

City of Davis Personnel Rules and Regulations



Passed and adopted
by the Davis City Council
May 28, 1997

Effective July 1, 1997
Revised April 8, 1998
Revised September 13, 2000

PERSONNEL RULES AND REGULATIONS
City of Davis

TABLE OF CONTENTS

<u>ARTICLE I. PURPOSE</u>	1
<u>ARTICLE II. DEFINITIONS</u>	1
<u>ARTICLE III. APPLICATION AND ADMINISTRATION</u>	9
<u>ARTICLE IV. EQUAL OPPORTUNITY</u>	13
<u>ARTICLE V. APPLICATION AND RECRUITMENT PROCESS</u>	15
<u>ARTICLE VI. ATTENDANCE AND LEAVES</u>	25
<u>ARTICLE VII. DISCIPLINE AND APPEALS PROCEDURE</u>	30
<u>ARTICLE VIII. GRIEVANCE PROCEDURE</u>	37
<u>ARTICLE IX. LAYOFF PROCEDURES</u>	39
<u>ARTICLE X. NON-DISCIPLINARY PERSONNEL ACTIONS</u>	41
<u>ARTICLE XI. PERSONNEL BOARD</u>	42
<u>ARTICLE XII. TERMINATION BASED ON MEDICAL CONDITION</u>	44
<u>APPENDIX A</u>	Error! Bookmark not defined.

PERSONNEL RULES AND REGULATIONS
City of Davis

ARTICLE I. PURPOSE

Section 1.1. Purpose. The purpose of these Rules and Regulations is to establish and maintain an equitable and uniform system for dealing with personnel matters, and to comply with applicable laws relating to the fair administration of a comprehensive personnel program. These rules set forth policies and procedures which ensure similar treatment for those who compete for original and promotional employment, and define certain obligations, rights, privileges, benefits, and prohibitions which are placed upon employees in the service of the City.

ARTICLE II. DEFINITIONS

Section 2.1. Administrative Leave. Absence with full pay and benefits, ordered by the City Manager or the Department Head, when the City interests require the employee to be away from the job.

Section 2.2 Equal Opportunity. A program that promotes equal employment opportunity.

Section 2.3. Anniversary Date. The employee's first date of work upon which longevity and benefits are based. In cases of reemployment, the reemployment date shall be considered as the new anniversary date.

Section 2.4. Appeal. The written request of an employee to have his/her discipline reduced or set aside.

Section 2.5. Appointment. The selection of, and acceptance by, a candidate to a position in City service in accordance with these rules.

Section 2.5.1. Appointing Authority. The person authorized to make appointments to City positions.

Section 2.5.2. Benefits. Items provided for employees in addition to their basic hourly pay.

Section 2.6. Board. The Personnel Board established pursuant to Chapter 19 of the Code of the City of Davis.

Section 2.7. Bumping. The act of a qualified employee retreating to another position due to layoff, thereby displacing the employee currently in that position.

Section 2.8. City. City of Davis.

Section 2.9. City Service. The entire employment system of the City.

Section 2.10. Class. All positions similar in duties, authority and responsibility sufficient to permit grouping under a common title and the use of common standards of selection.

Section 2.11. Class Specification. A written description of a class that includes a job title, essential job functions and responsibilities and setting forth necessary qualifications.

Section 2.12. Classification Plan. That series of duly adopted class specifications which describe the authorized positions within the City.

Section 2.13. Continuous Recruitment. An open-competitive recruitment for a particular class for which applications are accepted continuously with no final filing date.

Section 2.14. Continuous Service. Employment with the City without break or interruption, except for authorized vacation, military leave or other paid leaves.

Section 2.15. Demotion. The movement of an employee from one class to another class having a lower maximum base rate of pay.

Section 2.16. Disciplinary Action. A penalty action taken by the City against an employee for a deviation from City rules governing conduct or performance.

Section 2.17. Dismissal. Separation of an employee from City service, including dismissal for cause for regular employees and dismissal with or without cause for all other employees.

Section 2.18. Domestic Partner. Shall mean any person who has registered a domestic partnership with the City pursuant to state or local law authorizing such registration.

Section 2.19. Eligible. A person whose name appears on a current employment list as duly certified by the Assistant City Manager or his/her designee.

Section 2.20. Employee. Any person appointed to fill an authorized employment position with the City. Elected officials, volunteers, unpaid interns and those appointed to advisory boards, committees or commissions are not employees. The following are the types of employees:

- A. Regular. A regular employee is one who has passed probation and holds a regularly authorized position with benefits. There are three types of regular employees.
 - 1. Regular full-time. A person who works in a position budgeted for 2080 hours per fiscal year or more.
 - 2. Regular part-time. A person who works in a position budgeted for not less than 1040 but not more than 2079 hours per fiscal year.

3. Specially funded employee. A person who works in a regular full-time or regular part-time position which is funded from sources other than City revenues.

Regular employees may only be terminated or disciplined for cause.

An exempt employee shall be:

- B. Management Employee. A person designated by the City Council as a policy making and/or administrative at-will employee. No incumbent in a position not previously designated as management, who is a regular employee at the time the position is made management, and for two years after they are designated as management, shall be terminated or disciplined except for cause.
- C. Probationary. An employee in a full-time or part-time position (other than an exempt employee) who is serving a trial period in a position to which the employee has been appointed, promoted or reclassified upward. A demoted employee or an employee reclassified downward who passed probation prior to demotion or reclassification is not on probation as a result of the demotion or reclassification.
- D. Special Employee. An employee who is hired for a special purpose to meet the needs of the City. Special employees include:
 1. Provisional employee. An employee who meets the minimum qualification requirements for a regular position and who is appointed on an interim basis to fill a vacancy until the position is filled.
 2. Temporary part-time. An employee in a position budgeted for work not to exceed 1000 hours per year.
 3. Emergency employee. An employee who is hired to meet the requirements of a declared emergency which threatens life, property or the general welfare of the City and whose position ceases when the emergency ceases.

Exempt, probationary and special employees may be dismissed or disciplined with or without cause.

Section 2.21. Employee Organization. Any lawful organization with a membership of City employees which has representation rights in its employment relations with the City.

Section 2.22. Employment area. The geographical area from which the City draws the overwhelming majority of its employees. This geographical area is comprised of Yolo, Solano, and Sacramento Counties. Census data of workforce age residents of these three counties will be used to set goals for the availability of minorities and women in the labor market to the City-wide workforce.

Section 2.23. Employment List. A list of names of persons who have passed all preliminary phases of the recruitment process.

- A. Open Employment List. A list of persons who have successfully completed an open-competitive examination for a class in the City service.
- B. Promotional Employment List. A list of current City employees who have taken a promotional examination for and qualified for appointment to a specific class in the City service.
- C. Reinstatement List. A list, in order of seniority, containing the names of City employees who have been laid off, and who are eligible for reinstatement, pursuant to the provisions of Article IX (Layoff Procedures).

Section 2.24. Equal Employment Opportunity. A condition of equality in all employment-related actions (i.e. recruitment, hiring, promotion, training, terminations, etc.) brought about by unbiased personnel practices, procedures and methods, in accordance with Title VII of the Civil Rights Act, as amended by the Equal Employment Opportunity Act of 1972.

Section 2.25. Ethnic groups. The following categories of US citizens and/or permanent residents eligible for employment in the US:

African American or Black
Asian American or Pacific Islander
Hispanic American
American Indian or Alaskan Native
Caucasian or White

Section 2.26. Flexible Staffing. Hiring at an entry level, where a class series contains an entry and a journey level position, with the expectation of promoting that individual to the journey position when, based upon the judgment of the Department Head, the individual obtains the experience and knowledge to perform the full range of journey tasks.

Section 2.27. Grievance. A complaint by an employee relating to wages, hours and working conditions. Discipline cannot be grieved.

Section 2.28. Grievance Procedure. The process used to resolve a grievance.

Section 2.29. Assistant City Manager. The individual appointed by and responsible to the City Manager or his/her designee for the day-to-day efficient administration of all provisions of Chapter 19 of the Code of the City and these rules.

Section 2.30. Impasse. Where the parties to a dispute over matters within the scope of meet and confer have reached a point where differences in positions are so substantial or prolonged that future meetings would be futile.

Section 2.31. Job Sharing. Work performed by two employees by prearranged schedule for one authorized regular position.

Section 2.32. Journey Level. A job class which encompasses duties requiring skills and knowledge beyond that required of an entry level position.

Section 2.33. Layoff. Involuntary separation of a regular employee from City service for nondisciplinary reasons, such as the elimination of a position.

Section 2.34. Leave. An approved absence from work as provided by these rules.

Section 2.34.1. Leave Without Pay. An approved absence from work without pay and benefits as provided by these rules.

Section 2.35. Merit Decrease. A pay step reduction when performance falls short of the established standards or when performance is clearly inadequate in one or more of the critical job duties for the position.

Section 2.36. Merit Increase. Increase of an employee's base wage compensation, from one hourly step to a higher level hourly step within the same range, based on satisfactory demonstration of efficiency and performance.

Section 2.37. Merit System. A system of selecting and promoting employees on the basis of job fitness.

Section 2.38. Meet and Confer. The process of determining wages, hours, and terms and conditions of employment through discussions between representatives of the City and an employee organization in order to freely exchange information, opinions and proposals, and to endeavor to reach agreement on matters within the scope of representation.

Section 2.39. Memorandum of Understanding. A written document entered into by the City and a recognized employee organization, for a definite term setting forth wages, hours, and other terms and conditions of employment, resulting from the meet and confer process.

Section 2.40. Minimum qualifications principle. The principle that required qualifications shall be the minimum needed for entrance into a given class specification rather than a desired standard or qualification attainable only after some experience or training.

Section 2.41. Open-Competitive Recruitment. A recruitment for a particular class which is open to all persons meeting the qualifications for the class.

Section 2.42. Overtime. Work authorized by a supervisor and paid in accordance to the provisions of the Fair Labor Standards Act in excess of the adopted normal work period.

Section 2.43. Pay Differential. A temporary salary increase, subject to the approval of the City Manager, in recognition of special assignment in accordance with Section 5.23.

Section 2.44. Pay Range. One or more specific pay steps having a percentage relationship to one another and assigned to a class as the compensation for that class.

Section 2.45. Personnel Board. The body provided by Chapter 19 of the Code of the City of Davis to hear appeals submitted by any regular employee relative to any disciplinary action.

Section 2.46. Personnel Ordinance. Chapter 19 of the Code of the City, and all amendments or additions thereto, which creates a personnel system for the City.

Section 2.47. Position. A group of job duties or functions designed to be performed by one employee.

Section 2.48. Probation. A period of conditional employment to permit a non-management employee to demonstrate ability to satisfactorily perform the functions of a position.

Section 2.49. Probationary Period. A designated period of time in which an employee, upon original or promotional appointment or reclassification, is trained and evaluated for suitability to a position.

Section 2.50. Promotion. The movement of an employee from one class to a different class which results in a salary increase of approximately 5% but not less than 4.75%.

Section 2.51. Promotional Recruitment. A recruitment for a particular class which is open only to current employees who meet the minimum qualifications for the class.

Section 2.52. Reclassification. Redefinition of a position to more accurately reflect the duties it entails and/or assigning the position to a new or different class.

Section 2.53. Recruitment Testing. The process of measuring and evaluating the relative ability and fitness of applicants by job-related testing and evaluation procedures which may include any or all of the following (except where otherwise prohibited by law):

1. application and resume review;
2. written test;
3. performance test;
4. assessment exercise;
5. physical agility test;
6. personal interview;
7. reference checks;
8. psychological evaluation;
9. completion of necessary training;
10. medical evaluation;
11. drug testing for health and safety positions and positions covered by the Department of Transportation testing for employees with commercial driver's licenses
12. polygraph examination for non-promotional police recruitment
13. background investigation.

Section 2.54. Reemployment. The employment of a former employee who voluntarily left City service in good standing to the same or similar position within two years from date of separation.

Section 2.55. Reinstatement. The act of returning a laid-off employee whose name appears on a current reinstatement list into his/her former position from which he or she has been laid off, bumped, or demoted in lieu of layoff or to a vacant position for which the employee is qualified.

Section 2.56. Retreat rights. The right of an employee to return to a lower class, or a position previously held, due to layoff.

Section 2.57. Review Date. Date when an employee is given an annual performance evaluation or considered for a merit increase or decrease.

Section 2.58. Salary. The wage paid for work performed whether expressed in an hourly, weekly, monthly, or annual rate.

Section 2.59. Total Compensation. The salary or wage, plus benefits, paid for work performed, whether expressed in an hourly, weekly, monthly or annual rate.

Section 2.60. Transfer. To assign an employee from one department to another within the same class or from one class to another class requiring comparable qualifications and having the same pay range.

Section 2.61. Underutilization. The employment of fewer minorities and women in relation to the overall labor market availability.

Section 2.62. Y-Rate. The act of freezing an employee's salary at a definite range or dollar amount to avoid a salary reduction when salary comparison data support a reduction in pay.

ARTICLE III. APPLICATION AND ADMINISTRATION

Section 3.1. Adoption and Amendment. After the meet and confer process has been completed, personnel rules may be adopted and/or amended by resolution of the City Council upon review and recommendation of the Personnel Board. Upon amendment, revised personnel rules shall be distributed to employee organizations and department heads and posted on bulletin boards in normal work areas for a period of at least ten (10) calendar days.

Section 3.2. Conflict with Memorandum of Understanding. In the event these rules conflict with a memorandum of understanding on any matter, the provisions of the memorandum shall prevail.

Section 3.3. Personnel Administration. The City Manager shall have ultimate responsibility for the administration of the City personnel system and may delegate any of the duties and authority to the Assistant City Manager or another designee. As the personnel administrator, the City Manager shall:

- A. Interpret and administer all provisions of these articles and all related ordinances, resolutions, policies and procedures concerning personnel matters of the City;
- B. Prepare and recommend to the City Council and the Personnel Board personnel rules, including revisions and amendments to such rules;
- C. Prepare, update and maintain the position classification plan, including class specifications, a compensation plan and recommended revisions of those plans;
- D. Provide for the publishing or posting of notices of tests for positions in the City service, the receiving and evaluation of applications, the conducting and grading of tests, the certification of a list of persons eligible for appointment to the appropriate position in the City service, and the performance of any other duty that may be required to administer the personnel system;
- E. Appoint all employees in the City service, except the City Manager and City Attorney, who are appointed by the City Council.
- F. Maintain employee records.

Section 3.4. Nondiscrimination. Unless based on a bona fide occupational qualification as defined by law, no personnel action (including appointment to, or removal from, a position in City employment), shall be based upon race, creed, color, age, religion, ancestry, national origin, political affiliation, physical handicap, marital status, non-disqualifying medical condition (e.g. cured or rehabilitated cancer), gender, or sexual preference. Any technique or procedure used in recruitment and selection of employees shall be designed to measure only the job-related qualifications of applicants. No recruitment or selection technique or any other personnel action shall be used which, in the opinion of the Human Resources Administrator, is not justifiably linked to successful job performance.

Section 3.5. Contents of Classification Plan. The classification plan shall group positions, listed by title, into classes defined by written class specifications. The classification plan shall be developed and maintained in each class to include positions sufficiently similar with respect to their duties, responsibilities, authority, and character of work so that the same schedules of compensation may be fairly applied under similar working conditions, and that similar requirements as to training, experience, knowledge, skills and abilities may be fairly applied to all positions in the same class. Each class specification shall outline the main characteristics and qualification requirements of positions allocated to the class and give examples of duties which employees holding such positions may properly be required to perform.

Section 3.6. Purpose and Application of Classification. A class specification is descriptive and explanatory, but not restrictive. The listing of particular examples in a specification of duties does not preclude the assignment of other tasks and duties. The statement of desirable qualifications in a class specification is intended to be used as a guide in selecting candidates for employment, as an aid in the preparation of competitive examinations, and in determining the relative value of positions in one class with positions in other classes.

Section 3.7. Adoption, Amendment and Revision of Classification Plan. The classification plan shall be recommended by the City Manager for consideration by the City Council and may be amended as necessary. During the process of consideration, any recognized employee organization affected shall be advised at least thirty (30) calendar days prior to consideration of a proposed classification plan or amendment thereto. Amendments and revisions of the plan may be suggested by any interested party, including any recognized employee organization, and shall be submitted to the City Manager.

Section 3.8. Allocation of Positions. Following the adoption of the classification plan and consultation with any recognized employee organization affected, the City Manager, or designee, shall allocate every position in the City service to one of the classes established by the plan. The classification plan may contain classes to which there is no current allocation of positions in order to provide for future organizational growth or changes in organizational structure. Likewise, obsolete classifications may be deleted from the plan.

Section 3.9. Vacant Positions. No vacant position may be filled without the authorization of the City Manager and after determining that sufficient funds are available.

Section 3.10. Reclassification. Positions whose duties and responsibilities have changed significantly from the assigned class description, or positions which have been structurally affected by organizational changes, may be authorized by the City Manager for reclassification study. Such requests for study may be initiated by Department Heads, the Human Resources Division, or the City Manager. Upon completion of the study, a report of the findings shall be submitted and recommendations made to the City Manager, who shall determine whether or not to reclassify the position. Newly created or changes in job descriptions will be approved by the City Council.

Reclassification from one class to a higher-paying class on the basis of job duty changes, when approved by the City Manager, shall provide for movement of the employee to the step on the new range which is approximately 5% higher than the old range and step. If this results in placing the employee on the first step of the new salary range, the employee shall be reviewed after six months and be considered for a salary advancement. If it results in placing the employee on the second, third, or fourth step of the new salary range, the employee shall be reviewed after one year and be considered for a salary advancement. Such reclassified employee's review date shall reflect the date of reclassification.

Reclassification from one class to a lower-paying class on the basis of job duty changes, when approved by the City Manager, may provide for movement of the employee to the pay step of the new range which is approximately 5% lower than the old range and step or may be Y-rated. If the reclassification results in placing the employee on the first step of the new range, the employee shall be reviewed after six months and be considered for a salary advancement. Such reclassified employee's review date shall reflect the date of reclassification.

All assigned rates shall be gross hourly rate for services rendered and shall cover full payment for the number of hours being regularly worked in each class.

Section 3.11. Probation Following Reclassification. An individual employed in a position which is reclassified to a higher range shall serve a probationary period following such reclassification. No probationary period shall be required of employees who are "Y" rated or reclassified to a lower pay range.

Section 3.12. Improper Use of Reclassification. Reclassifications shall not be used for the purpose of avoiding restrictions concerning demotions, promotions, and layoffs nor to effect a change in salary in the absence of a significant change in assigned duties and responsibilities.

Section 3.13. Reports and Records. The Assistant City Manager or his/her designee shall maintain a personnel file for each employee in the City service showing the name, title of position held, the department to which assigned, salary and benefits, changes in employment status, and such other information as may be considered pertinent by the Human Resources Administrator. The Assistant City Manager or his/her designee shall file all documents relating to performance evaluations, educational records, letter of commendation and discipline, and all

other official data relating to the employee's employment with the City. All medical records and workers' compensation claims pertaining to an employee will be held in separate files. An employee shall, however, receive copies of any disciplinary item prior to its inclusion in the personnel file, thus affording the employee an opportunity to respond in writing. Such response, if any, shall also be filed in the personnel file.

Every appointment, transfer, promotion, demotion, change of salary rate, or any other temporary or permanent change in status of employees shall be reported to the Human Resources Division in such manner as prescribed.

Section 3.14. Performance Evaluations. The Assistant City Manager or his/her designee together with the recognized employee groups and management personnel designated by the City Manager shall establish a system of evaluating the performance of each employee in terms of such factors as efficiency, competency, conduct and other relevant factors. The evaluation system shall include the forms and procedures to be used in such reports and provide for necessary instruction manuals and training for supervisory personnel to insure that the program of performance evaluation is conducted in a sound, effective and objective manner.

Section 3.15. Destruction of Records. An employee may request the destruction of records or documents relating to a disciplinary matter which occurred more than two (2) years before the date of request. Such records may be destroyed upon the written consent of the City Manager and the City Attorney after he/she confers with the department head and determines that retention of such records or documents is no longer necessary or desirable. The determination regarding retention or destruction shall be final and not subject to grievance or appeal. If a destruction request is denied, no further request for destruction of records shall be considered for a period of at least one (1) year from the date of denial. At any time department heads may recommend to the City Manager the destruction of disciplinary action material.

Section 3.16. Compliance with These Rules. Each employee is responsible for knowledge of and compliance with these rules. Violation of these rules may be grounds for rejection of an application, removal from a recruitment or employment list, dismissal or other disciplinary action deemed appropriate to the nature of the violation under these rules. Representatives of designated employee organizations shall be charged with notice of these rules and will be expected to conduct business with the City in a manner permitting matters to proceed according to these rules.

Section 3.17. Service Awards. For purposes of service awards only, and for no other purpose, all probationary and regular City service shall be counted toward total years of service.

ARTICLE IV. EQUAL OPPORTUNITY

Section 4.1 Purpose. The purpose of this program is to clarify the intent of the city's equal opportunity commitment.

All of the city's human resources must be utilized to the fullest extent. The City has a responsibility to be a model for the community in providing leadership that is representative and reflective of the population which it serves. It is the intention of the City to reaffirm its commitment to recruit, hire and promote minorities and women.

The City Council, its Commissions, the City Manager, department heads, supervisors and employees are committed to the procedures of this program to assure non-discrimination and provide equal employment opportunity regardless of race, religion, sex, national origin, disability, age, non-disqualifying medical condition or sexual preference.

Application and recruitment processes described in these rules have been modified to reflect steps which promote diversity according to Article V, Sections 5.1 through 5.6.

Section 4.2 Promotion of Diversity In order to enhance career employment opportunities for men and women of all races and ethnic groups, the City commits itself to the following goals and objectives:

- A. Utilize trainee, intern, seasonal, and part-time positions as a means to recruit and develop potential career employees.
- B. Utilize training opportunities provided by the City and the department budget as a means of qualifying employees for career promotions and transfers.
- C. The "minimum qualifications" principle shall guide the establishment of requirements for all City class specifications. All requirements that cannot be demonstrated to be directly related to success on the job shall not be prerequisites for employment.
- D. Develop recruitment sources for the purpose of seeking qualified applicants to promote diversity in the city workforce.
- E. Provide and ensure that all City employees attend mandatory cultural awareness programs to improve understanding of minorities and women.
- F. Include annual diversity review by the City Manager of Department Heads using the EEO report.
- G. The Assistant City Manager or his/her designee will conduct exit interviews to identify reasons for employment turnover among underrepresented classes.

- H. The Assistant City Manager or his/her designee will be responsible for submitting to the Personnel Board the EEO report for the purpose of reviewing city diversity.
- I. Since all management employees are at-will, the City Manager has the discretion to act independently in all phases of the hiring process for management employees based on Chapter 29 of the City Code.

Section 4.3 Complaint Procedure Any employee who believes he/she has been discriminated against in any promotional opportunity, granting of compensation and benefits, or other terms and conditions of employment due to his/her race, religion, sex, national origin, disability, age, non-disqualifying medical condition or sexual preference may contact the Assistant City Manager or his/her designee. The Assistant City Manager or his/her designee will work with the employee to resolve the complaint and will have access to any information necessary in the investigation of the complaint. If there is reasonable cause to believe that a complaint is valid, the Assistant City Manager or his/her designee shall have the authority to recommend resolution of the complaint to the City Manager.

ARTICLE V. APPLICATION AND RECRUITMENT PROCESS

Section 5.1. Announcement. All openings for employment in the City service shall be publicized by posting announcements for at least ten (10) working days in the Human Resources office, in all departments on designated bulletin boards, and by such other means as the City Manager deems appropriate. All announcements relating to employment will include the reference of EQUAL OPPORTUNITY EMPLOYER. The announcement shall specify the title and hourly range of the class in which there is an opening, the general nature of work to be performed, qualifications required and/or desirable for the performance of the work of the class, the manner of making application and other pertinent information. Special recruitment methods shall be utilized as necessary to ensure that all segments of the labor market reasonably available to the City are apprised of each job opportunity by placing announcements in minority and female-oriented newspapers, journals and with other resource agencies and contacts as appropriate and available. Job announcements will be sent to minority and female-oriented schools, businesses, associations, and clubs.

Section 5.2. Application. Applications shall be submitted as prescribed on the job announcement. Application forms shall require information covering training, relevant work and volunteer experience, references, and other pertinent information. All applications must be signed and dated by the applicant.

Section 5.3. Disqualification of Applications. The Assistant City Manager or his/her designee may reject an employment application in any of the following cases:

- A. Where the application indicates on its face that the applicant does not possess the minimum qualifications required for the position;
- B. Where, based upon a bona fide occupational qualification and business necessity, the applicant is physically or psychologically unable to perform the job applied for and no reasonable accommodation can be made for such disability;
- C. Where the completed application has not been received by the Human Resources Administrator by the prescribed filing deadline;
- D. Where the applicant has willfully made any false statement of any material fact or omission thereof, or has practiced or attempted to practice any deception or fraud in the application or examining process;
- E. Where the applicant has been convicted of a crime as provided under Section 5.4 of these Rules;
- F. Where there exists other evidence of unfitness as determined by the Assistant City Manager or his/her designee or City Manager; and

- G. Where the applicant was previously involuntarily dismissed from City service (as opposed to laid off for economic reasons).

Whenever an application is rejected, notice of such rejection shall be mailed to the applicant by the Human Resources office. When the time for filing applications has not expired, an incomplete application may be returned to the applicant with notice that the applicant may amend it and resubmit within the deadline prescribed for receiving all applications.

Section 5.4. Criminal Conduct-Ineligibility for Employment. Conviction of a felony, or a misdemeanor involving moral turpitude, or a plea of guilty or nolo contendere to a felony, or misdemeanor involving moral turpitude shall disqualify an applicant from employment by the City unless the Assistant City Manager or his/her designee specifically determines that mitigating circumstances exist. In making such determination, the following factors shall be considered:

- A. Whether the position applied for has duties which may be implicated by the criminal conduct (e.g., where the position involves handling money and the prior criminal conduct has involved theft);
- B. The nature and seriousness of the offense;
- C. The circumstances surrounding the conviction or plea;
- D. The length of time elapsed since the conviction or plea;
- E. The age of the person at the time of the conviction or plea;
- F. The presence or absence of rehabilitation or efforts at rehabilitation;

Section 5.5. Recruitment - Relevance of Testing Procedures. The selection techniques used in the recruitment process shall be impartial, of a practical nature, and shall relate to those subjects which, in the opinion of the Assistant City Manager or his/her designee, fairly measure the capability of applicants to perform essential duties of the position assigned to the class for which they seek appointment.

Section 5.6. Recruitment Methods. Vacancies in City service will be filled by recruiting qualified applicants using the following methods.

- A. Open Recruitment. This type of recruitment is open to anyone who meets specified qualifications for the position, including, but not limited to, current City employees. An open recruitment shall be conducted when the needs of the service require, as determined by the City Manager.

An open recruitment has a specific period in which applications will be received. Such period is established by the Assistant City Manager or his/her designee. Applications received before, or after, the period shall not be considered.

- B. Continuous Recruitment. This type of recruitment is open to anyone who meets specified qualifications for the position, including, but not limited to, current City employees. It differs from open recruitment in that there is no specific period in which applications may be submitted.

The positions for which continuous recruitment is used will be determined by the City Manager, as the needs of the service require. Normally such positions are those with a significant number of incumbents and a relatively high turnover rate. The purpose of the continuous recruitments is to insure that employment lists are continually being created for those positions in order to minimize the delay in filling vacant positions.

When it is determined pursuant to section 5.12 C that there are an insufficient number of qualified applicants on the list, those who have submitted applications before a date established by the Assistant City Manager or his/her designee shall be tested and added to the list as otherwise provided by these rules. Applications received after the date so established shall be considered the next time it becomes necessary to add to the list.

- C. Promotional Recruitment. When determined appropriate by the City Manager, a recruitment may be limited to those current City employees who meet the minimum qualifications for the position. Assistant City Manager or his/her designee shall establish a specific period in which applications will be received.
- D. Other. In certain circumstances, a vacancy may be filled from a reinstatement list or a reemployment list as set forth in Section 5.12 D. and E.

Section 5.7. [RESERVED]

Section 5.8. Conduct of Recruitment. The City may contract with any competent firm or individual to perform specialized recruitment. In the absence of such a contract, the City Manager shall see that such duties are performed.

Section 5.9. Notification of Written Test Results and Opportunity to Review. A candidate shall, upon request, be given the results of any written test upon the conclusion of the recruitment process. A candidate may request that a written test be re-scored to insure the accuracy of the result, provided such request is made within five (5) working days after the results are mailed to the candidate.

Written test records for each eligible person shall be retained for the life of the applicable employment list.

Section 5.10. Interview Process. Applicants who have successfully completed all other phases of the recruitment process (e.g., physical agility test, written examination, manual performance test) may be interviewed by an oral board.

Oral boards shall consist of three to five members and shall include at least one minority person and one female. No interview panel shall contain more than one member (if the total panel is three persons) or two members (if the total panel is five persons) of the city department to which the job is assigned. The Assistant City Manager or his/her designee shall be present at interviews to ensure that all candidates are given equal time and opportunity to respond to job related inquiries into the candidate's ability to perform the job.

Members of the oral board will be trained by the Assistant City Manager or his/her designee or his/her representative in legal interviewing techniques prior to conducting interviews. The oral board shall rank all candidates and select up to ten most qualified candidates for each open position whom they believe are capable of competently performing the essential duties of the job. These candidates will be placed upon an Employment List. Qualified candidates on the Employment List will be certified by the Assistant City Manager or his/her designee and be listed alphabetically when they are sent to the hiring departments. Photographs may not be taken of candidates prior to acceptance of job offer. The Assistant City Manager or his/her designee may direct, or the department may request, that more than ten applicants be placed on the Employment List. The Assistant City Manager or his/her designee will create an Applicant Flow log in compliance with EOE requirements at the time of the oral board interviews. All candidates on the Employment List will be interviewed by the Department Head or his/her representative(s).

Section 5.11. Creation of Employment List. As soon as possible after the completion of the recruitment process, an employment list shall be prepared and maintained consisting of the names of candidates who qualified in the recruitment process, listed alphabetically. Whenever identical final ranks are earned by more than one candidate, they shall occupy the same position on the employment list. Candidates whose names appear on an employment list shall be deemed qualified for appointment, pending departmental interviews, additional evaluations, where applicable, such as reference checks, medical and/or psychological examinations, polygraph examinations, or background investigations. All candidates on the Employment List will receive the same additional evaluations. Candidates failing one of the evaluation elements will be dropped from the Employment List.

Section 5.12. Duration of Employment Lists.

- A. Open Recruitment List. An open recruitment list shall remain in effect until:

- 1) The number of candidates on the list falls below three (3), unless otherwise determined by the City Manager.
 - 2) The list is six (6) months old; provided, however, that, prior to its expiration, the City Manager may extend the list for an additional period, not exceeding two (2) years.
- B. Promotional List. A promotional list shall remain in effect until the position(s) for which the list was created is/are filled. However, if a position or positions in the same classification become(s) vacant within one (1) year after creation of the list, then the City Manager may utilize the same list to fill the position(s) if it is determined that it would be in the best interests of the City to do so.
- C. Continuous Recruitment List. A continuous recruitment list is of indefinite duration. When, in the opinion of the City Manager, the list contains too few potential appointees, then the list will be augmented from those qualified applicants who have previously submitted applications, as provided in Section 5.6 B.

If an applicant's name has been on a continuous recruitment list for more than two (2) years, it may be dropped therefrom unless the applicant affirmatively responds to a written request from the Assistant City Manager or his/her designee that the applicant desires that his/her name remain on the list.

Applicants whose names have been on the list for more than three (3) years shall be automatically dropped from the list.

- D. Reinstatement List. A reinstatement list, which consists of the names of employees laid off or demoted in lieu of layoff, as provided in Article IX (Layoff Procedures) shall remain in effect:
1. Until all persons thereon have been reinstated; or, if all persons have not been reinstated, then,
 2. For two (2) years; provided, however, that the City Manager may extend the list from time to time thereafter, but not for more than a total of one (1) year.
- E. Reemployment List. A reemployment list is of indefinite duration. After two (2) years, the name of any person not reemployed shall be dropped from the list.

Section 5.13. Removal of Names from Employment Lists. The name of any person who appears on any employment list shall be removed if:

- A. The eligible candidate requests so in writing;

- B. The eligible candidate fails to respond to a notice of certification mailed to the last known address;
- C. The eligible candidate becomes disqualified for employment with the City as provided in Section 5.3;
- D. A candidate on a promotional list resigns from City service.

Section 5.14. Types of Appointments. All vacancies in the City service shall be filled by transfer, demotion, re-employment, reinstatement, promotion, flexible staffing, or from eligible candidates from an appropriate employment list, if available. The type or types of appointments utilized shall be in the best interest of the City as determined by the City Manager. In the absence of persons eligible for appointment in these ways, provisional, temporary, emergency or other types of appointments may be authorized by the City Manager in accordance with these rules.

Section 5.15. Notice of Vacancy. Whenever a vacancy in the City service is to be filled, the hiring Department Head shall notify the City Manager and the Assistant City Manager or his/her designee. If there is no reinstatement list available for the class, the City Manager may cause the vacancy to be filled by employment from a promotional list or appointment from an open employment list.

Section 5.16. Certification of Eligibles. When the Department Head requests that a vacancy be filled from a promotional employment list the Assistant City Manager or his/her designee shall certify from this list the names of the top five (5) ranking individuals on that list plus one additional name for each additional vacancy. When only permanent full-time or part-time employees apply for a promotional recruitment, the Assistant City Manager or his/her designee, may certify the applicants as qualified and forward to the hiring department for interviews. When a temporary part-time employee applies for a promotional recruitment, the Assistant City Manager or his/her designee shall conduct an oral board and follow the guidelines of an open recruitment process.

When the Department Head requests that a vacancy be filled from an open employment list, the Assistant City Manager or his/her designee shall certify from the specified list the names of the top seven (7) ranking individuals on that list, plus seven (7) additional names if the Department Head is not satisfied with the first seven (7) names.

Section 5.17. Creation of New Employment Lists. Whenever there are three (3) or fewer names of individuals willing to accept appointment or promotion on an appropriate list, the Department Head may request appointment from among such eligibles or may request the City Manager to establish a new list. When so requested, the City Manager may call for a new examination in order to secure a sufficient number of persons eligible for certification.

Section 5.18. Vacancies Filled by Promotion. Vacancies filled by promotion may be filled by:

- A. Competitive promotional examination;
- B. By promotional certification by the City Manager in those cases where only one employee is qualified for the higher level position;
- C. By flexible staffing.

For advancement to occur by promotional certification, the Department Head must certify that an employee: (1) meets all prescribed standards of the higher level class, (2) has demonstrated in all respects the ability to satisfactorily perform the responsibilities of the higher level class, and (3) is in other ways eligible for certification to the higher level class. Upon certification that an employee is in all respects eligible for promotion, the employee is eligible for consideration by the Department Head upon the occurrence of the next vacancy at the higher level position. An individual promoted to a higher position shall serve a probationary period.

Section 5.19. Flexible Staffing. Positions budgeted at the II, or journey level, and encompassing full journey level work shall be filled at the I, or entry level, when they become vacant, unless the needs of the City require that the position be filled at the journey level. The individual hired at the I, or entry level, position shall be certified for promotion to the II, or journey level, position when, based on the judgment of the Department Head, that individual possesses the experience and knowledge to perform the full range of journey level tasks and fulfills any special requirements for the II level. The distinction between the I level and the II level is based upon the degree of responsibility that an incumbent is expected to assume rather than on the types of duties assigned. Promotion to the "II" level is outside of the competitive selection process. A Department Head shall determine that funding is available prior to promoting from a "I" to "II" position.

Section 5.20. Appointment Process. The Department Head, or his or her designee(s), shall interview eligible persons for a vacant position.

Upon selection of a person by the Department Head, and after approval of the City Manager or Assistant City Manager, that person shall be notified of his or her selection, subject to passing pre-employment tests.

Upon approval by the City Manager or the Assistant City Manager, the Human Resources office shall arrange for all pre-employment tests, including medical examination, finger printing and other similar matters. Upon successful completion of such tests, the Assistant City Manager or his/her designee shall certify the person for employment and direct the person to report for duty.

No appointment is effective until all necessary approvals and tests have been satisfactorily obtained and completed.

Section 5.21. Acceptance of Appointment. If the applicant accepts the appointment and reports for duty within such period of time as prescribed by the Department Head, the applicant shall be deemed to be appointed on a probationary basis. The applicant is deemed to have declined appointment upon failure to report for duty as specified.

Section 5.22. Provisional Appointments. If an appropriate employment list either does not exist or does not contain the names of three (3) individuals willing to accept employment to a vacancy, a person meeting the minimum training and experience qualifications for the position may be given a provisional appointment pending the establishment of an employment list. With the approval of the City Manager, such an appointment may be made for up to six (6) months. Such an appointment may be made during the period of suspension, or demotion, or after discharge of another person holding the position. A provisional employee may be removed at any time with or without cause, without the right of appeal or hearing. A provisional employee shall not accrue any benefits. If a provisional appointee is selected for a regular position with the City, time served as a provisional appointee shall not be counted as part of the required probationary period. No special consideration shall be given a provisional appointee for obtaining a regular appointment, except that a provisional appointee who wishes to be appointed to the regular position shall automatically be interviewed by the oral board during the selection process.

Section 5.23. Pay Differential. For temporary special assignments with a minimum of thirty (30) days duration, which involve increased complexity, hazard, and/or responsibility, and which are beyond the routine coverage for short-term leave of another, as determined by the City Manager, a salary differential of 5% of the employee's pay range shall be granted upon recommendation of the Department Head and approval of the City Manager. This temporary assignment may last for up to six (6) months and may be extended to an additional six months with the approval of the City Manager.

Section 5.24. Emergency Appointments. To meet the requirements of a declared emergency condition which threatens life, property, or the general welfare of the City, the City Manager may authorize the employment of such persons as may be needed for the period of the emergency, without regard to the examination or appointment provisions of these rules.

Section 5.25. Specially Funded Positions. Individuals may be hired to fill positions funded by sources other than the City, such as federal, state, or county funds. Specially funded positions are contingent upon the outside funding and terminate when such funding is discontinued.

Section 5.26. Probationary Period - Purpose. The probationary period shall be regarded as a part of the testing process and shall be used for closely observing the employee's work and for securing the most effective adjustment of a new employee to his or her position, and to reject any employee whose performance does not meet required work standards.

Section 5.27. Length of Probationary Period. The probationary period is as follows:

- A. Initial Appointment. The probationary period for a person first appointed to City service shall be as follows:
 - 1. Eighteen (18) months for safety employees (police and fire) and communications dispatchers.
 - 2. Twelve (12) months for all others.
- B. Promotional Appointment. The probationary period for a promotional appointment shall be one (1) year.
- C. Reclassification. An individual employed in a position which is reclassified to a higher range shall serve a probationary period following such reclassification. No probationary period shall be required of employees who are "Y" rated or reclassified to a lower pay range. The probationary period shall not exceed one (1) year.
- D. Demotion in Lieu of Layoff. The probationary period for an employee who is demoted in lieu of layoff, who retreats to a previously held position, or who "bumps" another employee pursuant to Article IX (Layoff Procedures) is six (6) months, unless the employee has previously successfully completed a probationary period in the position to which he/she is placed within the last five (5) years, in which case there shall be no probationary period.

Section 5.27.1. Waiver of Probationary Period for Certain Former Special Employees. Where a former special employee was employed for at least one (1) year in a specially funded position and that position was abolished, but a regular position with similar duties is created and the former special employee is hired to fill the regular position, the probationary period may be waived if the City Manager determines that the previous performance of the employee was satisfactory.

Section 5.28. Performance Evaluation During Probationary Period. The performance of a probationary employee shall be reviewed after six (6) months of employment, and at least once more prior to the expiration of the probationary period. If the employee is appointed at the first step of the salary range, the employee would be eligible at six (6) months for a merit increase, and then annually from the date of the first merit increase until the fifth step is reached. If the employee is appointed at the second, third or fourth step, the employee would be eligible for a merit increase upon the completion of a year of service, and then annually thereafter until the fifth step is reached.

Section 5.29. End of Probationary Period; Extensions. An employee shall be considered to have satisfactorily completed the probationary period unless the Department Head certifies to the contrary in writing to the Assistant City Manager or his/her designee prior to the expiration of the probationary period.

The Department Head may extend the probation period for a period not to exceed six (6) months. The employee shall be considered to have satisfactorily completed probation at the end of the extension period unless the Department Head certifies to the contrary in writing to the Assistant City Manager or his/her designee prior to the end of the extension period.

The probationary period, whether the initial period or the extended period, shall be extended one work day for each work day the probationary employee is not actually at work, except where the absence is for authorized training or for authorized vacation leave.

Section 5.30. Release of Probationer. During the probationary period, whether initial or extended, a probationary employee may be terminated at any time by the Department Head, at the sole discretion of the City. A probationary employee so terminated shall not be entitled to any appeal. A probationary employee so released shall be notified in writing.

Section 5.31. Release of Probationer Following Promotion or Reclasse to a Higher Position. Any employee released during the probationary period following a promotional appointment or reclass to a higher position shall be reinstated to the classification from which the employee was promoted or reclassified, unless dismissed for cause.

Section 5.31.1. Release of Displaced Employee. If a reinstatement under Section 5.31 causes another employee to be displaced, layoff procedures shall be followed. Release of a displaced employee pursuant to this section shall not be subject to appeal.

ARTICLE VI. ATTENDANCE AND LEAVES

Section 6.1. Hours of Work. The hours of work shall be those prescribed by the Department Head or by an applicable memorandum of understanding.

Section 6.2. Attendance. Every employee shall be in attendance at work in accordance with written rules regarding hours of work, holidays, and leaves. All departments shall keep daily records of employee attendance. Any employee unable to come to work shall notify the department prior to or within thirty (30) minutes after the start of the normal department hours or such lesser time as specified in departmental policy.

An employee absent without leave who, within twenty-four (24) hours after being notified by the Department Head, neither returns to duty or gives good reason why work cannot be resumed at the specified time, may be treated as having abandoned his or her employment.

If the employee has abandoned his or her position, the employee shall be given notice of the intent of the City to dismiss because of such abandonment. The notice shall provide the time, date and place at which the employee may explain his or her conduct to the City Manager or his or her designee. The decision of the City Manager or designee on whether to retain the employee thereafter is final and there is no further appeal.

Section 6.3. Military Leave. Military leave shall be granted in accordance with the provisions of State law. All employees entitled to military leave shall give the Department Head an opportunity, where possible, to determine when such leave shall be taken.

Section 6.4. Annual Vacation Leave-Purpose. The purpose of vacation leave is to provide eligible employees the opportunity to take paid time off from their job responsibilities in order to maintain a high standard of mental, emotional and physical conditioning.

Section 6.5. Accrual of Vacation Leave. Annual vacation leave with pay shall be accrued by all regular, exempt and probationary employees. An employee must complete six (6) months continuous service before the employee is entitled to take vacation leave, except as otherwise determined by the Department Head. Special employees do not accrue annual paid vacation leave.

Section 6.6. Prorated Accrual. Regular part-time employees shall be credited vacation leave with pay on a prorated basis.

Section 6.7. Holidays within Vacation Leave. In the event one or more recognized City holidays fall within an annual vacation leave, such holidays shall not be charged as vacation leave.

Section 6.8. Scheduling and Carryover of Vacation Time. The times during the year when an employee may take vacation shall be determined by the Department Head with due regard for the

needs of the city and the wishes of the employee. If the requirements of the City are such that an employee cannot take part or all of the accrued vacation leave in the year in which it was earned, such vacation shall either be taken during the following year, subject to the limits set forth in Section 6.9, or paid for at the discretion of the Department Head in consultation with the City Manager.

Section 6.9 Management of Excess of Accrual of Vacation Leave. Department Heads may take actions to direct vacation leave be taken at such time as the amount of vacation leave carried over from any previous year(s) exceeds the employee's annual leave at the end of the calendar year. If the accrued vacation leave is approaching this upper limit, the employee shall be notified of the potential for mandatory placement on vacation leave prior to the end of the year. At the request of an affected employee, the City Manager may modify the provisions of this section where circumstances warrant.

Section 6.10. Lump Sum Payment at Termination. Employees who terminate employment shall be paid a lump sum for all accrued vacation leave and comp time earned prior to the effective date of termination. Accrued vacation shall not be taken immediately prior to termination of employment, whether voluntary or involuntary, but shall be paid in a lump sum to avoid further accrual of vacation time.

Section 6.11. Sick Leave - Generally. Sick leave is time allowed away from work, with pay, because of the illness or injury of the employee or his/her family member(s), or to go to a medical or dental appointment where the appointment cannot be scheduled during off duty hours. Only the following are family members for purposes of the previous sentence: a spouse or a child under eighteen (18) years of age, or any of the following who resides with the employee or who is dependent on the employee for care and transportation: a child over eighteen (18) years of age, a parent, a grandparent, a sibling, or domestic partner.

Sick leave is not time which may be used by an employee merely because he/she does not wish to be at work. It is limited to those circumstances where there is a genuine medical condition that precludes the employee from doing the essential functions of his/her job, where a medical appointment is necessary, or where care of a family member is warranted. Vacation time may not be used in lieu of sick leave unless expressly authorized in advance by the Department Head.

Sick leave may also be used as bereavement leave for the loss of a spouse, child, sibling, parent, grandparent, or domestic partner.

The sick leave program is designed to provide employees with: (1) available paid leave for a reasonable amount of short-term illnesses, and (2) provide a savings bank of time to ensure available paid leave for possible long-term illnesses.

If an employee's sick leave usage assumes a pattern as hereafter defined, the employee shall be counseled by the Department Head about the pattern of sick leave usage. The employee may provide information demonstrating that a specific personal medical condition, or medical

condition of a family member, requires the use of sick leave. If an employee, after notice, fails to modify behavior of sick leave usage, the employee may be subject to discipline.

An assumed pattern of sick leave usage could be generally defined as the use of sick leave prior to and/or after a holiday, or the first or last day of a work week or shift.

Nothing in this section shall preclude discipline for excessive or improper use of sick leave at any time where there is evidence that an employee is using sick leave for purposes other than permitted by these rules.

Section 6.12. Notice of Taking Sick Leave. In order to be compensated for sick leave absence, the employee must notify his or her immediate supervisor or other appropriate department person prior to or within 30 minutes after the start of the normal department hours or such lesser time as specified in departmental policy. An employee becoming sick at work shall notify his/her supervisor prior to leaving work.

Section 6.13. Compensating Time Off. In lieu of payment for overtime, an employee may elect to, and shall earn, compensating time off (otherwise known as comp time or CTO) in accordance with departmental policy and in accordance with applicable federal law.

CTO shall be taken upon prior authorization of the Department Head, as the needs of the department permit.

Section 6.14. Accumulation of Sick Leave. Unused sick leave may be accumulated to be used in a subsequent year for the purposes specified in Section 6.11. No payment shall be made for unused sick leave at termination of employment, whether voluntary or involuntary, except that, upon retirement under PERS (Public Employees' Retirement System), unused sick leave shall be treated as additional time in service for the purpose of computing service credit. In accordance with any applicable State law, where an industrial disability makes it necessary for a safety employee to retire, such employee shall be entitled to (1) exhaust any accumulated sick leave prior to commencing retirement benefits or, (2) receive a lump sum payment for any accumulated sick leave, at the discretion of the City Manager.

Section 6.16. Industrial Injury Leave - Non-Safety Employees. When a non-safety employee is rendered incapable of performing the assigned work duties by injuries received or illness arising in the course of employment with the City, and when such injury or illness is determined to come within the provisions of the Workers' Compensation Law, the City Manager may grant leave with an amount of pay equal to the difference between eighty percent (80%) of the employee's base pay and the workers' compensation pay, if any, received by the employee during such injury or illness, not to exceed one (1) year.

- A. Leave granted a non-safety employee under this provision shall not be considered sick leave or deducted from accumulated sick leave.

- B. During periods of leave granted under this provision, a non-safety employee will not accrue sick leave or vacation leave.

Section 6.17. Industrial Injury Leave - Safety Employees. Public safety employees shall receive industrial injury leave in accordance with State law.

Section 6.18. Non-Industrial Injury Leave. Where an employee is unable to work for an extended period because of an injury or illness not arising in the course of employment with the City, the City Manager may grant an unpaid leave of absence not exceeding one (1) year if it appears, based on competent medical evidence, that the employee is likely to be able to return to duty at the end of the leave.

An employee may be eligible for long-term disability benefits under a plan established by the City for that purpose.

An employee on leave for non-industrial injury or illness shall exhaust all accrued sick leave and vacation before being placed on such leave, but shall not accrue any sick leave or vacation while on such leave.

Section 6.19. Court Duty/Administrative Hearings.

- A. Jury duty. An employee who is summoned to jury duty shall be granted leave with full pay and benefits until excused by the court. Any pay for jury service, exclusive of mileage allowances, shall be paid by the employee to the City. If employee is released from jury duty with 2 or more hours remaining in regular work day, the employee must return to work.
- B. Employee as a party in official capacity. An employee who is a party to a lawsuit in his or her official capacity as a City employee shall be paid as though on duty for all time spent in connection with the suit.
- C. Employee as a witness. An employee who is either directed by his or her supervisor, or is subpoenaed, to appear as a witness in court, in an administrative proceeding, or in an arbitration, in connection with events arising from the performance by the employee of his or her official City duties shall be paid as though on duty for all time spent in connection with such appearance. An employee shall, if subpoenaed by a third party, immediately notify his or her supervisor so that the City may, if authorized to do so by law, demand of the subpoenaing party fees and costs associated with the appearance of the employee. Any City employee subpoenaed in connection with events arising from work performance in previous employment, that experience which is used in the present capacity, shall be paid his or her actual wages.

- D. Non-City related court appearances. An employee who is a party or a witness in any court, administrative proceeding or arbitration in connection with matters not related to the performance of his or her official City duties, may take vacation leave, comp time, or unpaid leave, for the purpose of any time spent in connection therewith. An employee who has exhausted vacation leave and comp time may be granted leave without pay by the Department Heads or City Manager, if circumstances warrant. If the employee uses leave for this purpose, he/she shall not be required to remit to the City any amount.

Section 6.20. Leave of Absence Without Pay. Department heads may grant a regular or a probationary employee a leave of absence without pay not to exceed one calendar month. Thereafter, the City Manager may grant a regular or a probationary employee a leave of absence without pay at any time, not to exceed a total of twelve (12) consecutive months. Upon expiration of an approved leave, or upon return to work if earlier, the employee shall be reinstated in the position held at the time leave was granted. Failure on the part of an employee on leave of absence to report for work promptly at the expiration of leave, or within a reasonable time after notice to return to duty, shall be considered an abandonment of employment as set forth in section 5.2.

While on such leave an employee shall not receive seniority credits or any benefits. No such leave shall be granted except upon written request of the employee setting forth the reason for the request. The anniversary date of such employee shall be adjusted to the new date of hire.

ARTICLE VII. DISCIPLINE AND APPEALS PROCEDURE

Section 7.1. Purpose. The purpose of this article is to establish the types of actions for which an employee can be disciplined and the disciplinary measures that may be used.

Section 7.2. Exclusive Remedy. The procedure set forth in this Article shall be exclusive, and the failure of an employee to utilize the provisions herein shall constitute a waiver of any claim to relief.

Section 7.3. Application. This Article applies only to regular employees. An employee not covered by this Article may be disciplined without reference to these provisions; such an employee has no property interest in his or her employment, expressed or implied.

Section 7.4. Grounds for Discipline. Discipline may be taken against an employee for "good cause." Good cause is defined as any facts which, based upon relevant circumstances, may be reasonably relied upon in the exercise of discretion as a basis for disciplinary action. The following are set forth as examples only and shall not be construed as an exclusive list:

- A. Fraud in securing employment.
- B. Incompetency.
- C. Inefficiency.
- D. Neglect of duty.
- E. Inattention to or dereliction of duties.
- F. Soliciting, taking, or accepting a fee, gift, service, or other things of value in the course of city work or in connection with it.
- G. Insubordination. Willful disobedience of an inherently lawful order or direction.
- H. Dishonesty.
- I. Absence without leave.
- J. Appearing for work under the influence of alcohol or drugs.
- K. Conviction of a felony. A plea of guilty, a plea of nolo contendere, or a conviction following a plea of not guilty is deemed to be a conviction within the meaning of this section.

- L. Conviction of a misdemeanor which is of such a nature as to adversely affect the employee's ability to perform the duties and responsibilities of his or her position. A plea of guilty, a plea of nolo contendere, or a conviction following a plea of not guilty is deemed to be a conviction within the meaning of this section.
- M. Improper political activity as governed by the Federal Hatch Act and the California Government Code.
- N. Discourteous or abusive treatment of the public or other officers or employees.
- O. Violation of any documented rules and regulations of the City, department rules, regulations, policies, procedures and general orders, or any deliberate breach of confidentiality.
- P. Failure to observe City safety regulations.
- Q. Abuse of sick leave.

Section 7.5. Levels of Discipline - Minor.

- A. Oral Warning: An oral admonition to an employee whose conduct or performance must be improved and which details the areas for improvement, the degree of improvement required, and notice that failure to improve will result in more serious disciplinary action.
- B. Documented Counseling: A written memorandum which shows that the employee has met with his supervisor, and/or another person in the chain of command, to discuss a specific problem or problems, and which sets forth the recommendations given to the employee for solving similar problems in the future and the expectations communicated to the employee for improving performance.
- C. Written Reprimand: A formal written notice to an employee which summarizes previous related disciplinary action, if any, and which details a record of conduct or performance that is substantially below standards and which advises that continued conduct or performance at such levels may result in suspension, merit decrease, demotion or dismissal. At the time a written reprimand is issued, the employee is entitled to bring a representative with him/her. The individual shall be counseled and given an opportunity to review the reprimand and sign it, and make comments within three working days thereon, before it is placed in his or her personnel file.

Section 7.6. Levels of Discipline - Major.

- A. Short Suspension: The temporary removal of any employee from the service of the City without pay for one (1) work day, or fraction thereof. What constitutes a "work day" shall be determined by reference to the employee's normal work schedule.
- B. Long Suspension: The temporary removal of an employee from the service of the City without pay for more than one (1) work day. A "work day" is defined under A. of this section. A long suspension is generally used where there has been chronic misconduct, or where the employee is involved in one or more serious events, and where no other measure short of merit decrease, demotion or dismissal is appropriate.
- C. Merit Decrease: A pay step reduction where performance falls short of the normal established standards or where performance is clearly inadequate in one or more of the critical job duties for the position.
- D. Demotion: The removal of an employee from a position to one of lower grade or classification when such employee is no longer able or willing to perform the duties of the position but who may still function effectively at a lower level.
- E. Dismissal: The removal of an employee from the service of the City when it has been determined that the employee has been given every reasonable opportunity to reach the standards of conduct or performance required by the City and has clearly failed to do so or has committed one or more offenses for which no other measure is appropriate.

Section 7.7. Disciplinary Procedures for Major Discipline.

- A. Charges for Suspension, Merit Decrease, Demotion or Dismissal. Where the proposed discipline is major, as defined, a preliminary written statement of charges, signed by the Department Head, supporting the discipline shall be served on the employee. Service of the preliminary written statement of charges shall be made at least five (5) days before a hearing pursuant to Section 7.7(C) is held to discuss the charges. The charges shall state:
 - 1. The proposed discipline.
 - 2. The effective date(s) of the discipline, or fraction thereof.
 - 3. The reasons for the discipline.

4. The names of witnesses to the incident(s) precipitating the discipline if applicable.
5. The identity of any written documents pertinent to the discipline.

B. Service of Charges. Service of the preliminary written statement of charges shall be made by:

1. Personally giving the employee a copy; or
2. If personal delivery is infeasible, then by one of the following:
 - a. A recognized overnight delivery service (e.g., Federal Express).
 - b. U.S. Postal Service overnight mail.
 - c. U.S. registered or certified mail, with a return receipt.
 - d. Any other reasonable method that is normally employed in commerce to deliver items of importance from one person or entity to another, where proof of service is obtained.

Service is deemed complete when either one of the preceding steps is taken.

C. Informal Hearing Procedure (Skelly Hearing). The employee shall be given an opportunity at an informal hearing to show why the proposed major discipline should not be imposed prior to its imposition.

1. The hearing will be conducted by a responsible person designated by the City Manager. It shall include the employee, the employee's representative, if the employee so wishes, and others as directed by the person conducting the hearing. The hearing is not an evidentiary hearing. It shall be tape recorded or stenographically recorded. The person conducting the hearing will keep a written record.
2. At the hearing the employee shall be given an opportunity, either orally, in writing, or both, to bring forward facts or circumstances which may cause the charges to be revised or dismissed.
3. Following the hearing, the person conducting it will recommend to the Department Head whether it is appropriate to proceed with the preliminary charges, modify them, reduce the level of discipline to a minor discipline, or dismiss the proposed discipline. If the decision of the Department Head

is to dismiss the discipline, the employee will be so notified. If the decision of the Department Head is to reduce the level of discipline to a minor discipline, the reduced discipline will be imposed. If the decision of the Department Head is to proceed with the imposition of major discipline, whether as originally proposed or as modified, the employee will be served with a notice of discipline, which includes the final statement of charges. The statement of charges will contain a synopsis of the informal hearing, the matters set forth in Section 7.7(A) and notice of the right of appeal as provided by Section 7.10.

Section 7.8 [RESERVED]

Section 7.9. Appeal from Minor Discipline. Oral warnings and documented counseling are not subject to appeal. A written reprimand may be appealed to the City Manager. The appeal must be in writing. It must be filed with the City Manager within five (5) working days after the reprimand is finalized and given to the employee. The City Manager or his/her representative will conduct an investigation of the facts as warranted. The City Manager shall issue a decision in writing and may uphold, revise or rescind the reprimand. The decision of the City Manager is final and must include notice to the appellant that the time within which judicial review must be sought is governed by Code of Civil Procedure Section 1094.6 as described in Section 7.10 of these rules.

If the City Manager issued the reprimand, he or she is disqualified from hearing the appeal. He or she shall appoint a third party not familiar with the circumstances of the reprimand, to hear the appeal.

Section 7.10. Appeal from Major Discipline.

- A. An employee who has been dismissed, given a suspension or merit decrease, or demoted, may appeal to the Personnel Board. The appeal must be in writing. It must be filed with the City Manager or designee within ten (10) working days after service of the notice of discipline. An evidentiary hearing shall be held on the appeal. The City Manager or designee shall arrange for an appeal hearing before the Personnel Board to commence within sixty (60) days of receipt of such written request. If unusual circumstances warrant, the appellant and the City Manager or designee may agree in writing that the date of hearing be extended for a specified period of time. The time in which to commence the hearing may be extended if the Board is unable to convene. The City Manager or designee shall provide at least seven (7) days written notice of the date, time and place of hearing to the appellant and to the disciplining authority. The hearing shall be closed to the public unless the appellant requests, in writing, an open hearing at the time the appeal is submitted.
- B. The procedures of the hearing shall be determined by the Personnel Board, which may establish its own reasonable rules for the conduct of appeal hearings. To the extent it is

possible and appropriate, hearings shall be informal. Technical rules of evidence need not be followed. Any evidence which reasonable persons may rely on in the conduct of serious affairs shall be admissible, as determined by the Personnel Board; provided, however, that hearsay, properly objected to, and standing alone, shall not be competent to prove a charge. Witnesses shall be examined under oath. The proceedings shall be tape recorded and/or stenographically reported. The Personnel Board may include within the rules a procedure whereby each party to the disciplinary proceedings may engage in discovery from the other(s) concerning the documents to be used at the hearing and the witnesses to be called.

- C. The appellant shall personally attend the hearing, unless physically unable to do so. Unexcused failure of an appellant to appear at a hearing shall be deemed a withdrawal of the appeal.
- D. The Board may alter the discipline imposed by the disciplinary authority; provided, however, that if the underlying facts giving rise to the discipline are proved by a preponderance of the evidence, the Board may not reduce the discipline imposed if reasonable minds could differ as to the proper level of discipline. If the Board reduces the discipline, it must make a finding, in its written decision, that reasonable minds could not differ as to the appropriate level of the discipline and set forth the facts upon which it reaches that conclusion.
- E. Within fifteen (15) days after completion of a hearing, unless waived by the parties, or because of the inability of the Board to convene, the Board shall prepare a written decision on the appeal and serve it on the appellant and the disciplining authority. The decision shall include a brief statement of the case, the Board's findings of facts, with a citation to the evidence relied upon, a statement of its conclusions, and the disposition of the matter. The decision shall be forwarded to the City Manager or designee. The City Manager or designee shall review the recommendation of the Personnel Board and may then accept, reject or modify the proposed decision. The City Manager or designee's decision shall be in writing and issued within thirty (30) days of receiving the Personnel Board's decision. The City Manager's or designee's decision shall be final. If the appellant is dissatisfied with the City Manager's or designee's decision and wishes to seek judicial review, the 90-day limitations period provided in Code of Civil Procedure Section 1094.6 shall apply. The City Manager's or designee's written decision shall include notice to the appellant that the time within which judicial review must be initiated is governed by Code of Civil Procedure Section 1094.6. A copy of the City Manager's or designee's decision shall be forwarded to the Personnel Board, the disciplining authority and the appellant. It shall be included in the appellant's personnel file.

Section 7.11 Subpoenas. Pursuant to the authority of the Government Code which authorizes the City Council to issue subpoenas, the mayor, mayor pro tempore, or if neither is available, any member of the City council, may execute on behalf of the City a subpoena directing that a

witness appear before the Personnel Board for a hearing and bring with him/her such tangible items as are pertinent to the subject matter of the hearing.

If a subpoena is not honored, the Personnel Board is authorized to request the City Attorney to bring such proceedings as are authorized by the Government Code to enforce the subpoena.

Section 7.12 Administrative Leave. Whenever the Department head determines that it is in the best interests of the City not to have an employee at the work place, either prior to or during, the disciplinary process, an employee may be placed on administrative leave, with pay, subject to such reasonable conditions as may be determined by the Department Head given the circumstances of the situation.

ARTICLE VIII. GRIEVANCE PROCEDURE

Section 8.1. Purpose. The purpose of the grievance procedure is to promote improved employer-employee relations by affording the employee individually, or through the representative of his or her choice, a systematic means for obtaining further consideration of problems after reasonable efforts to resolve them through discussion have failed. This procedure is designed to expedite the settlement of grievances as near the point of origin as possible.

Section 8.2. Process. An employee may submit a complaint through the grievance procedure provided in this article regarding any matter related to the employee's wages, hours or conditions of employment. Employees must demonstrate that reasonable efforts were undertaken to resolve this matter through direct discussion prior to initiation of the grievance process.

An evaluation is not grievable. An employee may not grieve disciplinary actions. An employee may appeal disciplinary actions as otherwise provided in Article VII.

Section 8.3. Grievance Procedure: First Level of Review. An employee who has a complaint which remains unresolved after discussion with his/her supervisor may file a grievance in writing. The employee shall file a written grievance with the Department Head. The Department Head may choose to refer the grievance to a supervisory or management representative responsible to the grieving employee. The supervisor or management representative shall meet with the grieving employee and other individuals he/she deems appropriate and respond in writing to the grieving employee within ten (10) working days of the receipt of the grievance. The decision of the supervisor or management representative shall be final unless the employee refiles the grievance with the Department Head within ten (10) working days after receiving a written decision from this first level of review.

Section 8.4. Grievance Procedure: Second Level of Review. Upon initial receipt of a grievance a Department Head may unilaterally waive the first level of review and respond to the grievance directly. Regardless of whether the first level of review is waived or whether the Department Head is responding to a refile of a grievance at the second level, the Department Head shall meet with the grieving employee and other individuals he/she deems appropriate and respond in writing to the grieving employee within fifteen (15) days of receipt of the grievance.

Section 8.5. Grievance Procedure: Third Level of Review: City Manager. If the grieving employee does not agree with the decision made by the Department Head, or if no answer has been received within fifteen (15) working days, the employee may refile the grievance in writing to the City Manager. The City Manager or his/her designee shall meet with the grieving employee and other individuals he/she deems appropriate and respond in writing to the grieving employee within fifteen (15) days of receipt of the grievance. The City Manager may designate a fact finding committee, or a management representative not in the normal line of supervision, to advise on the grievance. The City Manager's (or designee's) decision on the grievance shall be final. The employee shall have no further appeal rights.

Section 8.6 Extending Time. The time limits specified in sections 8.3, 8.4 and 8.5 may be extended by mutual consent of the employee and the person with jurisdiction at any particular stage of the procedure, or by the City Manager if no mutual consent is obtained and the City Manager determines, on his/her own or on application by an affected person, that additional time is warranted.

Section 8.7. Representation. The employee may have the assistance of another person of his/her own choosing in preparing and presenting the grievance at any level of review. The employee must be present during any proceeding.

Section 8.8. Use of Work Time For Grievance. The employee and the employee's representative may be allowed to use a reasonable amount of work time as determined by the Department Head in conferring about the grievance.

Section 8.9. Freedom from Reprisal. The employee shall be assured freedom from reprisal for using the Grievance Procedure.

ARTICLE IX. LAYOFF PROCEDURES

Section 9.1. Purpose. It is the purpose of these procedures to establish equitable standards to regulate the layoff of City employees where such a layoff is dictated by economic considerations, lack of work, changes in mission, technological changes or other factors.

Section 9.1.1. Application. These procedures apply only to the following:

- 1) Regular Employees
- 2) Probationary Employees
- 3) Management Employees.

Section 9.2. Order of Layoff Layoffs shall be in inverse order of seniority.

Section 9.3 Notice of Layoff. An employee shall be given written notice of a pending layoff ten (10) days prior to its effective date.

Section 9.4. Layoff [Reserved].

Section 9.5 Demotion in Lieu of Layoff; Retreat Rights; Bumping Rights.

- A. An employee who would otherwise be laid off may be demoted by the City Manager to any vacant position for which the employee is qualified.
- B. An employee who would otherwise be laid off has the right to retreat to a vacant position which he/she previously held, provided the employee meets the current minimum qualifications for the position.
- C. An employee who has seniority over another employee who holds a position in the same family series (as set forth in Appendix A) for which the senior employee is qualified has the right to displace (or "bump") the junior employee from that position.

Section 9.6 Notice of Intent to Exercise Rights; Waiver. An employee who is notified of his/her pending layoff shall, within five (5) days of such notice, advise the Assistant City Manager or his/her designee whether he/she intends to exercise any rights under section 9.5. A failure to give such notice shall constitute a waiver of any right.

Section 9.7 Calculation of Seniority. For purposes of this article, seniority shall be determined by adding together all time spent in City service, in whatever capacity, expressed in terms of years, months and days.

The following shall not be included in the seniority calculation:

- A. Disciplinary time off.

- B. Time spent on unpaid leave (unless Federal or State Law requires such time to be included within the calculation).
- C. Any hours spent as a special employee as defined in section 2.20.D.

Section 9.8 Ties in Seniority. In the event two or more employees have the identical amount of seniority, ties will be broken by the City Manager. The City Manager, in breaking a tie, may take into account the past performance of the employees, any disciplinary actions against them, any recommendations from department heads concerning them, and such other factors as will result in the City retaining the most qualified and efficient employees.

Section 9.9 Rate of Pay. An employee who is demoted in lieu of layoff, retreats to another position, or bumps to another position, shall be placed at the hourly pay step which represents the least decrease in compensation.

Section 9.10 Probationary Period After Demotion. An employee who retreats to another position outside a family series shall serve a probationary period in that position unless the employee has satisfactorily completed probation in the position.

Section 9.11 Reinstatement List. Those employees who are laid off shall be placed on a reinstatement list in order of seniority. If the position held by employee immediately prior to layoff becomes vacant, or if another position within the family series and for which the employee is qualified becomes vacant, then the employee shall be offered the vacant position. If the employee fails to accept the position within five (5) days of being notified of his/her right to do so, the employee shall have waived any right to reinstatement and his/her name shall be removed from the reinstatement list.

Section 9.12 Restoration of Benefits Upon Reinstatement. When an employee is reinstated to employment after layoff, all his/her prior service shall be counted toward the calculation of sick leave and vacation accruals and the calculation of seniority. Any unused sick leave which the employee had accrued at the time of layoff shall be restored.

If an employee is reemployed in a position in which he/she was serving a probationary period at the time of layoff, all time spent by the employee in the probationary period shall be counted toward determining when the probationary period ends.

ARTICLE X. NON-DISCIPLINARY PERSONNEL ACTIONS

Section 10.1. Transfer. An employee may be transferred from one position to another position in a comparable class. For transfer purposes, a comparable class is one with the same maximum hourly pay, involves the performance of similar duties and requires substantially the same basic qualifications. No person shall be transferred to a class for which he or she does not possess the minimum qualifications. A transfer within a department may be made by the Department Head. If the transfer involves a change from one department to another, both Department Heads must consent thereto, unless the City Manager orders in writing the transfer for purposes of economy or efficiency. Transfer shall not be used to effectuate a promotion, demotion, advancement or reduction, each of which may be accomplished only as provided in these rules.

Section 10.2. Voluntary Demotion. Upon written request of the employee, and with the consent of the Department Head, voluntary demotion may be made to a vacant position providing the employee possesses the minimum qualifications for the vacant position.

Section 10.3. Abolition of Position. Whenever, in the judgment of the City Manager, it becomes necessary to abolish any position, the employee holding such position may be laid off, transferred, or demoted. Such action is not disciplinary and there is no right of appeal.

Section 10.4. Resignation. At least ten (10) working days prior to departure, an employee wishing to leave City service in good standing shall file with the Department Head a written resignation stating the effective date and reasons for leaving, unless such time period is waived by the Department Head. Acceptance by the Department Head of an employee's written notice of resignation shall be final. The Department Head shall forward a statement on the resigned employee's service performance and other pertinent information to the Human Resources Administrator. Employees may be asked to participate in an exit interview upon submitting their resignation.

Section 10.5. Reemployment. With the approval of the City Manager, a regular or probationary employee who resigned in good standing may be reemployed within two (2) years of the effective date of resignation, to a vacant position in the same or comparable class. Such reemployment shall, for all purposes, be considered as though it were an original appointment. An employee terminated for medical condition, as described in Article XII of these rules, may request reemployment within two (2) years of such termination to a vacant position in the same or comparable class. The City shall subject such employee to a fitness for duty medical examination to be given by a physician selected by the City. The City Manager shall review such case and may approve or disapprove reemployment. If approved, such reemployment shall, for all purposes, be considered as though it were an original appointment.

ARTICLE XI. PERSONNEL BOARD

Section 11.1. Purpose. The role of the Personnel Board is to provide advice to the City Council and the City Manager through neutral and objective judgments concerning personnel issues and thereby help to ensure fair and equitable conditions of employment in City service. The Personnel Board shall also review any proposed new personnel rules or any amendments to existing personnel rules and make recommendations related thereto to the City Council.

Section 11.2. Membership. The Personnel Board shall consist of seven (7) members appointed by the City Council, who serve at its pleasure. Members of the Personnel Board shall be residents of the City. No person shall be appointed to the Board who holds any salaried office or employment with the City. In appointing members, the City Council shall strive to include at least two (2) women and two (2) Ethnic minorities. No person appointed to the Board shall be counted as satisfying more than one of these criteria.

Section 11.3. Terms. The terms of office of the Personnel Board shall be for a period of three (3) years. The terms shall be staggered among the membership. The Board shall adopt rules of procedure and shall select a chairperson from among its members who shall act as its presiding officer.

Section 11.4. Vacancies, Removals. Vacancies on the Personnel Board shall be filled by appointment by the City Council for a full or unexpired term. Each member shall serve until his or her successor is appointed and qualified. A majority vote of the City Council shall be required to appoint or remove a member of the Board.

Section 11.5. Powers. The Personnel Board shall have the power to examine witnesses under oath. Each member of the Board shall have the power to administer oaths to witnesses.

The City Council shall, at the request of the Personnel Board issue subpoenas when necessary to compel attendance of witnesses at Personnel Board hearings or to require the production of evidence.

Section 11.6. Meetings. The Personnel Board shall hold regular meetings at such time and place within the City as designated by the chairperson. Any regular meeting may be adjourned to a time certain and to a place designated by the chairperson or by the Board pursuant to its rules. In addition, the Board may hold special meetings upon the call of the chairperson, a majority of the members of the Board, or the Assistant City Manager or his/her designee. A majority of the Board shall constitute a quorum for the transaction of business, and meetings shall be conducted in accordance with such reasonable and appropriate rules and procedures as may be adopted by the Board. Regular meetings of the Board may be canceled for lack of a quorum or at the request of either the Human Resources Administrator or the Board chairperson for a lack of significant issues to be considered.

All regular and special meetings of the Board shall be conducted in accordance with the Ralph M. Brown Act (Govt. Code Section 54950 et seq.).

ARTICLE XII. TERMINATION BASED ON MEDICAL CONDITION

Section 12.1. Purpose. This article is intended to provide a procedure for terminating employees who, for medical reasons, are unable to continue employment. These include, but are not limited to, employees who suffer injury, either on or off duty, resulting in an incapacity to perform job duties, or whose medical condition precludes the performance of job duties.

Section 12.2 Voluntary Termination. An employee who believes he or she is no longer capable of performing his or her essential job functions for medical reasons shall notify the Assistant City Manager or his/her designee. The employee will be terminated from City service. Where permitted by state law, the employee shall be retired. The employee, upon termination, shall receive such City benefits as may be applicable.

Section 12.3. Disagreement as to Medical Condition. If the City has reason to believe, based on competent medical evidence, that an employee cannot perform the essential functions of his or her job duties, the Assistant City Manager or his/her designee shall notify the employee that the City intends to terminate the employee based on the employee's medical condition. The notice shall be accompanied by all medical reports substantiating the determination and specifying a date of termination not less than ten (10) days from the date of the notice.

If the employee, prior to the date set for termination, disagrees with the decision to terminate, he/she may notify the Assistant City Manager or his/her designee and the termination will be held in abeyance until a final decision is made. The City Manager, or his/her designee, shall thereafter hold a hearing and receive from the employee such medical evidence as the employee may have demonstrating fitness for duty.

The City Manager may forward medical reports from the employee to a physician or physicians for review or may require the employee to undergo additional City paid examination to determine fitness for duty.

The City Manager shall notify the employee, in writing, of his or her decision. If the decision is termination, the employee shall be retired, if permitted by state law. The employee, upon termination, shall receive such City benefits as may be applicable. The decision of the City Manager shall be final.

If the employee is dissatisfied with the decision of the City Manager and wishes to seek judicial review, the 90-day limitations period provided in Code of Civil Procedure section 1094.6 shall apply. The City Manager's written decision shall include notice to the employee that the time within which judicial review must be initiated is governed by Code of Civil Procedure section 1094.6.