 5

APPLICATION, SELECTION, AND ELIGIBLE LISTS

Section 5.01. Recruitment: The City may utilize any legitimate recruitment procedure for attracting qualified applicants. Recruitments may be "open" 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 selection processes for restricted entrance and promotion shall be supplied to each appointing authority, who may post such notices on the departmental bulletin boards.

Section 5.02. Applicants for Selection Process. All applicants for classified positions will be required to participate in a competitive selection process. 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. However, the Personnel Director may, at his or her discretion, permit a letter, resume or other indication of interest to be accepted, pending receipt of a properly completed application. 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 5.03. Background Checks. As part of the pre-employment procedure, applicants shall be required to supply references, and submit to a thorough background check by the City. The City shall have the right to conduct a complete and exhaustive background investigation on any applicant seeking employment in the City. Applicants may be required to submit to pre-employment drug and/or alcohol testing.

Section 5.04. Eligibility to Compete in a Selection Process. Open competitive selection processes shall be open to all applicants who meet the standards or requirements established by the City's classification system, with regard to experience, education, license or other professional, specific or special certifications or standards that generally determine the ability of candidates to efficiently perform the duties of the position.

Section 5.05. Basis for Rejection of Applications. The Personnel Director may refuse to examine and/or certify an applicant or eligible who is found to lack any of the requirements established for the position of employment for which application is made, or for any legitimate reason including, but not limited to, the following:

- (a) The applicant's past employment record is of such a nature that would indicate an unsuitability for public employment; including, but not limited to, incompetency, misconduct, or unsatisfactory service;
- (b) The applicant previously worked for the City and his/her work performance as a City employee was below standard as indicated by City records;
- (c) The applicant has practiced, or attempted to practice, any deception or fraud in his/her application, or in securing his/her eligibility or appointment;
- (d) 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;
- (e) The applicant has made a false statement or has omitted material facts on the application;

- (f) The applicant is a current user of illegal drugs.

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, the Personnel Director shall notify the appointing authority in whose department such person is employed, who shall, if the false statement is of material fact, summarily discharge the person.

Section 5.06. Frauds Prohibited. The City prohibits the following conduct:

(a) Willfully and falsely marking, grading, estimating, or reporting upon the examination or proper standing of any person examined or certified pursuant to these Rules, or the service ratings of any employee, or aiding in so doing, or willfully making any false representation concerning the same, or concerning any person examined;

(b) Impersonating any other person, or permitting or aiding in any manner any other person to impersonate him/her in connection with any examination, appointment, or application or request for examination;

(c) Deceiving or obstructing any person in respect to his or her rights in relation to any examination or appointment in the classified service;

(d) Directly or indirectly giving, rendering, paying, offering, soliciting or accepting money, service, or other valuable considerations for or on account of any appointment, proposed appointment, promotion, or proposed promotion to, or any advantage in, a position in the classified service.

Any employee determined to have committed any of the above acts shall be subject to disciplinary action up to and including termination, and may also be subject to criminal charges. Any applicant or non-employee determined to have committed any of the above acts may be subject to criminal charges.

Section 5.07. Announcement of Selection Process to Fill Vacancy. The announcement of the selection process to fill a vacancy shall list a description of the position, its duties, the minimum education, experience and license requirements for application, and any other such information as is necessary to adequately inform prospective applicants about the selection process. The minimum rating for which eligibility for the position may be achieved will be established by the Personnel Director.

Section 5.08. Type and Scope of Competitive Selection Processes. Open, restricted entrance, and promotional selection processes shall be designed for the purpose of determining the qualifications of applicants for positions, 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. The City may use any legitimate method to determine the qualifications of applicants, including without limitation, supplemental questionnaires, written tests, physical agility tests, oral examinations, panel interviews, assessment centers and oral interviews.

Section 5.09. Conduct of Examination. Each examination shall be conducted by the Personnel Director or his/her designee. Appropriate safeguards will be put in place to ensure fairness, prevent collusion and/or fraud in the examination process, and comply with testing provisions.

Section 5.10. Ratings of Results of Examination. The Personnel Director shall utilize appropriate techniques and procedures in rating 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 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 City service. Any such adjusted score shall be established before the identification of the candidates' examination papers. The final earned rating of each person competing in any examination shall be determined by the weighted average of the earned ratings on all parts of the examination, according to the weights for each part established by the Personnel Director, in advance of the conduct of the examination. On entrance examinations, the Personnel Director may set minimum qualifying ratings for each phase of an examination, and may provide that candidates failing to achieve such ratings in any phase shall be disqualified from any further participation in the examination.

Section 5.11 Preferences in Selection Processes.

Section 5.11.1. Oakland Residents Preference. A City of Oakland resident who competes in an open or promotional selection process for a position in the classified service shall be given an additional five percent (5%) on his/her final examination score, provided that he/she initially scores a passing grade 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. The applicant must submit satisfactory written proof of residency as determined by the Personnel Director.

Section 5.11.2. Veterans' Preference in Examinations. A qualifying veteran who competes in an examination for a position in the classified service shall be given an additional five percent (5%) on his/her final examination score, provided that he/she initially scores a passing grade on the examination. For purposes of this Rule, a "veteran" means any person who has served full time for 30 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 5.11.3. Seniority Credit. Credit for seniority shall be given for current employees who compete in promotional examinations so long as the employee's overall rating is at least "fully effective" in each Performance Appraisal for one year leading up to the date of the promotional examination. An employee with ten (10) or more years of active City service who successfully completes a promotional examination shall have five (5) points added to the final score. An employee with fewer than ten (10) years of active City service shall have up to a maximum of five (5) points, prorated based on the number of years of active City service, added to the employee's final score. Seniority points shall be calculated as of the date of the job announcement.

Section 5.12. Eligibility for Promotional Selection Processes. Promotions in the classified service shall be made on the basis of competitive selection process. Employees with post-probationary status who meet the requirements as set forth in the specification of the class for which the promotional examination is to be held, or who are employed in an appropriate class, shall be considered eligible to compete in such examination. Any permanent employee whose position has been reallocated shall be eligible to compete in any promotional examination held to fill the allocated position. Applicants shall meet the following requirements:

- (a) They shall be employed in the classes of positions at the time of examination, or

shall be on the reinstatement list for such classes, or shall be on leave of absence from such classes.

(b) They shall have maintained a record clear of any disciplinary action for a period of one year prior to the date of examination. However, the Personnel Director may decide in his/her discretion, for legitimate reason, that such disciplinary action may not bar the applicant from taking an examination.

(c) They shall have maintained an overall ~~service~~ rating of ~~at least standard~~ “fully effective” or above in each Performance Appraisal for a period of at least one year prior to the date of examination.

Section 5.13. Scheduling of Promotional Examinations. Upon giving three days’ notice to the immediate supervisor, and with the consent of the immediate supervisor, any qualified City employee may be permitted to take any promotional examination during working hours, if the examination is scheduled during such period.

Section 5.14. Reordered Selection Processes. The Personnel Director may order an additional selection process in the event that all candidates in an open or promotional selection process fail the examination, or in the event that there is an insufficient number of candidates on an eligible list which prevents the full certification of that list.

Section 5.15. Notice and Review of Results of Examinations. All persons competing in any examination shall be given notice of their final score or rating, or their failure to attain a place upon the eligible list. A promotional candidate may inspect his/her own examination papers within a period of not to exceed 30 days after the Personnel Director has certified the eligible list. Candidates for open examinations do not have a right to inspect their examination papers. Information concerning the results of an examination shall not be made public until after the eligible list has been certified.

Section 5.16. Appeal of Examination Results. Applicants may appeal to the Board the results of an examination or any of its parts based only on the following issues and only if the applicant bringing the appeal demonstrates by clear and convincing evidence that:

(a) A mechanical error or error not involving judgment or discretion was made in grading, scoring, or computing, or

(b) An examination grade or rating was the result of fraud or bias on the part of an examiner or rater.

Test content is not subject to appeal. "Clear and convincing evidence" means proof that is so clear, explicit and unequivocal as to leave no substantial doubt in a reasonable mind.

Any such appeal must be filed with the Board no later than thirty (30) days after the posting of the eligible list resulting from the examination in question. No person previously appointed shall be displaced by reason of any correction of examination results. The decision of the Board shall be final.

Section 5.17. The Establishment of Eligible Lists. From the reports of the scoring and rating of the selection process, the Personnel Director shall prepare or cause to be prepared an eligible list showing the names of candidates who have obtained ratings equal to or greater than the minimum required in any stage of the selection process, whose final earned rating is 70 or more, and who have met all other requirements for eligibility, arranged in order of their relative

percentages. The Personnel Director may determine the total number of persons who constitute the list of eligibles.

Eligible lists shall become effective upon approval by the Personnel Director. Open and restricted entrance eligibility lists shall expire one year from that date, and promotional lists shall expire two years from that date, unless extended or cancelled prior to the expiration of that time period by the Personnel Director. However, no list shall be extended for a period exceeding four years from the date of original posting. When there is more than one eligible list for a particular class of position, the two lists may be combined and the names of eligibles may be entered on the combined list at the discretion of the Personnel Director. Any names occurring on combined lists shall be cancelled at the date on which the original list from which they came would expire.

In the event a promotional or restricted entrance eligible list has fewer than four names to be certified to the appointing authority, the appointing authority may request that the list be cancelled and a new selection process be held. Upon receipt of such request, the Personnel Director may proceed with the new selection process and compile an eligibility list with sufficient persons on the list in order to certify a minimum of four names for the position vacancy. In the alternative, the appointing authority may request to review alternative lists including a transfer list or an eligibility list for comparable classes.

Section 5.18. Kinds of Eligible Lists. There are four kinds of eligible lists: (1) Reinstatement list, consisting of employees who have been laid-off; (2) Promotional lists, from which promotions shall be made; (3) Employment lists, from which original entrance appointments shall be made, and (4) Transfer List, consisting of names of employees eligible for transfers.

Section 5.19. Reinstatement Lists. Permanent employees who are laid off shall be placed on a reinstatement list in reverse order of layoff in accordance with the provisions of Rule 12.04.

Section 5.20. Removal of Names from Eligible Lists. Names of eligibles will be removed from any eligible list for any causes as set forth in Section 5.05, and, in addition, may be removed from the list for any of the following:

- (a) the eligible has been appointed through certification from any such list to fill a vacancy in any department;
- (b) the eligible has refused certification without any satisfactory reason, failed to respond to timelines for certification or refused to accept an appointment offered him/her, without giving a satisfactory reason;
- (c) the eligible has waived certification three times to a permanent position in any given class;
- (d) the eligible has failed to respond to correspondence regarding availability for employment.

Section 5.21. Waiver of Appointment. After being offered an appointment, eligibles on any of the eligible lists may waive appointment, without losing their eligibility for future appointment, by filing a written waiver stating that they are not willing to accept appointment from the eligible list; provided, however, that

- (a) such waivers shall be filed within three working days of notification of certification, and satisfactory reason for the waiver shall be submitted;
- (b) such waivers may be withdrawn upon written request;
- (c) waivers of appointment from a promotional eligible list shall not be permitted where the vacancy occurs within the department in which the eligible is then employed;
- (d) such waivers of appointment from promotional eligible lists may be accepted when an employee is on more than one eligible list and he/she has accepted appointment from one or the other of such lists.

Eligibles who are notified that they are being offered an appointment are required to respond to the Office of Personnel within five (5) working days of the date of notification. The Personnel Director may extend the time response period in his/her discretion. Failure of an employee to respond within the time limits shall be considered a refusal of the offer of appointment. Eligibles who fail to possess and maintain the qualifications required by law and the terms of the position announcement shall forfeit their right to appointment.

Section 5.22. 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.

RULE 6

CERTIFICATION AND APPOINTMENT

Section 6.01. Power of Appointment and Types of Appointments. All appointments to positions in the classified service shall be made by the respective appointing authorities under and in conformity with the provisions of the City Charter and these Rules by original appointment, provisional appointment, limited duration appointment, reinstatement, re-employment, transfer or promotion.

There are three types of vacancies in the City service to be filled by appointments: permanent vacancies, temporary vacancies, and absences. Permanent vacancies shall be filled by regular appointments, when an individual is certified from an eligibility, reinstatement, re-employment or transfer list. Temporary vacancies and absences may be filled by (a) limited duration appointments, (b) provisional appointments, (c) temporary contract service employees, (d) exempt limited duration employees, or (e) temporary agency assignments.

Section 6.02. Procedure for Certification of Eligibles to Fill Vacancies. In order to fill any classified position, the following two prerequisites must be met: 1) an authorized budgeted position must exist; and 2) the position must be vacant.

Whenever a vacancy is to be filled other than by transfer, demotion or re-employment, the appointing authority may request certification of the names of the persons eligible for reinstatement or appointment to the class of position for which the vacancy exists. Upon receipt of this request for certification, the Personnel Director shall make certification from the list for the appropriate class in the following order: (1) reinstatement list; (2) promotional list; (3) restricted entrance list; (4) original entrance list. If no appropriate eligible list exists, the Personnel Director may certify from such other list(s) as he/she deems most appropriate.

In case of certification from a reinstatement list, the Personnel Director shall certify the names in rank order on the list. If no reinstatement list exists, the Personnel Director shall certify,

whenever possible, the top ten ranks on the eligibility list for the vacancy, with an additional rank for each additional vacancy. However, fewer persons may be certified if there are less than ten ranks on the eligibility list.

Section 6.03. Selective Certification. The eligibles certified shall be the highest ranking eligibles willing to accept employment. However, the appointing authority 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 shall be provided to the eligibles that the appointing authority desires to pass over for appointment any eligibles who do not possess such qualifications, including a brief statement of the reason for the need for such qualifications.

Section 6.04. Certification to Position in Lower Class. An eligible on an entrance or reinstatement 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 that no eligible list exists for the lower class. Acceptance of such position shall not defeat the eligible's rights to be certified to the class of position for which he/she was originally examined.

Section 6.05 Provisional Appointments. The Personnel Director shall have the power to make provisional appointments, in the absence of an eligible list, for any position in which a vacancy may occur. No such provisional employment shall continue after the establishment of an eligible list, nor for more than 120 calendar days in any event. Provisional appointees are required to participate in an examination and achieve a reachable rank on the eligibility list in order to be permanently appointed to fill a vacancy.

In cases where the appointing authority desires to fill a vacancy by provisional appointment of a regular City employee having permanent status, such employee may be so appointed provided that he/she is eligible to compete in the examination for that vacancy.

Section 6.06. Limited Duration Appointments. Whenever a department requires emergency 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 as follows.

(a) Provisional appointment A provisional appointment may be made in accordance with Rule 6.05.

(b) Temporary Contract Service Employee An employee may be appointed in a temporary contract service employee classification and may serve for a maximum of 960 hours per fiscal year and may be one of two types of assignments. Employees may be assigned to a division or a project on a regular basis up to the maximum of 960 hours in a fiscal year; or, assignments may be on an occasional or short-term (less than 30 days) basis. These assignments usually require specialized skills. This classification may not be used for on-going or repetitive use. Temporary Contract Service Employees may not be placed in permanent employment without successfully competing in an examination process.

(c) Exempt Limited Duration Employees This classification is intended to meet the City's need to fill positions with: (a) limited funding cycles of one year or less; (b) special projects that are longer than 6 months in duration, yet still short-term; or (c) positions where the duties and responsibilities have not been fully defined. Exempt Limited Duration appointments may not exceed one year. Exempt Limited Duration employees may not be placed in permanent employment without successfully competing in an examination process.

(d) Temporary Agency Assignments. The Office of Personnel 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.

Such limited duration appointments delineated above shall not attain permanent status. Such positions shall be deemed "at will." At will positions are not subject to the job protections described in these Rules, including process and rules for recruitment, discipline, termination, probationary periods, testing and appointment from eligible lists. The employment of at will personnel may be terminated at any time, for any legal reasons, and without any requirement of demonstrating "good cause." At will employees and temporary agency personnel have no right to appeal any discipline or termination. A person serving in a limited duration appointment shall serve the City only for such time-limited period as is determined by the City. However, if a person serving in such appointment works more time or is retained in excess of this time period, the person does not acquire permanent status as a civil service employee of the City.

Section 6.07. Transfer of Employees. An appointing authority may at any time reassign any employee under his/her jurisdiction from one position to another position in the same class. The appointing authority may also, with the approval of the Personnel Director, transfer an employee to a position of a similar class for which the maximum rate of pay is the same.

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.

Any transfer of an employee from a position in a lower class to a position in a class carrying a higher maximum salary shall be deemed a promotional appointment, and shall be accomplished only in the manner provided in these Rules for making promotional appointments.

Any transfer of an employee from a position in a higher class to a position in a class carrying a lower maximum salary shall be deemed a demotion, and may be effected only in the manner provided in these Rules for making demotions.

An appointing authority, with the approval of the Personnel Director, may at any time reassign an employee who has a permanent disability to a vacant position for which the employee is qualified as a reasonable accommodation to the employee, in accordance with the City's policies and applicable law. Such reassignments shall have priority over any individuals on existing eligible lists.

Section 6.08. Transfer List. Any permanent classified employee may request a transfer from one department to another, provided the employee meets the qualifications for the position. However, Port of Oakland employees may not be placed on transfer lists for City positions and City employees may not be placed on transfer lists for Port of Oakland positions. 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 the notice of the employee). Vacancies may, with the consent of the department head, be filled from the transfer list.

Section 6.09. Re-employment After Resignation. Any permanent employee who has resigned from service in good standing shall, upon his/her written request, be considered for re-employment to a position in the same or similar class in the classified service, within two 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 may 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. However, it shall not be mandatory for any appointing authority to re-employ former employees; former employees do not have a right to re-employment. Appointment shall otherwise be made in the manner as for original employment as defined in other sections of these Rules.

Section 6.10. Nepotism Policy. No employee, prospective employee, or applicant shall be improperly denied employment or benefits of employment on the basis of marital status or domestic partnership with another employee or official of the City (except as provided in the section 907 of City Charter).

Notwithstanding the above, the City retains the right to take appropriate steps to avoid inappropriate working relationships among relatives, including married persons and domestic partners. For administrative purposes, a relative shall be defined as a spouse, domestic partner, child, step-child, parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, cousin, niece, nephew, parent-in-law, brother-in-law, sister-in-law or any other individual related by blood or marriage. The City retains its rights to:

- (a) Refuse to place one party to a relationship under the direct or indirect supervision of the other party of a relationship.
- (b) Refuse to place both parties to a relationship in the same department, division, or facility when such action has the potential for creating adverse impact on supervision, safety, security, or morale, or involves potential conflicts of interest.
- (c) Disqualify one party to a relationship for a position privy to confidential personnel matters who has a relative already in the City's employment when the relationship may compromise confidential information.
- (d) Effect a transfer in the event the City learns of circumstances described above.

RULE 7

PROBATIONARY PERIOD

Section 7.01. Probationary Period. Every person appointed or promoted to a permanent position in the classified service shall serve a period of probation while occupying such position, which shall be considered as part of the test of fitness. The probationary period shall be an essential part of the examination process, and shall be utilized to observe the employee's work. During the probationary period, an employee may be rejected if his/her performance does not meet the required standard. The employee is not entitled to be provided with a reason for such rejection from probation. A probationary employee shall have no rights of tenure and may be terminated without cause and without any right of appeal. Probationary periods do not apply for any position which is designated as "at will;" such positions are terminable at any time with or without cause.

Section 7.02. Duration of Probationary Period. For entrance appointments, the duration of such appointments shall be for a period of twelve consecutive months of actual service.

The probationary period for persons appointed on a promotional basis shall be six months of actual service.

Former employees who are re-employed under the provision of these Rules shall serve a probationary period of six months of actual service.

An employee accepting a regular entrance appointment who has served on a limited duration appointment (LDA) in the same class immediately prior to his/her regular appointment shall have the period of time served as an LDA counted as part of the probationary period.

An employee accepting a promotional appointment who has served an LDA in the same class immediately prior to regular promotional appointment shall have the time served as a LDA counted as part of his/her promotional probationary period.

Section 7.03. Extension of Probationary Period. The appointing authority, with the approval of the Personnel Director, may extend the probationary period up to ninety (90) days in the event the City has any legitimate question regarding the employee's continued employment. Notice of such extension shall be given to the employee prior to the scheduled end of a probationary period.

Section 7.04. Interruption of Probationary Period. Periods of time during unpaid absences shall automatically extend the probationary period by the number of days of the absence. Further, periods of time on paid leave exceeding ten (10) working days shall extend the probationary period by the number of days the employee is on such leave.

If an employee is laid off during the probationary period and subsequently reappointed to the same class of position, the employee shall be given credit for the portion of probationary service previously completed in that class of position.

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

Section 7.05. Performance Rating During Probationary Period. Department heads shall prepare performance appraisals for an employee at least once during the employee's probationary period and shall file such performance appraisals with the Personnel Director. The appointment of the employee shall be deemed to be complete at the expiration of the probationary period if the employee's performance has been deemed to be satisfactory. In the event the employee's performance has not been deemed satisfactory, the appointing authority shall notify the Personnel Director and the employee that his/her services will be terminated no later than the final date of the probationary period. Failure to prepare a performance appraisal shall not prevent the City from releasing the employee from probation.

Section 7.06. Removal or Demotion of Employee During the Probationary Period.

At any time during the probationary period, an employee may be removed from his/her 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.

(b) If the employee has served in the City in another position in the classified service, and reinstatement is approved by the appointing authority, the employee shall be notified by the Personnel Department in writing that he/she may be reinstated to the prior classification from which promotion was made. The employee has five working days from date of notification to respond in writing to the Personnel Director regarding his/her wish to be so reinstated.

(c) Reinstatement to the former classification is entirely within the discretion of the appointing authority who shall consider the circumstances of the employee's removal from the most recent appointment and the employee's work record in determining whether to approve the reinstatement.

(d) If reinstatement is approved by the appointing authority, the employee shall be appointed to a vacant position in the former classification. However, if no vacancy is immediately available, the City is under no obligation to create an additional position for the employee.

RULE 8

EMPLOYEE PERFORMANCE APPRAISALS

Section 8.01. Employee Performance Appraisals. The City shall require employees in the classified service to undergo performance appraisals on at least an annual basis. Such performance appraisals shall be considered in connection with eligibility for advancement, layoff, reemployment, promotion, demotion, dismissal from 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. The performance appraisal system shall be a means whereby employees may review their performance with their supervisors, and for ascertaining and encouraging the improvement in service by employees, and in providing effective supervision of employees. The Personnel Director shall prescribe appropriate forms and procedures for completing performance appraisals.

Section 8.02. Participants in the Performance Appraisal Process. The performance appraisals shall be prepared by a rating supervisor and reviewed by a reviewing supervisor, each of whom shall be designated by the department head in each department. The rating supervisor shall be the person immediately responsible for the work of the employee. The reviewing supervisor 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. The Personnel Director shall be responsible for instructing the rating and reviewing supervisors regarding the performance appraisal process.

Section 8.03. Placement in Personnel Files. Completed performance appraisal forms shall be maintained in employee personnel files. The employee has a right to review his/her own performance appraisal(s). Employees may submit rebuttals to their performance appraisals within 20 working days of receipt of the performance appraisal. Such rebuttals shall also be maintained in the personnel files with the performance appraisal forms. Employees have no right to appeal statements or ratings made in performance appraisals.

RULE 9

VACATIONS AND LEAVES OF ABSENCE

Section 9.01. General Provisions regarding Leave.

Section 9.01.1. Employees are expected to be at work at scheduled times. To ensure public accountability and the integrity of public service, all employees are expected to account for their absences from work by notifying their supervisors or Department Heads whether such absences are chargeable to sick leave, vacation or other type of leave. Leaves shall be subject to approval by the Department Head and scheduled in advance whenever possible, with due regard for the City's service need.

Section 9.01.2. The City may employ any reasonable measure to ensure employees are properly accounting for leaves, including requiring reasonable proof that the basis for the leave is legitimate. Employees may be required to submit a medical certification of sickness supporting a request for sick leave. The City may require a fitness for duty certification from any employee returning from leave and may require that the employee be examined by a City-retained physician for the purpose of determining whether the employee is capable of performing his/her duties and returning to work. Abuse of leave privileges, including working for a secondary employer while on sick leave, may subject an employee to loss of sick leave privileges and disciplinary action, up to and including termination of employment.

Section 9.01.3. Leave benefits are available only to employees in the classified service, but are not available to seasonal, temporary or emergency employees or to exempt part-time employees. 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 are eligible for the same leave benefits as regular full-time employees based on a proration of average hours worked.

Section 9.01.4. Employees eligible for leave shall accumulate leave from the date of the employee's initial appointment to a full-time, regular or probationary position.

Section 9.02. Available Leave Categories. The City provides the following leave categories: (a) vacation; (b) sick leave; (c) family medical leave; (d) pregnancy disability leave/parental leave; (e) on-the-job injury leave; (f) family death leave; (g) military leave; (h) jury duty leave; (i) management leave; (j) administrative leave with pay; (k) personal leave without pay; (l) family death leave; (m) holiday; (n) compensatory time off; (o) school activities leave, as well as other leaves mandated by law.

Section 9.03. Vacation.

Section 9.03.1. Accrual. Employees accrue vacation at the following rates, except as otherwise specified in an applicable MOU:

- (a) During the first four calendar years of service, vacation shall accrue at the rate of 10 days per year;
- (b) During the fifth through twelfth years of service, vacation shall accrue at the rate 15 days per year, plus one extra day during the 5th and 10th anniversary years for those years only;
- (c) During the thirteenth through fifteenth years of service, vacation shall accrue at the rate of 18 days per year, plus one extra day during the 15th anniversary year for that year only;
- (d) During the sixteenth through nineteenth years of service, vacation shall accrue at the rate of 19 days per year,

(e) During the twentieth through twenty-fifth years of service, vacation shall accrue at the rate of 20 days per year, plus one extra day during the 20th and 25th anniversary years for those years only;

(f) During the twenty-sixth through twenty-ninth years of service, vacation shall accrue at the rate of 25 days per year,

(g) After completion of thirty years of service, vacation shall accrue at the rate of 30 days per year, plus one extra day during the 30th anniversary year and at subsequent 5-year anniversary intervals for those years only, i.e., the 35th and then the 40th.

Vacation accrues biweekly. On an emergency basis, employees may take vacation time in less than one-half day increments. All vacation time used shall be charged by the actual hours taken.

For purposes of computing the rate or accrual of vacation leave, a break in service of less than two years shall have no effect. A break in service in excess of two years shall mean that the employee shall be treated as a new employee, for purposes of computing accrual of vacation.

An employee who works under the four-day workweek plan shall accrue vacation leave on the same basis as he/she would accrue vacation under the five-day workweek schedule.

Section 9.03.4. Notice. Employees shall give at least two (2) weeks notice of a vacation request, unless the vacation is three days or less, in which case notice shall be at least one (1) week in advance of the requested leave. Scheduling of vacations must be made in consideration of departmental workload.

Section 9.03.5. Payment for Unused Vacation at Separation or Upon Commencement of Extended Military Leave. Upon termination of City service or commencement of extended military leave, an employee shall be paid in a lump sum for accumulated unused vacation subject to the following provisions. No employee, or employee's estate, shall be paid for unused vacation in excess of forty-seven (47) working days.

Section 9.03.6. Vacation Sell Back. Employees may choose to be paid for up to five (5) days of vacation in a calendar year instead of taking the days as vacation time, if they have met both of the following conditions:

(a) Have accumulated vacation days in excess of their annual vacation entitlement at the end of the calendar year; and

(b) Have already taken a minimum of 10 vacation days within that calendar year.

Employees can only sell back vacation days during the month of January.

Section 9.04. Sick Leave.

Section 9.04.1. Sick Leave with pay. Employees shall not accrue sick leave credit until they have three months of service. Thereafter, each employee shall accrue sick leave at the rate of one working day of sick leave per one month of service. For purposes of this rule, one month of service shall mean thirty (30) calendar days.

Section 9.04.2. Sick leave usage is not a "right." Rather, sick leave may only be used in cases of actual sickness or disability. Employees unable to report to work must notify their immediate supervisors not later than one hour before work is scheduled to begin, if possible, or by

whatever method is established by the supervisor. Failure to do so is cause for denying sick leave with pay.

Section 9.04.3. Sick leave with pay shall not be granted to an employee who is absent from duty due to an injury incurred while working for an employer other than the City.

Section 9.04.4. Unless otherwise provided in an applicable MOU, if an employee is determined to be eligible for disability retirement, the employee shall not be permitted to exhaust paid sick leave balances prior to retiring.

Section 9.04.5. Sick Leave Usage for Family Illness. In accordance with applicable law, an employee may use a minimum of one-half of his/her annual sick leave allotment to attend to an illness of a family member. For purposes of this Rule, the family members shall include: mother, father, husband, wife, domestic partner, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, grandchildren in the custody of the grandparents who are City employees. In special circumstances involving the illness of a person who has raised the represented employee in lieu of a natural parent, the Department Head may consider granting family illness leave under this Rule to the affected employee. The Department Head may require the employee to provide a medical certification from the treating physician of the family member to verify the need for the employee to utilize sick leave to attend to the illness of the family member.

Section 9.04.6. Accumulation of Sick Leave Credits. Unless otherwise specified in an applicable MOU, unused sick leave may be accumulated, not to exceed one hundred and fifty (150) working days. Sick leave credits accrued under this provision shall be expressed in hours.

An employee who is granted leave without pay for a period of thirty (30) calendar days or more shall not earn sick leave credits for such time, unless otherwise provided in these Rules or in an applicable MOU.

Section 9.04.7. Disposition of Sick Leave Credits of Terminated Employees. Except as hereinafter set forth, if an employee separates from City employment or is terminated for any reason whatsoever, all accumulated sick leave shall be cancelled. However, an employee who returns to work with the City within one year of termination shall be again credited with the amount of accumulated sick leave he/she had at the time of termination. An employee who is re-employed or reinstated in this manner shall earn sick leave at the rate of one working day per month, unless his/her previous service with the City amounted to less than three months service.

If an employee with not less than ten years total City service, uninterrupted by a single period of absence in excess of one year, separates from City employment or is terminated for any reason, he/she shall be paid a lump sum for one-third of any accumulated unused sick leave at the rate of pay at time of separation.

Section 9.04.8. Sick Leave Without Pay. In the event paid balances are exhausted, employees may be placed on sick leave without pay if circumstances so warrant and within the discretion of the Department Head. Employees in such status do not accrue vacation or other benefits, or receive service credit and may be required to pay for all fringe benefits, such as health plan premiums, during the period of their leave without pay (unless the leave qualifies for Family and Medical Leave as set forth in these Rules).

Section 9.04.9. Return to Duty from Extended Sick Leave. For employees returning to duty after extended sick leave, medical clearance may be required from a City-retained physician prior to the employee's return to duty. Persons on sick leave may be required to be evaluated by a City-retained physician to aid the City in determining their anticipated return-to-duty date.

Section 9.04.10. Accommodation for Employees with Disabilities. If an employee believes he or she has a disability, the employee may request a reasonable accommodation for that disability in accordance with City policy. Such requests should be submitted to the employee's Department Head. The Department Head or designee from the Equal Employment Opportunity Office may engage in an interactive process with the employee to determine an appropriate accommodation for the employee in accordance with applicable law. If, in the opinion of the City, an employee is unable to perform his/her work properly due to illness or injury, the City may direct that the employee undergo a fitness for duty examination by a City-retained physician. If the physician finds that the employee is physically or mentally unfit to perform the duties of the position, the City may consider a reasonable accommodation for the employee, may compel such employee to take a leave of absence, may provide for a disability retirement if the employee is eligible, or may separate the employee for medical reasons in accordance with these Rules.

Section 9.05. Family and Medical Leave/Paid Family Leave. The City will provide family and medical care leave for eligible employees in accordance with the requirements of the Family and Medical Leave Act ("FMLA"), and the California Family Rights Act ("CFRA") and pursuant to City policy. In addition, employees who pay into State Disability Insurance are eligible for Paid Family Leave in accordance with applicable law and City policy.

Section 9.06. Pregnancy Disability Leave/Parental Leave. The City shall provide pregnancy disability leave to eligible employees in accordance with applicable law and City policy. After the employee's pregnancy disability ends, the employee may be eligible for CFRA leave to care for the newborn, in accordance with applicable law and City policy.

Section 9.07. On-the-Job Injury Leave. Employees shall be granted on-the-job injury/illness leave when the employee is unable to work because of any on-the injury/illness as defined in the California Labor Code (Workers' Compensation Act).

Section 9.07.1. City Paid Leave Entitlement

9.07.1.1 Probationary Employees. An entry probationary employee shall not be entitled to City paid leave entitlement under Section 9.07 unless as otherwise provided by law.

9.07.1.2 Permanent Employee. Permanent employees shall be entitled to a maximum of sixty (60) working days of City paid on-the-job injury/illness leave per injury or illness, unless as otherwise provided by law. Reoccurrences of an injury/illness shall not be considered a new injury/illness and shall not entitle the represented employee to a new sixty (60) working day free period. The sixty (60) working days per injury or illness does not have to be used consecutively. This leave shall not be deducted from the employee's sick leave or any other accrued leave.

9.07.1.3 Long Term Permanent. Permanent employees with ten (10) consecutive years of City service shall be entitled to a maximum of ninety (90) working days of paid on-the-job injury/illness leave per injury or illness with the same standards as stated in Section 9.07.1.2, unless as otherwise provided by law.

9.07.1.4 Workers' Compensation Claim An on-the-job injury/illness must qualify as a workers' compensation claim under standards applied by the Workers' Compensation Appeals Board. The Workers' Compensation Appeals Board's rejection of an employee's claim shall result in disqualification of the employee's injury/illness for leave under this provision. On-the-job injury leave previously granted for a disqualified injury/illness will be deducted from the employee's other accrued paid leave balances, or the employee may reimburse the City in cash.

9.07.1.5 Physical Examination. As permitted by state law and City policies, the City may require an employee who claims to have had an on-the-job injury or illness to submit to a physical examination. When an employee seeks to return to work after being on injury or illness leave, the employee must provide medical certification that he/she is physically able to perform the duties of his/her position. The City may require the employee to undergo a fitness for duty examination before returning to work.

9.07.1.6 Workers' Compensation Benefits. Payment under this provision shall not be cumulative with any benefit that the employee may receive under the California Labor Code as the result of the same injury/illness, unless as otherwise provided by law. If, after the sixty (60) working day period of City paid leave, the employee is still unable to work, the employee may supplement any benefits paid under the Labor Code with accumulated sick leave and vacation to the extent necessary to make up the difference between the amount of the award and the normal weekly base pay for each week of continuing disability.

Section 9.08. Return from Disability Retirement. If an employee retires for disability and thereafter the disability ceases, to the extent that the employee is able to perform the duties of his/her position held on the date of disability retirement, and the employee is otherwise qualified for the position, and the position is vacant, the employee shall be entitled to return to the vacant position or to a vacant position within the same class as that occupied at the time of retirement and shall be entitled to such other privileges as are provided in these Rules.

Section 9.09. Family Death Leave. The City shall grant a leave of absence with pay for up to five (5) working days when a member of the employee's immediate family dies. Such leave shall not be charged against vacation or sick leave.

"Immediate family" means mother, father, husband, wife, domestic partner, parent of spouse or domestic partner, child (including step-child or child of domestic partner), sibling, grandparent or grandchild. In special or unusual cases, the department head, with the approval of the Personnel Director, 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. 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.

If the employee experiences extreme hardship relating to the death, an additional day off may be granted, with the approval of the department head. The department head or Personnel Director may require some proof that a death in the family has occurred.

Section 9.10. Military Leave. Military leave shall be granted in accordance with applicable state and federal law and City policy.

Section 9.11. Management Leave. Employees in exempt management positions shall be awarded five (5) days of management leave as of July 1st of each year. Management leave shall be prorated for new hires. Additionally, exempt management employees who work irregular work hours or who demonstrate superior performance during the eligibility period of July 1 through June 30 of each year may also be awarded up to a maximum of five (5) days of management leave each year. The awarding of such additional leave will be at the sole discretion of the City Administrator.

Section 9.12. Jury Duty. Employees summoned by state or federal court to mandatory jury duty shall be paid regular salary during the period of jury service. Employees must keep their supervisors informed of jury service schedule, and shall provide proof of jury service to the City upon request. Employees may retain any fees or allowances received for such jury service.

Section 9.13. Administrative Leave with Pay. The City in its discretion may place an employee on administrative leave with pay. Employees on such leave shall be subject to the City's instructions during their normal working hours.

Section 9.14. Personal Leave Without Pay.

Section 9.14.1. To be eligible for a personal leave without pay, an employee must make a written request for the leave to his/her Department Head at least five (5) working days prior to the requested leave, stating specific reasons for the request.

The Department Head, in his/her discretion, may permit or require employees to be on personal leave without pay for a maximum of three (3) working days. However, no employee shall be granted more than five (5) working days of such leave without pay in any one calendar year.

For personal leave without pay in excess in three (3) working days, employees must obtain permission from the appointing authority, subject to the approval of the Personnel Director. Permission for such leave must be obtained in writing. A leave of absence may be extended, upon the recommendation of the appointing authority and the approval of the Personnel Director. In no event shall a leave of absence in excess of one year be granted.

Section 9.14.2. 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 Personnel Director, appear to be proper and in the best interest of the City, including, but not limited to, the following:

- (a) To permit the employee to receive additional education of such nature that will improve the employee's job performance with the City;
- (b) To permit the employee, because of his/her particular abilities or special competence, to assist another governmental jurisdiction, and which in a direct way will enhance the prestige of the City;
- (c) To permit the employee to take care of urgent personal business which cannot feasibly be accomplished by someone else;
- (d) To permit the employee to take an exempt position in the City service;
- (e) To permit the employee to retain promotional and seniority rights to 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.

Employees in such status do not accrue vacation or other benefits, or receive service credit and may be required to pay for all fringe benefits, such as health plan premiums, during the period of their leave without pay. Employees shall be entitled to take personal leave without pay when required by applicable law.

Section 9.15. Holidays.

Section 9.15.1. The City observes the following legal holidays.

- (a) New Year's Day
- (b) Martin Luther King Jr. Birthday

- (c) President's Day
- (d) Memorial Day
- (e) Independence Day
- (f) Labor Day
- (g) Admission Day
- (h) Veteran's Day
- (i) Thanksgiving Day
- (j) Day After Thanksgiving
- (k) Christmas

Floating Holiday (one eight-hour holiday per fiscal year).

Section 9.15.2. Legal holidays falling on a Saturday are observed on Friday. Legal holidays falling on a Sunday are observed on Monday. To qualify for holiday pay, employees must be on paid status on the regularly scheduled workday before and after the legal holiday, unless the absence is with the written permission of the City, or due to illness. Holidays occurring during an employee's vacation will be treated as a paid holiday.

Floating holidays are subject to supervisory approval and may not be carried over to another fiscal year, and are lost unless used prior to the end of the fiscal year.

When an employee's assigned work schedule requires him/her to work on both December 24th and December 31st, the employee is entitled to one of the following: (a) one half of the workshift as paid time off on both of the above days; OR (b) one full workshift as paid time off on either of the above days. If the employee's regular work week schedule is Monday through Friday, and December 24th and December 31st occurs on a Saturday or Sunday, the employee is entitled to one of the following: (a) one-half of the workshift as paid time off on both the Friday preceding Christmas Eve and the Friday preceding New Year's Eve; OR (b) one full workshift as paid time off on either the Friday preceding Christmas Eve or the Friday preceding New Year's Eve.

Section 9.16. School Activities Leave. Employees who are parents, guardians or grandparents having custody of a child in kindergarten through grade 12, or attending a licensed child day care facility, may take up to forty (40) hours per year, not exceeding eight (8) hours in a month, to participate in the child's school activities. The employee must use accrued vacation or a floating holiday for this leave. Employees must give their supervisor notice at least four (4) workdays prior to the planned absence. The employee shall use existing vacation, personal leave, or time off without pay for purposes of the school activities leave. If requested by the employee's supervisor, the employee shall provide documentation from the school or day care facility as proof that the employee participated in the school activity on a specific date and time.

Section 9.17. Voting Time. Time off with pay to vote in any general, direct primary or presidential primary election shall be granted as provided by state law. Employees must give prior notice to their immediate supervisors of their need to take such time off.

Section 9.18. Other Authorized Leaves With Pay. In addition to those leaves of 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 appointing authority, make it in the best interests of the City to grant such leave with pay, or which are required by applicable law. In no case shall leave with pay be granted in excess of three (3) working days in any calendar year. To be eligible for a personal leave of absence with pay, an employee must have served the City continuously for a period of not less than six months and the employee's work performance must have been satisfactory.

RULE 10

WAGE AND HOUR BENEFITS / OVERTIME

Section 10.01. The City is committed to observing all of its obligations under the Fair Labor Standards Act ("FLSA"). These Rules, as well as all applicable provisions in the Memoranda of Understanding and all City pay practices, shall comport with, and shall be interpreted to ensure the minimum requirements of the FLSA.

Section 10.02. The City designates as "FLSA Exempt" those employees who work in professional, executive or administrative capacities and who are therefore not entitled to overtime compensation under the FLSA. Except when necessary to address an emergency or special circumstances, employees who are entitled to overtime compensation under the law may not work outside of regularly scheduled working hours, or during unpaid meal periods, without the prior authorization of a supervisor. In any event, employees shall report overtime work as soon as possible after the work is performed and in no event later than 24 hours. Violations of this Rule may result in discipline, up to and including termination of employment.

NEW RULE 11

ATTENDANCE / MEAL PERIODS / REST PERIODS

Section 11.01. Workweek. The basic workweek for full time employees shall be forty (40) hours per week, in a seven-day period. The workweek commences at 12:01 a.m. every Sunday a.m., and is a regularly recurring seven (7) day period ending at 12 Midnight every Saturday p.m.

Section 11.02. The City shall establish and may modify regular working hours for its employees. The City may require employees to work overtime and to perform standby responsibilities. Employees shall be responsible for reporting to work on time, and observing the work schedule established for their department.

Section 11.03. Meal Periods. Unless otherwise established for a department or particular employees, employees shall receive a thirty (30) to sixty (60) minute meal period that shall not be compensated. During the meal period, the employee shall be completely relieved of duties. If the employee is authorized in advance and performs work during the meal period, the employee shall be compensated for such time. Meal periods may not be used to shorten the workday.

Section 11.04. Rest Periods. Unless otherwise established for a department or particular employees, employees shall have a fifteen (15) minute rest period for each half of their shift, as scheduled by the department director. The rest period may be interrupted or cancelled if necessary to complete work and shall be compensated time. The rest periods may not be

combined or used to shorten the workday – e.g., by taking a break at the beginning or end of the workday.

RULE 12

LAYOFF, RESIGNATIONS, SEPARATIONS

Section 12.01. Layoffs. Whenever, in the sole judgment of the City Council, it becomes necessary to abolish any position due to a reorganization, lack of work or funds, or abandonment of activities, the employee holding said position may be laid off or demoted in accordance with these Rules. Layoffs shall be on a City-wide basis by prescribed classification. The criteria applied in the particular employees to be laid off shall be those specified in Rule 12.02. Employees who have been laid off shall have no right to appeal the layoff decision.

Section 12.02. Layoff Procedure. When a position classification has been abolished due to a layoff, the first order of layoff shall be the following: emergency, seasonal, temporary and probationary employees.

In implementing layoffs, the appointing authority shall first communicate with the Personnel Director regarding the classes of positions to be considered. The appointing authority shall then 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 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 submit a written report to the Personnel Director stating the name or names of the employees to be laid off.

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. Performance ratings shall also be considered in computing layoff points, as follows. If an employee receives an overall performance rating of "Unacceptable" any time within the twelve months preceding the layoff decision, thirty-six (36) points shall be deducted from the employee's layoff points. If an employee receives an overall performance rating of "Needs Improvement" any time within the twelve months preceding the layoff decision, twelve (12) points shall be deducted from the employee's layoff points.

(c) Order of Layoff When Combined Scores are Equal. As between two or more employees having the same 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 sequence: (1) the employee who achieved an overall "exceeds expectation" performance rating in the preceding twelve months shall have preference over an employee who achieved a "fully effective" performance rating or lower rating; (2) the employee with the greatest actual time in class in which the layoff is being made and in classes with the same or higher maximum salary shall have preference; (3) the employee with greatest total time in City service shall have preference; (4) the employee who received the highest score on the entrance examination in the classification shall have preference; and (5) the employee whose application for the position in the subject classification was first received shall have preference.

Section 12.03. 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 foregoing, the employee in the lower classification with the least number of seniority and efficiency points shall be laid off.

However, in the event of a lay off, City employees shall have no right to revert to a position which is held by a Port employee and Port employees shall have no right to revert to a position which is held by a City employee.

Section 12.04. Reinstatement List. Full-time permanent employees who are laid off will have their names kept on a reinstatement list for two (2) 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 City when a vacancy arises in the same or lower classification of position in the department where the layoff originally occurred. The City shall use this list before any other eligible list and before seeking general applications from others. The name of any permanent employee on a reinstatement list who has remained on the list for two full years shall be removed from the list and that person shall lose all civil service status. The City, in its discretion, may extend the active period of the reinstatement list. A permanent employee reinstated to duty on a permanent basis in a department other than the one from which laid off shall serve a new probationary period.

Section 12.05. 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 will 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 reinstatement rights;
- (b) Such persons whose names have been restored to an eligible list may have their names 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 reinstated to a new position in the same class shall complete their probationary period in that class. Probationary employees who are reinstated to a new position in a different class must serve the entire probationary period required in that class.

Section 12.06. Resignation. Employees are free to resign from their employment, but are encouraged to give at least two (2) weeks notice. A resignation becomes effective upon the City's receipt of a written notice of resignation. If no written resignation is tendered, but a resignation is indicated orally, a resignation becomes effective upon the City's notice of acceptance of the resignation. Once a resignation becomes effective, it is irrevocable except that the Personnel Director may, in his/her discretion, permit a resignation to be rescinded. The City may, in its discretion, require employees separating from City employment to undergo an exit interview with the Personnel Director.

Section 12.07. Service Retirement. Any person who is in regular employment who shall retire under the provisions of applicable retirement laws shall be deemed, for the purposes of these Rules, to have been separated from City service in good standing.

Section 12.08. Medical Separation. An employee who becomes unable to perform the essential assigned functions of his/her 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 and applicable law, and may determine whether the employee may be eligible for disability retirement, if appropriate. An employee who is medically separated is eligible for special reemployment procedures as set forth in Section 12.08.3. Except by mutual consent, an employee shall not be medically separated while on any authorized leave of absence.

Section 12.08.1. Proof of Disability. 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 may pay the reasonable costs of the medical examination(s) requested.

Section 12.08.2. Notice of Intent to Medically Separate. If the employee has passed his/her probationary period, a written notice of intent to medically separate shall be given to the employee either by delivery of the notice to the employee in person or by placing the notice of intent in the U.S. mail, first class postage paid, in an envelope addressed to the employee at the employee's last known home address. 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. The employee shall have no right to a post-separation appeal.

Section 12.08.3. Reemployment. For a period of one (1) year following the date of medical separation, a medically separated employee may be selected for a vacant position within the class he/she occupied prior to separation without the requirement of going through a competitive selection process. In order to be eligible for reemployment, the medically separated employee must provide medical certification from a City-approved medical physician describing in detail the medically separated employee's ability to return to work, and the employee must otherwise meet the qualifications and requirements for the position. The decision to reemploy the individual is entirely within the City's discretion.

Section 12.09. Separation Due to Absence Without Leave. If an employee is absent from work without authorization for five or more consecutive working days, such absence shall be treated as an "automatic resignation" and the employee may be separated.

Section 12.09.1. Notice of Intent to Separate Due to Absence Without Leave. If the employee has passed his/her probationary period, a written notice of intent to separate due to absence without leave shall be given to the employee either by delivery of the notice to the employee in person or by placing the notice of intent in the U.S. mail, first class postage paid, in an envelope addressed to the employee at the employee's last known home address. 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. The employee shall have no right to a post-separation appeal.

RULE 13

DISCIPLINARY ACTIONS, APPEALS AND HEARINGS

Section 13.01. General Rules of Conduct. It is expected that all employees shall render the best possible service and reflect credit on the City. Therefore, the highest standards of professional conduct are essential and expected of all employees.

Section 13.02. Disciplinary Actions. The City may invoke the following types of disciplinary actions:

- (a) Written Reprimand;
- (b) Suspension Without Pay;
- (c) Demotion;
- (d) Discharge/Termination

Section 13.03. Grounds for Discipline. Any employee holding a permanent appointment in the classified service may be disciplined for good cause. City employees who are employed "at-will," or who are emergency, seasonal, temporary or probationary, are not subject to the requirement of good cause, and are not entitled to pre-discipline procedures or appeals. Such employees may be disciplined without reference to these provisions.

Good cause exists, not only when there has been an improper act or omission by an employee in the employee's official capacity, but when any conduct by an employee brings discredit to the City, affects the employee's ability to perform his or her duties, causes other employees not be to able to perform their duties, or involves any improper use of their position for personal advantage or the advantage of others. The type of disciplinary action shall depend on the seriousness of the offense and the relevant employment history of the employee.

Causes for disciplinary action against an employee may include, but shall not be limited to, the following. **The following are examples of misconduct which are subject to disciplinary action, but do not constitute an exclusive list:**

- (a) Misstatements or omissions of fact in completion of the employment application or to secure appointment to a position with the City;
- (b) Dishonesty; knowingly furnishing false information in the course of the employee's duties and responsibilities;
- (c) Inefficiency, incompetence, carelessness or negligence in the performance of duties;
- (d) Violation of safety rules;
- (e) Violation of any of the provisions of these Rules, department rules and regulations, City policies, ordinances or resolutions;
- (f) Inattention to duty;

- (g) Tardiness or overstaying lunch periods;
- (h) Being under the influence of an intoxicating beverage or non-prescription drug, or prescription drugs not authorized by the employee's physician, while on duty or on City property, when called in for emergency duty;
- (i) Disobedience to proper authority, refusal or failure to perform assigned work, to comply with a lawful order, or to accept a reasonable and proper assignment from an authorized supervisor; or interference or disruption of work or with supervisor's instructions (e.g., telling employees they do not have to do work assigned by supervisors)
- (j) Any violation of the City's Nondiscrimination Policy;
- (k) Unauthorized soliciting on City property;
- (l) Unauthorized absence without leave; failure to report after leave of absence has expired or after a requested leave of absence has been disapproved, revoked or canceled; or any other unauthorized absence from work;
- (m) Conviction of a felony, or a misdemeanor relating to an offense which has a connection to the employee's job, or a violation of a federal, state or local law which negatively impacts the employee's ability to effectively perform his/her job or brings discredit to the City. (For purposes of this section, a misdemeanor conviction does not include a conviction based on a plea of *nolo contendere*);
- (n) Discourteous or offensive treatment of the public or other employees;
- (o) Falsifying any City document or record;
- (p) Misuse of City property (including any personal use of City property, equipment or resources); improper or unauthorized use of City equipment or supplies; damage to or negligence in the care and handling of City property;
- (q) Fighting, assault and/or battery;
- (r) Theft or sabotage of City property;
- (s) Sleeping on the job, except as specifically authorized for twenty-four (24) hour duty personnel;
- (t) Accepting bribes or kickbacks;
- (u) Engaging in outside employment which conflicts with an employee's responsibilities;
- (v) Intimidation or interference with the rights of any employee;
- (w) Outside work which creates a conflict of interest with City work, which causes discredit to the City, negatively impacts the effective performance of City functions or is not compatible with good public service or interests of the City service;
- (x) Failure to maintain the minimum qualifications for a position or a necessary license or certification specified for the position;

(y) Abusive or intemperate language toward or in the presence of others in the workplace;

(z) Any other conduct that is incompatible with City employment as determined by the City.

Section 13.04. Authority to Discipline. Any authorized supervisory employee may institute disciplinary action for cause against an employee under his/her supervision in accordance with the procedures outlined in these Rules.

Section 13.05. Procedures for Disciplinary Actions. In the absence of a process in an MOU, employees covered by these Rules shall be governed by the following provisions:

Section 13.05.1. Written Notice/Pre-Discipline Meeting/Final Action.

A manager shall issue a written notice of discipline which describes the intended discipline and the basis for the discipline. The notice shall reference that the documents upon which the action is based are available for review and copying by the employee.

Discipline which is lesser in severity than a suspension of more than five (5) working days may be imposed at the time of the written notice of discipline. However, after a suspension without pay for five (5) days or less is imposed, the employee shall have the right to respond to the disciplinary action orally or in writing as set forth below within a reasonable period of time.

For discipline that is greater in severity than a suspension of five (5) working days, the manager shall issue a notice of intent to impose discipline which describes the intended discipline and the basis for the discipline and states that the documents upon which the action is based are available for review and copying by the employee. The notice shall state that the employee has a right to respond, either orally or in writing, before discipline is imposed. The City shall set the pre-discipline meeting approximately one (1) week from the date of the notice, unless a different time and date is set by mutual agreement.

For discipline involving suspensions without pay, demotions or discharge, the manager, in coordination with the Personnel Office, shall designate a City official who is disinterested in the matter and who has authority to recommend discipline who shall convene a meeting to review the employee's response and position before imposing discipline. The employee shall be entitled to a representative of his/her choice. However, the inability of a particular representative to attend the meeting shall not be cause requiring a continuance of the meeting. At the meeting, the employee shall be provided the opportunity to respond to the charges and to present any information for consideration by the City.

At some reasonable time after the employee has been provided an opportunity to respond to the charges, the designated City official shall issue a final notice of discipline. The notice shall include the final decision, the effective date of the discipline and the facts upon which the discipline is based. In cases involving suspensions of more than five days, demotions or discharge, after the final notice of discipline has been issued, the discipline shall be imposed. The notice may be given either by personal service or by mail. In the case of service by mail, the notice must be deposited in the U.S. mail, first class postage paid, in an envelope addressed to the employee at the employee's last known home address. Proof of service shall accompany the notice of intent. Service is complete at time of deposit.

Section 13.05.2. Appeal of Disciplinary Action.

For discipline that is greater in severity than a suspension of five days, employees shall have the right to appeal from the final notice of discipline. The notice of appeal must be received by the Secretary to the Board within ten (10) calendar 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 13.05.2.1. 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 Thursdays 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 or agree 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.

Good reason appearing therefore, the hearing may be continued 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 his/her representative, and the Board

shall later sustain the appeal, the Board may rule that the appellant shall receive no 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 his/her 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 or not sustain the discipline, reduce 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 his/her representative, City Attorney's Officer and the affected City department. 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 13.05.2.2. 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.

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 his/her 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.

Civil Service Board Responsibilities. After receiving the 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 cassette tape of the hearing. The Board's decision shall be made in accordance with Ordinance No. 8979, as amended, which requires a majority of a quorum to accept, reject, or modify an appeal.

The Board's determination will be issued in writing, within ten (10) 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 his/her representative, City Attorney's Officer 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 14

INCOMPATIBLE ACTIVITY OF CITY EMPLOYEES

Section 14.01. A City officer or employee shall not engage in any employment, activity or enterprise which is inconsistent, incompatible or in conflict with his/her duties as a City officer or employee, or with the duties, functions or responsibilities of his/her appointing authority or any aspect of City operations.

Section 14.02. During the workday, employees are expected to devote their full time in the performance of their assigned duties as City employees. Any outside work, part time job, hobbies or personal business must be performed during off duty hours. Off duty hours include unpaid lunch break periods, but do not include other rest or break periods during which the employee continues to receive pay.

Section 14.03. An employee shall not perform work for compensation outside of his/her City employment where any part of his/her efforts will be subject to approval by any officer, employee, board or commission of the City, unless the employee obtains the approval of his/her department head.

Section 14.04. The City does not encourage or discourage employees from participating in community or civic activities on their own time. However, in any case where 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.

Section 14.05. Employees who violate this Rule shall be subject to disciplinary action up to and including termination, and, where appropriate, may be subject to criminal charges.

NEW RULE 15:

MISCELLANEOUS

Section 15.01. Word Usage. The term “City” as used in these Rules refers to the City of Oakland. Responsibilities and rights of the City under these Rules are exercised by the Board, and may be delegated by the Board in its discretion. Duties assigned to the Personnel Director under these Rules may be delegated by the Director in his/her discretion.

Section 15.02. 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.

719015

CITY OF OAKLAND
Civil Service Rules Revision Project

REVISED 12/2/04

EXHIBIT 2
Pages 1 to 25

**Matrix Showing Policy Issues to be Considered by the Finance Committee
(with comments from unions and Port of Oakland)
(Supplemental, 12-1-04)**

1. Shall Port employees be covered by the Civil Service Rules, and shall the following exceptions be made in the Rules for Port employees?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 790
a. Classify all Port employees separately as "Port employees" but keep them under the jurisdiction of the Civil Service Board	<p>The Old Rules do not specify which employees are covered by the Rules.</p> <p>New Rule 1.01 states the Rules apply to all City employees including Port of Oakland employees except where otherwise indicated in the</p> <p>New Rule 4.02 provides that Port of Oakland employees and City employees shall have separate and distinct classifications.</p>	None	None	Union does not represent any Port employees; No unified position at this time	Port is concerned about consistency with Ordinance 8979 and wants to ensure that its separate personnel rules that cover subjects also covered by the City rules, will prevail.	Union objects to a blanket separation of all classifications, although there may be some areas where modification of the relationship is appropriate

<p>b. Eliminate the ability of Port employees and City employees to place their names on crossover transfer lists</p>	<p>The Old Rules do not address the issue of whether City employees' names may be placed on transfer lists for Port positions and whether Port employees may place their names on transfer lists for City positions.</p> <p>New Rule 6.08 provides that Port employees may <i>not be placed on transfer lists for City positions</i> and City employees may not be placed on transfer lists for Port of Oakland positions.</p>	<p>None</p>	<p>None</p>	<p>No unified position at this time</p>	<p>No objection</p>	<p>Union objects to a blanket separation of all classifications, although there may be some areas where modification of the relationship is appropriate</p>
<p>c. Eliminate crossover "bumping" rights in the event of layoffs.</p>	<p>The Old Rules do not address the issue of whether City employees slated for lay off may "bump" into Port positions, or vice versa.</p> <p>New Rule 12.03 provides that, in the event of a lay off, City employees shall have no right to revert to a position which is held by a Port employee and Port employees shall have no right to revert to a position</p>	<p>None</p>	<p>None</p>	<p>No unified position at this time</p>	<p>No objection</p>	<p>Union objects to a blanket separation of all classifications, although there may be some areas where modification of the relationship is appropriate</p>

which is held by a City employee.						
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2. Shall the need for approval, oversight or action by the Civil Service Board be eliminated for the following duties, and shall the Personnel Director have exclusive responsibility for the following duties?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 790
a. Preparation of class specifications	Old Rule 3.02(c) requires Board approval for preparation of class specifications. New Rule 4.02(b) provides that the Personnel Director shall prepare class specifications and eliminates need for Board approval.	None	None	None	No objection so long as Port rule on subject prevails	Union objects to shift of duties to the Personnel Director from the Civil Service Board unless there is oversight of the actions of the Personnel Director
b. Determination of minimum qualifications for class specifications	Old Rule 3.02(c)(4) requires the Personnel Director to recommend combined training and experience for classifications and receive Board approval before the minimum	None	None	None	No objection so long as Port rule on subject	Same

	<p>qualifications become part of the class specification.</p> <p>New Rule 4.02(b)(ii) eliminates the requirement of Board approval for the minimum qualifications for the class specifications.</p>				prevails	
c. Oversight of administration and maintenance of the classification plan.	<p>Old Rule 3.05 states that the Board "shall direct" and the Personnel Director shall be responsible for the work of administering and maintaining the classification plan.</p> <p>New Rule 4.04(a) deletes the reference to Board direction and provides that "the Personnel Director shall be responsible for administering and maintaining the classification plan."</p>	None	None	No specific objection, but stated concerns about City's need for oversight of Personnel Director's actions by neutral body to preserve the integrity of the competitive merit system	No objection so long as Port rule on subject prevails	Same
d. Reallocation of a position from one class to another, subject to have disputes regarding classification issues heard by the Board.	<p>Old Rule 3.05(a) states that the Personnel Director shall recommend to the Board the reallocation of any position from one class to another class when there is a change of duties of such position and the Board must approve such reallocation.</p> <p>New Rule 4.04(b) states that the Personnel Director may initiate reclassification of positions when she/he deems it is warranted.</p>	None	None	Suggested that, while an appeal regarding reallocation of a person is pending, the reallocation not be implemented	No objection so long as Port rule on subject prevails	Same

	However, if an employee disputes a reclassification or seeks a reclassification, such disputes shall be heard by the Board (See New Rule 4.04(f).)					
e. Providing notice to employees whose positions have been reallocated to a different classification.	<p>Old Rule 3.06 requires that the Board provide to the incumbent two-week notice of the reallocation of a position to a different class.</p> <p>New Rule 4.05(c) retains the 2-week notice requirement but require that the notice be given by the Personnel Director.</p>	None	None	Suggested that the notification provision include notification being made to the affected union	No objection so long as Port rule on subject prevails	No objection
f. Making changes in class titles where the change does not affect the duties or pay rate of the position.	<p>Old Rule 3.05(e) requires Board approval for any change in class title.</p> <p>New Rule 4.04(e) states that the Personnel Director may make changes in class title which do not involve changes in job duties or pay rate without Board approval</p>	None	None	None	No objection so long as Port rule on subject prevails	Union objects to shift of duties to the Personnel Director from the Civil Service Board unless there is oversight of the actions of the Personnel Director
g. Making changes in minimum qualifications for current	Old Rule 3.05(e) requires Board approval for changes in	None	None	None	No objection so long as	Same

classifications	<p>minimum qualifications for current classes.</p> <p>New Rule 4.04(e) eliminates that approval requirement.</p>				Port rule on subject prevails	
h. Classifying positions of temporary employment	<p>Old Rule 3.05(d) requires that whenever the Council authorized temporary employment, a copy of the authorizing resolution would be filed with the Board and the Board would immediately <i>classify such positions of temporary employment.</i></p> <p>New Rule 4.06 provides that whenever temporary positions are authorized, such positions shall be classified by the Personnel Director.</p>	None	None	None	No objection so long as Port rule on subject prevails	Same
i. Making exceptions regarding the standards for eligibility for promotional exams	<p>To be eligible to compete for a promotional exam, a candidate must have maintained an overall service rating of standard or above for one year prior to the exam. Old Rule 4.14 provides that the Board may make exceptions in such cases where the efficiency of an employee has been rated</p>	None	None	None	No objection so long as Port rule on subject prevails	Same

	<p>below standard but has improved his performance within the year.</p> <p>New Rule 5.12(c) deletes this exception entirely.</p>					
j. Determining the number of persons on eligibility lists	<p>Old Rule 4.22 provides that the Board may determine the total number of persons on an eligible list.</p> <p>New Rule 5.17 provides that the Personnel Director may determine the number of persons on the eligible list.</p>	None	None	None	No objection so long as Port rule on subject prevails	Same
k. Designating alternative eligible lists when no appropriate regular eligible list exists.	<p>Old Rule 4.25 provides that the Board may designate alternative eligible lists when no appropriate eligible list exists.</p> <p>New Rule 5.17 eliminates Board involvement and allows the Personnel Director to compile new eligibility lists when the current list has fewer than four names, and allows the appointing authority to request review of alternative eligibility lists.</p>	None	None	None	No objection so long as Port rule on subject prevails	Same

<p>l. Certifying names from alternative eligibility lists</p>	<p>Old Rule 5.03 provides that the Personnel Director needs Board approval to certify for appointment names from alternative eligibility lists.</p> <p>New Rule 6.02 permits the Personnel Director to do this without Board approval.</p>	<p>None</p>	<p>None</p>	<p>None</p>	<p>No objection so long as Port rule on subject prevails</p>	<p>Same</p>
<p>m. Granting or denying requests from an appointing authority to require special qualifications for a position</p>	<p>Old Rule 5.04 provides that, when an appointing authority wishes to require additional and special qualifications for positions in specific departments, Board approval is required.</p> <p>New Rule 6.03 eliminates the requirement of Board approval and replaces it with Personnel Director approval.</p>	<p>None</p>	<p>None</p>	<p>Suggested that this be made subject to appeal to the Civil Service Board; stated concerns about City's need for oversight of Personnel Director's actions by neutral body to preserve the integrity of the competitive merit system</p>	<p>No objection so long as Port rule on subject prevails</p>	<p>Same</p>
<p>n. Making provisional appointments</p>	<p>Old Rule 5.07 provides that the Board has the power to make provisional appointments without</p>	<p>None</p>	<p>None</p>	<p>Suggested need for Civil Service Board oversight or</p>	<p>No objection so long as Port rule on subject</p>	<p>Same</p>

	<p>examination in the absence of an eligible list.</p> <p>New Rule 6.05 gives this power to the Personnel Director.</p>			approval when provisional appointments are made because such appointments often become permanent, resulting in circumvention of the competitive hiring system	prevails	
o. Extending the period of time between the separation date and re-employment date in the case of an employee who has resigned and wishes to be re-employed	<p>Old Rule 5.10 provides that, when an employee who has resigned wishes to return to City employment, he/she may do so within 2 years of resignation, but the Board may approve a longer period of time between resignation and re-employment for highly qualified employees.</p> <p>New Rule 6.09 gives this duty to the Personnel Director rather than the Board.</p>	None	None	None	No objection so long as Port rule on subject prevails	Same
p. Making rules regarding leaves and vacation	<p>Old Rule 8.01 provides that the Board is authorized to make rules governing leaves and vacation for all classified employees.</p>	None	None	None	No objection so long as Port rule on subject prevails	Same

	The New Rules delete this provision.					
q. Receiving reports of employee injuries on the job	<p>Old Rule 8.04 (b) requires that the Board be given reports regarding any employee injured on the job.</p> <p>The New Rules delete this provision.</p>	None	None	Want Civil Service Board to receive reports so that Board can determine whether there are excessive on-the-job injuries which may trigger an investigation into the causes	No objection	Same
r. Receiving reports of employees who retire due to disability	<p>Old Rule 8.05 requires that the Board be given reports about employees who retire due to disability.</p> <p>The New Rules delete this provision.</p>	None	None	Same as above	No objection	Same
s. Approving leaves of absence with pay and without pay	Old Rule 8.07 requires Board approval of leaves of absence without pay and extensions of such leave. Old Rule 8.09 requires Board approval for leaves in excess of 30 days.	None	None	None	No objection so long as Port rule on subject prevails	Same

	New Rule 9.15 provides that the Personnel Director gives this approval, not the Board.					
t. Investigating the reasons for excessive resignations	Old Rule 9.03 requires the Personnel Director to investigate and report to the Board excessive resignations. The New Rules delete this requirement.	None	None	Want Civil Service Board to receive reports so that Board can determine whether there are excessive resignations in a department which may trigger an investigation into the causes	No objection	Same

3. Shall the Personnel Director be given exclusive responsibility for amending the Civil Service Rules in the future, and the Civil Service Board be given the duty of making recommendations to the Personnel Director for changes to the Rules?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 790
The Personnel Director shall maintain and amend the Civil Service Rules and the Civil Service Board may make recommendations for changes	The Old Rules do not state specifically who shall be responsible for maintaining or amending the Civil Service Rules.	None	None	Suggested that the process for amendment of the Rules be the same as with	Concern is that Personnel Director may not have	Believes amendments should be made by City Counsel following

to the Personnel Director	New Rule 3.01(2) provides that it shall be the Personnel Director's responsibility to prepare, maintain and amend the Personnel Manual (a/k/a/ Civil Service Rules)			other Boards and Commissions; concerned that the Civil Service Board maintain oversight of changes to Rules	authority to make changes to the Civil Service Rules because they are established by ordinance	recommendations from Civil Service Board
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4. Shall the Rules be changed regarding probationary employees as follows?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 790
a. Probationary employees have no right to appeal release from probation and are "at will"	<p>Old Rule 6.06 provides probationary employees a limited right to appeal to the Board their release from probation based on (a) failure of the appointing authority to give quarterly performance ratings to the employee; (b) failure to comply with Old Rule 6.05; or (c) discrimination based on a protected class.</p> <p>New Rule 7.01 states that probationary employees have no right to appeal release from</p>	None	None	Want to maintain the probationary employees' right to appeal the failure to do performance appraisals; believe that managers should take the consequences of failure to do performance appraisals; probationary	No objection	Same objection as Local 21

	probation and are not entitled to be provided with a reason for release from probation. It provides probationary employees are "at-will."			employees must be given notice of whether they are meeting standards before they are released		
b. Subject to approval by the Personnel Director, the appointing authority may extend probation by up to 90 days.	<p>The Old Rules do not provide for extensions of probation.</p> <p>New Rule 7.03 provides that a probationary period may be extended up to 90 days by the appointing authority subject to approval by the Personnel Director.</p>	None	None	None	No objection so long as Port rule on subject prevails	No objection
c. Periods of paid leave of more than 10 days and unpaid leave of any length automatically extend the probationary period.	<p>The Old Rules do not address any extension of probationary period during leaves.</p> <p>New Rule 7.04 provides that periods of paid leave of more than 10 days and unpaid leave of any length automatically extend the probationary period.</p>	None	None	None	No objection	No objection

5. Shall the Board's other functions be maintained and altered as follows?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 21
a. Board retains the duty of hearing disciplinary appeals (subject to changes addressed below:	<p>The Old Rules 2.09-2.10 addressed the Board's procedure for hearing disciplinary appeals.</p> <p>The procedure for hearing disciplinary appeals is now addressed in New Rule 13.05.2.</p>	None	None	None	No objection	No objection
b. Board retains the duty of hearing appeals by employees regarding changes in the employee's classification or reallocation of the employee's position to another classification	<p>Old Rule 3.05(b) provides employees and appointing authorities an opportunity to be heard by the Board before changes in classifications become effective.</p> <p>New Rule 4.04(f) provides that employees who dispute issues regarding their classification have a right of appeal to the Board.</p>	None	None	None	No objection so long as Port rule on subject prevails	No objection
c. Board retains the duty of hearing appeals regarding examination results, limited to disputes about scoring, but not about test content	<p>Old Rule 4.21 provides a right of appeal to the Board from the results of an examination if the appellant demonstrates by clear and convincing evidence that a there was a mechanical error in scoring the exam or there was fraud or bias in the exam.</p>	None	None	None	No objection so long as Port rule on subject prevails	No objection

	New Rule 5.16 retains this right of appeal but states that test content is not subject to appeal.					
d. Board retains the duty of determining whether a new or merged classification should be created.	Old Rule 3.05(b) provides that the Personnel Director recommends the establishment of a new classification and the Board approves and classifies the position. New Rule 4.04(d) retains this language.	None	None	None	No objection so long as Port rule on subject prevails	No objection

6. Shall the Rules contain a non-exclusive list of grounds for discipline?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 790
Create list of non-exclusive grounds for discipline	Old Rule 10.01 refers to a few isolated grounds for employee discipline (i.e., incompetency, neglect of duty or disobedience of orders). New Rule 13.03 sets forth a non-exclusive list of 25 grounds for discipline and includes a catch-all ground: "any other conduct that is incompatible with	None	None	Suggested that the "catchall" provision be deleted as unnecessary, ambiguous, and overbroad	No objection	Union believes list is unnecessary and rule should simply state that discipline can only be for "just"

City employment."					cause
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7. Shall the Rules eliminate the requirement of a pre-disciplinary hearing for suspensions of 5 days or less and provide only the hearing required by law?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 790
For suspensions of 5 days or less, eliminate requirement for a pre-disciplinary and provide instead a non-evidentiary post-disciplinary hearing before the appointing authority but not the Civil Service.	<p>Old Rule 10.02 provides that, in the case of any disciplinary suspension, the employee shall have a right to a hearing or investigation by the appointing authority or the Board.</p> <p>New Rule 13.05.1 addresses pre-disciplinary meetings and provides that employees who receive suspensions of 5 days or less do not have a right to a pre-disciplinary meeting but may have a post-disciplinary meeting to respond to the charges after the discipline is imposed. New Rule 13.05.2 provides employees with a right to an evidentiary appeal hearing only for discipline more severe than a 5-day suspension.</p>	<p>If the MOU does not provide for a pre-disciplinary hearing, OPOA objects that these suspensions will not be resolved through the Skelly (pre-disciplinary) hearing process.</p> <p>OPOA observes that the rule does not clearly state</p>	IAFF observes that the rule does not clearly state what a "five day" suspension is for employees working 24 hour shifts.	Strong objection to eliminating the right to a pre-disciplinary hearing and appeal of suspensions of 5 days or less	No objection; Port already applies this rule as a matter of practice	Same objection as Local 21

		what a "five day" suspension is for employees on shifts different from an 8 hour day.				
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8. Shall the Board be given the following authority in disciplinary appeals?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 790
a. The Board shall have the option to have a disciplinary appeal heard by a Hearing Officer rather than by the Board.	<p>Old Rule 2.09 provides a right to a public appeal hearing before the Board for suspensions, fines or termination. Old Rule 2.10 provides the procedures for the Board's appeal hearing.</p> <p>New Rule 13.05.2 sets forth the Board's disciplinary appeals procedure and allows the Board the option of choosing a hearing officer to hear the appeal in a non-public hearing.</p>	None	None	None	No objection	No objection
b. The Board shall establish its own procedure for selecting a	New Rule 13.05.2.2 sets forth the procedures for the appeal hearing	None	None	None	No objection	No objection

Hearing Officer for such appeal hearings.	by the hearing officer and provides that the Board shall determine the procedures for selecting a neutral and un-biased hearing officer.					
c. The hearing before the Hearing Officer shall not be public, and shall be advisory to the Board which shall make the final decision.	New Rule 13.05.2.2 provides that the hearing officer's decision will be advisory only and sets forth the procedures for the Board's review of the hearing officer's decision and final decision.	None	None	None	No objection	No objection

9. Shall the Rules be changed regarding Performance Appraisals as follows?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 790
a. Performance appraisals for probationary employees shall be done at least once during the probationary period, but failure to perform a written performance appraisal shall not prevent the City from releasing the employee from probation.	<p>Old Rule 6.04 provides that department heads shall file performance ratings twice during a six-month probationary period and on a quarterly basis during a one-year probationary period for each probationary employee.</p> <p>New Rule 7.05 provides that the department head shall prepare a performance appraisal at least once during the employee's probationary period, but failure to perform a written performance appraisal shall not</p>	None	None	Suggested that performance appraisals of probationary employees be done early and more frequently than once during the probationary period; suggested that probationary employees retain the right	No objection	Union objects and wants evaluations of probationary employees every 3 months, and automatic pass of probation if evaluations not given

	prevent the City from releasing the employee from probation.			to appeal the failure to do performance appraisals		
b. Employees shall not have a right to appeal the contents of a performance appraisal, but they may submit written rebuttals to their performance appraisals which will be kept in their personnel files.	<p>The Old Rules are silent on the issue of whether there is a right to appeal the contents of an appraisal, but Old Rule 6.06 provide probationary employees the right to appeal to the Board if they are released from probation without having received the required performance appraisals.</p> <p>New Rule 8.03 provides that employees have no right to appeal statements or ratings in performance appraisals but allows employees to submit rebuttals to their performance appraisals which shall be placed in their personnel files.</p>	None	None	Suggested that this language be changed to reflect the performance appraisal system now in place which allows employees an opportunity to grieve issues re: appraisals	No objection	Union believes probationary employees should be able to appeal failure to give mandated evaluations. For tenured employees union wants a right of appeal or grievance consistent with the City's performance appraisal system and the Local 790 MOU

10. Shall the Rule regarding Veterans' Preferences in Examinations be changed as follows?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 790
<p>a. Define "veteran" to substantially conform with the state law's definition and eliminate the requirement that the veteran have served in the military within the past five years.</p>	<p>Old Rule 4.18 and 4.19 provide for preferences in examinations to be given to veterans but define a veteran as one released from active duty within 5 years</p> <p>New Rule 5.11.2 defines "veteran" in conformity with Government Code § 18973, to mean any person who has served full time for 30 days or more in the armed services as defined in the statute.</p>	None	None	None	No objection so long as Port rule on subject prevails	No objection
<p>b. Eliminate any special preference for disabled veterans and allow all eligible veterans a 5% point credit on examinations.</p>	<p>Old Rule 4.18 provides that eligible veterans receive an additional 5% on the final examination score. Old Rule 4.19 provides that eligible "disabled veterans" receive an additional 7.5% on the examination score.</p> <p>New Rule 5.11.2 provides eligible veterans with an additional 5% on the examination score, but the Rule regarding preferences for disabled veterans has been</p>	None	None	No unified position; however some voiced objections to elimination of the special credit given to disabled veterans	No objection so long as Port rule on subject prevails	Union believes disabled veterans should receive 7.5% additional score, not just 5% like other veterans

	eliminated.					
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11. Shall the Rules be changed to allow the Personnel Department to give department heads the top ten ranks of eligible candidates (rather than only the top four names) with an additional rank for each vacancy?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comment	Port	SEIU Local 790
<p>Personnel Department shall give Department heads the top ten ranks of eligible candidates and one additional rank for each vacancy.</p>	<p>Old Rule 5.03 provides that, in the case of certification from open, restricted or promotional lists (except for Fire, Police or Electrical workers), the Personnel Director shall certify to the appointing authority 4 names for any single vacancy; and 2 additional names for each additional vacancy.</p> <p>New Rule 6.02 provides that the Personnel Director shall first certify names from a reinstatement list, but if no such list exists, shall certify, whenever possible, the top ten ranks on the eligibility list for the vacancy with an additional rank for each additional vacancy.</p>	<p>OPOA believes they have a rule of 5 in their MOU and thus are not impacted by this rule.</p>	<p>IAFF Local 55 examination MOU provides for a rule of five, so they are not impacted by this rule.</p>	<p>No unified position; but some stated that they believe that increasing the number of ranks of eligible candidates certified will undermine the competitive hiring system; the top 4 who scored highest in the examination should be given preference in</p>	<p>No objection so long as Port rule on subject prevails</p>	<p>Union objects because increasing the number of ranks of eligible candidates certified will undermine the competitive hiring system; the top 4 who scored highest in the examination should be given</p>

				hiring		preference in hiring
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12. Shall the Rules add a nepotism policy permitting the City to take reasonable steps to avoid inappropriate working relationships between relatives?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comment	Port	SEIU Local 790
Adopt a rule avoiding discrimination based on marital status but permitting City to take reasonable steps to avoid inappropriate working relationships between relatives including refusing to place a relative under the direct supervision of another relative.	<p>The Old Rules do not contain a nepotism policy.</p> <p>New Rule 6.10 provides a nepotism policy prohibiting discrimination based on marital or registered domestic partnership status with another employee or official of the City (except as provided in the section 907 of City Charter). The City retains the right to take reasonable steps to avoid inappropriate working relationships among relatives, including married persons and domestic partners.</p>	None	None	No objection now, but needs further review	No objection	Union believes the rule should impose a stronger affirmative duty on management to avoid inappropriate reporting relationships

13. Shall the Rules define the work week as 40 hours?

Recommendation	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comment	Port	SEIU Local 790
Define the workweek at 40 hours in a 7 day period.	The Old Rules do not define the work week. Some of the MOUs define the workweek for some employees as 37.5 hours; and for other employees as 40-hours. New Rule 11.01 defines the basic workweek as 40 hours in a 7-day period.	None	None	Strong objection; believe that the City's practice is to define the workweek as 37.5 hours	Prefer that rules do not define workweek because existing practice is a 37.5 hour week for some unrepresented employees	Strong objection because of the impact on those employees working a 37.5 hour week

14. Shall the Rules provide a special process for terminating employees who are physically unable to perform their duties?

Recommendations	Location in Old and New Rules	OPOA comments	IAFF Local 55 comments	IFPTE Local 21 comments	Port	SEIU Local 790
Create a summary process for dismissing employees who are physically or mentally unable to work	The Old Rules do not address this. New Rule 12.08 provides a summary process by which the City may terminate employees who are unable to perform their jobs (with or without reasonable accommodation) due to	None	None	Objects; believes that employees who are terminated for medical reasons	No objection	Objection is that rule fails to outline other procedures which must be

	physical or medical incapacity. The process allows the employee an opportunity to respond to a notice of intent to separate, but provides no right of to an evidentiary appeal hearing for the employee after the termination.			should be allowed the same right of appeal (including an evidentiary appeal hearing) given to employees who are terminated for disciplinary reasons		exhausted before resorting to termination of employee unable to perform job duties (such as ADA, FEHA, WC)
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All unions presented their comments with the understanding that the meetings were not formal "meet and confer" sessions, but that their input was being sought in connection with the policy questions being presented to the committee. Each union indicated they would likely have more comments and more detailed comments when given a fuller opportunity to address the individual rules.

However, SEIU, Local 790 raised additional concerns which did not fit into the above described Policy Issues, but which the union raised for the Committee's consideration:

New Rule 2(o): Definition of "confidential position" is expanded beyond involvement in personnel matters, and may result in removal of some employees from the bargaining unit, which cannot represent confidential employees.

New Rule 5.05: Including past poor performance as a reason not to permit application for employment may prevent promotion for employees whose poor performance is many years ago.

New Rule 5.12: The union wants a rule to require that all promotions be made from internal candidates unless there is a good reason for not doing so.

New Rule 6.01: The union is concerned that permitting positions to be filled by certain types of appointments such as limited duration appointments, provisional appointments, temporary contract service employees, exempt limited duration employees or temporary agency assignments permits the civil service rules to be circumvented.

New Rule 9.01.1 and 9.01.2: These leave provisions should be eliminated as unnecessary or be coordinated with the City's attendance management policy.

New Rule 19.15.1: Lincoln's Birthday should be included as a legal holiday observed by the City.

New rule 12.01: Union does not believe that reorganization should provide a basis for a layoff.

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