

CITY OF SAN MARCOS  
PERSONNEL RULES AND REGULATIONS  
SAN MARCOS PROFESSIONAL FIREFIGHTERS'  
ASSOCIATION (SMPFFA) EMPLOYEES

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## **SECTION 1.0 – GENERAL PROVISIONS**

### **1.1 Scope and Purpose of Sections**

#### **1.1.1 Purpose**

The purpose of this manual is to set forth basic procedures and policies which relate to the City of San Marcos personnel system in order to:

- 1.1.1.1 Facilitate efficient, economical and effective service to the public.
- 1.1.1.2 Attract, employ, develop, promote and retain employees based on merit and job performance.
- 1.1.1.3 Insure fair, equitable and uniform treatment of applicants and employees in municipal service.
- 1.1.1.4 Define the responsibilities, rights, privileges, benefits, obligations and prohibition placed upon all employees in the service of the City.

1.1.2 This manual will not take the place of common sense nor will it provide an answer to all personnel questions and issues that may arise within the City. If a provision of these Sections conflicts with any provision of an applicable collective bargaining agreement entered into by the City of San Marcos and a recognized employee organization, to the extent of such conflict, the provision of the collective bargaining agreement shall be deemed controlling unless the provision of these Sections has been negotiated more recently.

It is understood that the policies and procedures contained in this manual supersede any and all previously issued City policies, procedures, rules or instructions related to matters discussed herein, and this manual may be updated and revised, as needed, due to changing circumstances in accordance with the City's obligation to meet and confer with the Association when applicable. Notwithstanding the aforementioned, the Association reserves the right to enforce policies, past practices, and documents to the extent protected under the law.

1.2 Management Rights

The City Council/City Manager, and appointed Department Heads, maintain, keep, and control all rights to determine the mission of the City's constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; maintain the efficiency of governmental operations; determine the methods, means, and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

1.3 Responsibility of City's Personnel Officer

The City Manager is the individual responsible for all personnel matters within the City and, subject to the provisions of Ordinance 71-180, is the ex-officio Personnel Officer for the City. The City Manager may delegate any of the powers and duties conferred upon him or her as Personnel Officer to any other officer or employee of the City. The City Council appoints both the City Attorney and City Manager. All other employees are appointed by the City Manager. The City Manager is responsible for maintaining this manual in a current state.

1.4 Equal Employment Opportunity

It is the City's policy to seek the most qualified person for each position while providing an equal opportunity for all persons to compete for employment with the City. The City prohibits harassment or discrimination in employment on the basis of an individual's race, color, age, ancestry, national origin, citizenship status, marital status, pregnancy, political or religious affiliation, sex, gender, sexual identity, sexual orientation, any non-job-related physical or mental disability (whether perceived or actual), medical condition, or other functional limitation or any other basis protected by law, except where a bona fide occupational qualification so dictates.

The City will comply with Federal, State and local regulations in regard to equal opportunity to all qualified employees and applicants as to all terms and conditions of employment, including recruitment, appointment, compensation, training, promotion, retention, transfer, discipline, termination and all other personnel matters. Employees who believe they have experienced any form of harassment or discrimination are

encouraged to report this immediately as outlined in **DISCRIMINATION AND HARASSMENT POLICY**.

1.5 **Reasonable Accommodation**

The City provides employment-related reasonable accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act.

1.5.1 Request for Accommodation

An employee who desires a reasonable accommodation in order to perform essential job function(s) should make such a request in writing to Human Resources/Risk. The request must identify: a) the job related function(s) at issue; and b) the desired accommodation(s).

1.5.2 Reasonable Documentation of Disability

Following receipt of the request, Human Resources/Risk may require additional information, such as reasonable documentation of the existence of a disability.

1.5.3 Fitness for Duty Examination

The City, with reasonable cause, may require an employee to undergo a fitness for duty examination to determine whether the employee can perform the essential functions of the job with or without accommodation. The City may also require that a City-approved physician conduct the examination.

1.5.4 Interactive Process Discussion

After receipt of the results of a fitness for duty report and reasonable documentation of disability, the City will arrange for a discussion, in person or via telephone conference call, with the employee, and his or her representatives, if any. The purpose of the discussion is to work in good faith to fully discuss all feasible, potential reasonable accommodations.

1.5.5 Case-by-Case Determination

The City determines, in its sole discretion, whether reasonable accommodation(s) can be made, and the type of accommodation(s) to provide. The City will not provide accommodation(s) that would pose an undue hardship upon City finances or operations, or that would endanger the health or safety of the applicant, employee or

others. The City will inform the employee of its decision as to reasonable accommodation(s) in writing.

1.6 Merit System Policy

The personnel system within the City of San Marcos is operated on the merit system. The City Council and the City Manager have determined that it is in the public interest that all personnel are employed, promoted, demoted, disciplined or terminated based upon their job performance. Individuals will be hired based upon their qualifications for a particular position or job classification. Such individuals will be expected to perform the duties required and fulfill the responsibilities of that position. The City's merit system will attempt to be as flexible as possible to provide for the needs and requirements of each individual employee, but the primary purpose of the merit system is to create a smoothly operating municipal personnel system which provides services to the public in an efficient and economical manner (please refer to [SECTION 7.0 – COMPENSATION PROGRAM](#) for further information).

1.7 Amendment and Revision of Sections

1.7.1 The Human Resources/Risk Director shall review all suggested amendments or revisions to these Sections for appropriateness and consistency. The City Manager or his/her designee shall notify the exclusively recognized Employee Organization(s) in writing of any amendments which affect wages, hours and other terms and conditions of employment. Upon request, the City shall provide the opportunity to meet and confer with any recognized employee organization so requesting in accordance with [Resolution No. 88-2746, SECTION15.0 – EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS RESOLUTION](#). If the proposed amendment does not affect wages, hours and other terms and conditions of employment, the City Manager, at his or her sole discretion, may consult with the recognized employee organization for their suggestions and comments.

1.7.2 Following the above, the City Manager shall schedule the proposed amendment or revision as a resolution for consideration by the City Council at their regular public meeting. The City Manager shall make recommendations

to the City Council as to action which may be taken on the proposed modification. Any interested person may appear before the City Council and be heard prior to Council action on the City Manager's recommendation. The City Council may reject or adopt the amendment as submitted or refer proposed modifications back to the City Manager for further review and/or for input from the employee organization(s), if appropriate. Approved resolutions shall become effective immediately unless a different effective date is specified.

1.7.3 As provided in Section 3500 et. seq. of the Government Code, in cases of emergency, when the City Council determines that amendments(s) to these Sections must be adopted immediately without prior notice or meeting and conferring with the recognized employee organization, the City shall provide such notice and the opportunity to meet at the earliest practical time following the adoption of the amendment(s).

1.8 Violation of Sections

All employees are expected to abide by these Sections as required for continued employment with the City. Violation of the provisions of these Sections constitutes grounds for rejection of application, suspension, dismissal or other disciplinary action. Disciplinary action shall depend upon the nature of the violation, the circumstances surrounding the violation, the employee's prior work record and other relevant information and shall be carried out in accordance with [SECTION 13.0 - DISCIPLINARY ACTION](#).

1.9 Personnel Records and Reports

1.9.1 Service Record

The City maintains a personnel file on each employee. The file shall be maintained in Human Resources/Risk and shall contain materials that are necessary and relevant to the administration of the City's personnel program including, but not limited to, the name, title of position, department, employment status, salary and other employment information as may be considered pertinent.

1.9.2 Notifying the City of Changes in Personal Information

Each employee is responsible for updating personal information within five (5) calendar days through [MUNIS Employee Self Service](#) to notify Human Resources/Risk of any changes in relevant personal information, including:

Mailing Address  
Telephone Numbers  
Persons to Contact in Emergency  
Number and Names of Dependents

### 1.9.3 Medical Information

#### 1.9.3.1 Separate Confidential Files

All medical information about an employee or applicant is kept separately and is treated as confidential, in accordance with the Americans with Disabilities Act (45 U.S.C. section 12112(d)(3)(b)) and the California Confidentiality of Medical Information Act (Cal. Civil Code section 56 et seq.), and any other applicable state or federal law.

#### 1.9.3.2 Information in Medical Files

The City will not obtain medical information about an employee or applicant except in compliance with the California Confidentiality of Medical Information Act. To enable the City to obtain certain medical information, the employee or applicant may need to sign an "Authorization for the Release of Employee Medical Information" form, available through the Human Resources / Risk Management Department.

#### 1.9.3.3 Access to Medical Information

Access to employee or applicant medical information shall be strictly limited to only those with a legitimate need to have such information for City business reasons or if access is required by law, subpoena or court order. In the case of an employee with a disability, managers and supervisors may be informed regarding necessary restrictions on the work or

duties of the employee and necessary accommodations.

The City will not provide employee or applicant medical information to a third party (except as permitted under the California Confidentiality of Medical Information Act) unless the employee signs an "Authorization for the Release of Employee Medical Information" form as available through the Human Resources / Risk Management Department. The City will release only the medical information that is identified in the employee's authorization. If the employee's authorization indicates any limitations regarding the use of the medical information, the City will communicate those limitations to the person or entity to which it discloses the medical information.

#### 1.9.4 References and Release of Information in Personnel Files

- 1.9.4.1 Public Information - Upon request, the City will release to the public information about its employees as required by the Public Records Act. The City will not disclose personal information if it believes doing so would constitute an unwarranted invasion of personal privacy.
- 1.9.4.2 Reference Checks - All requests from outside the City for reference checks or verification of employment concerning any current or former employee must be referred to the Human Resources/Risk Director. Information will be released only if the employee signs an "Authorization for the Release of Employment Information" form as available on the City Intranet, except that without such authorization, the following limited information will be provided:

Dates of Employment  
Job Title

## Salary upon Departure

Department Heads and supervisors shall not provide information in response to requests for reference checks or verification of employment unless specifically approved by the Human Resources/Risk Director on a case-by-case basis.

1.9.4.3 Medical Information – Medical information will be released only in accordance with subsection [1.9.3](#) above.

## 1.9.5 Employee Access to Personnel File

1.9.5.1 Inspection of File - Employees will have the opportunity to inspect all materials placed in their own personnel file while on duty and shall have the right to provide comments to be attached to any materials placed therein. The employee shall make an appointment with Human Resources/Risk to review their personnel file at least one (1) working day in advance and the City shall honor their request. The review must be done in the presence of the Human Resources/Risk Director or designee. Employees may request removal or correction of material in their personnel file believed to be mistaken or unlawful. The City must respond to such a request within thirty (30) calendar days.

1.9.5.2 No adverse comments shall be placed in any personnel file, or any other file used for any personnel purposes, without the employee having first read and signed the instrument containing the comment. If the employee refuses to sign the instrument, that fact shall be noted and signed or initialed by the employee (ref. [Firefighter Bill of Rights](#)).

1.9.5.3 Copies - On request, an employee is entitled to receive a copy of any employment-related document he or she has signed. An employee who wishes to receive such a copy should contact the Human Resources/Risk Director. The employee shall acknowledge receipt of the material by signature.

1.9.6 Destruction of Records

Service records, examination results and all related records will be retained permanently. All other Human Resource records, such as applications, examinations, correspondence, reports, etc. may be destroyed after a specified period of time as determined by the City's Records Retention Policy.

1.10 Severability

If any section or portion of any section of these Sections is found to be illegal, the balance of these Sections shall not be affected and shall remain in full force and effect.

## **SECTION 2.0 – DEFINITIONS**

In order to provide a mutual understanding and agreement in terminology, the following term used in these Sections are understood to have the following meanings:

2.1     Actor

An employee working out-of class for a short duration (usually less than 24 hours) assignment. There is no additional compensation for working as an actor. An employee must be on the eligibility list in order to be eligible to work as an actor in a position.

2.2     Administrative Leave

Absence with full pay and benefits, ordered by the City Manager based upon the recommendation of the Department Head, when the City's interests require the employee to be away from the job.

2.3     Advancement

A salary increase within the limits of the merit and longevity pay ranges established for a classification.

2.4     Allocate

The assignment of a single position to its proper class in accordance with the duties performed and the authority and responsibilities exercised.

2.5     Anniversary Date

(1) The date that signifies the completion of each year of service by a regular employee in a position.  
(2) The date an employee starts his or her probationary period for either original, promotional, or change in classification appointments.

2.6     Applicant

Any person who has successfully completed and submitted an employment application for a position for which the City is currently recruiting.

2.7     Appointing Authority

The City Manager.

2.8     Appointment

The selection of, and acceptance by, an applicant to occupy an authorized position in the service of the City.

2.9 **Association Leave Bank**  
Further information can be found in [MOU Article VI, Section 15 – Association Leave Bank.](#)

2.10 **Bid System**  
Further information can be found in [MOU Article III, Section 2 – Bid System of Station Assignments.](#)

2.11 **Candidate**  
A person who has applied for and meets the qualifications of the position.

2.12 **City**  
The City of San Marcos, California.

2.13 **City Council**  
The City Council of the City of San Marcos, California.

2.14 **City Manager**  
The City Manager or his or her designated representative.

2.15 **Class Specification / Job Description**  
A written statement of the duties and responsibilities of the position(s) in the class, illustrated by examples of typical tasks, and of the qualification requirements of the position(s) in the class as determined by Human Resources/Risk.

2.16 **Classification or Class**  
All positions sufficiently similar in duties, authority and responsibility to permit grouping under a common title in the application of equity of common standards of selection, transfer, demotion and salary.

2.17 **Closed Promotional Recruitment**  
A competitive selection process for a particular class in which only those persons presently employed full-time by the City meeting the minimum qualifications for the class may participate. An employee must have completed his or her initial probationary period with the City to be eligible to participate in a closed promotional recruitment process.

2.18 COBRA Rights

Consolidated Omnibus Budget Reconciliation Action of 1985 provides eligible employees and their qualifying dependents with the right to continue health care coverage.

2.19 Compensation

The salary, wage, allowances, fringe benefits and other forms of valuable compensation earned by or paid to any employee by reason of employment with the City.

2.20 Core Values

**Leadership**

- We value the development and application of all personnel's leadership skills.
- We believe that leadership occurs at all levels of the organization and is everyone's responsibility.

**Integrity**

- We do the right thing – ethically, honestly and with integrity – always.
- We treat each other and the public with respect based on mutual trust and open communication.

**Safety**

- We recognize San Marcos Fire Department employees as our most valuable resource.
- We believe our health and safety are essential to fulfilling the department's mission.

**Competency**

- We embrace accountability for the quality of services the department provides to the community.
- We take responsibility for developing and training ourselves and each other.

**Customer Service**

- We treat all customers with respect, dignity, fairness and compassion.
- We are responsive to the changing needs of our community.

2.21 Days

Means calendar days, unless otherwise stated.

2.22 **Demotion**  
The movement of an employee from one class to another class having a lower maximum base rate of pay and an equivalent decrease in the required duties, skills, and qualifications.

2.23 **Department**  
An organizational unit with responsibility for carrying out a function or variety of functions under the supervision of a Department Head.

2.24 **Department Head**  
The individual who administers the operations of a City Department and who is directly responsible to the City Manager for the performance of the department.

2.25 **Discharge / Dismissal**  
The termination of an employee from City service by the City Manager.

2.26 **Disciplinary Action**  
The discharge/dismissal, demotion, reduction-in-salary, or suspension of an employee with the objective of obtaining employee compliance with Sections, orders, procedures, standards of conduct and/or expected job performance when non-disciplinary corrective actions do not achieve compliance, or a particular event is serious enough to warrant disciplinary action on its own.

2.27 **Dismissal / Discharge**  
The termination of an employee from City service by the City Manager.

2.28 **Division Head**  
The individual who administers the operation of a City Division and who is directly responsible to the Department Head for the performance of the division.

2.29 **Eligibility List**  
A list of qualifying candidates who have competed for a position and who have been ranked according to their respective qualifying score.

2.30 **Eligible**  
A person whose name is on an eligibility list.

2.31 **Employee**  
A person employed to fill an authorized City position. An employee is either a full-time or part-time employee. The term employee used in these Sections, shall refer to full-time (unless otherwise modified by the term part-time) employees, employed by the City of San Marcos.

2.32 **Entry Level**  
The initial position in a class series.

2.33 **Examination**  
A selection technique used to measure qualifications, skills and knowledge of the applicants applying for a position with the City.

2.34 **Evidentiary Review**  
An administrative review of disciplinary actions or violations of the personnel Sections conducted by the City Manager in which disputing parties present appropriate documents, records and testimony.

2.35 **Fire Department**  
The City Department responsible for providing emergency life safety services.

2.36 **Fiscal Year**  
July 1 to June 30.

2.37 **Flex-time**  
A work schedule that equals eighty (80) hours per pay period, although the hours worked may not be from 8:00 a.m. to 5:00 p.m. daily or scheduled Monday through Friday. Fire employees may be placed on such a schedule when participating in the [City's Transitional Return To Work \(TRTW\) Program](#).

2.38 **Grievance**  
A complaint by an employee or group of employees arising out of the application or interpretation of existing Sections, regulations, policies or practices.

2.39 **Incumbent**  
An employee assigned to a position.

2.40 **Interrogation**  
A discussion or questioning by a supervisor, or other person designated by the Department, for the purpose of conducting an investigation.

2.41 **Job Description / Class Specification**  
A written statement of the duties and responsibilities of the position(s) in the class, illustrated by examples of typical tasks, and of the qualification requirements of the position(s) in the class as determined by Human Resources/Risk.

2.42 **Layoff**  
The separation of one or more employees from the active work force due to lack of funds, organizational change or lack of work.

2.43 **Leave of Absence**  
An approved absence from duty, with or without pay, which is granted by the City Manager when in his or her opinion such leave is warranted.

2.44 **Limited Term Appointment**  
Further information can be found in [MOU Article V, Section 17 – Out-of-Class Assignments.](#)

2.45 **Management Rights**  
The rights of managers appointed by the City Council or the City Manager to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

2.46 **Memorandum of Understanding**  
A binding agreement of wages, hours, benefits, and other conditions of employment for designated classes between the bargaining units and the City that have been adopted by the City Council.

2.47 **Merit System**  
The City's personnel system, which utilizes job performance in all decisions relative to employment, promotions, demotions, disciplinary actions and dismissals/discharges.

2.48 **Minimum Qualifications**  
Mandatory requirements established for a specific class.

2.49 **Mission Statement**  
The mission of the San Marcos Fire Department is to provide the highest level of customer service by protecting life, property, and the environment, through the delivery of innovative, fiscally responsible and ethical emergency services in our community.

2.50 **Nine-Eighty (9/80) Work Schedule**  
Effective until June 30, 2016, employees with accommodating work duties and responsibilities will work eighty (80) hours in a two week pay period but will do so over nine (9) days instead of the usual ten (10). This will allow the closure of the majority of City facilities on alternating Fridays. NINE-EIGHTY (9/80) WORK SCHEDULE POLICY and MOU Article VI, Section 18 outlines the policies and procedures implementing this work schedule. Fire employees may be placed on such a schedule when participating in the City's Transitional Return To Work (TRTW) Program.

2.51 **Open Competitive Recruitment**  
A competitive selection process for a particular class, which shall be open to all applicants who meet the minimum qualifications for the particular classification for which the recruitment is to be held.

2.52 **Open-Until-Filled Recruitment**  
An open competitive selection process for a particular class, which is conducted on an "open-until-filled" basis. The recruitment does not have a specified filing period but continues at the discretion of the Human Resources/Risk Director. Examinations may be given repeatedly and names placed on eligibility lists on a continuous

basis. The names of all eligible candidates who took the same test on different dates shall be ranked by score on one eligibility list.

2.53 **Overtime**

For 56-hour employees – Time worked in excess of 192 hours in a 24-day FLSA work period.

2.54 **Paid Leave**

The use of earned time such as earned sick leave and vacation by an employee with approval from the Department Head and the City Manager.

2.55 **Performance Evaluation**

An evaluation conducted by the immediate supervisor, Department Head or City Manager of an employee's job performance within the position and classification assigned. Each employee will be evaluated at least once annually.

2.56 **Position**

A group of duties and responsibilities in the competitive service requiring the full-time employment of one person.

2.57 **Probationary Employee**

An employee serving a probationary period, following an initial probationary appointment with the City or a promotion to a higher classification.

2.58 **Probationary Period**

A one-year period to be considered an integral part of the examination, recruiting, testing and selection process during which an employee is required to demonstrate the fitness for the position to which the employee is appointed by actual performance of the duties of the position.

2.59 **Promotion**

The movement of a qualified employee from one class to another class having a higher maximum base rate of pay and greater job responsibilities.

2.60 **Reasonable Suspicion**

A belief based on objective facts sufficient to lead a reasonable, prudent supervisor to suspect that an employee is under the

influence of drugs or alcohol, so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his or her job safely is reduced.

2.61 **Reassignment**

The movement of an employee from one position to another position within the same classification.

2.62 **Reclassification**

A change in allocation for a position from one class to another existing class or to a new class based on substantial changes in duties, and/or responsibilities.

2.63 **Reduction-in-Salary**

The reduction in an employee's salary from one rate to a lower rate within the established salary schedule for that employee's classification due to a disciplinary action.

2.64 **Regular Employee**

An employee who has successfully completed his or her probationary period and has received a regular appointment.

2.65 **Registered Domestic Partner**

An employee's registered partner as certified by a copy of the State of California certification for Registered Domestic Partners. Such a partner has the same benefit status as a "spouse."

2.66 **Reinstatement**

The re-employment of an employee who has regular status in a class and who resigned from the City in good standing. Such action must have approval of the City Manager.

2.67 **Resignation**

The voluntary separation of an employee from employment with the City, made at the request of the employee, preferably in writing.

2.68 **Salary Schedule**

A set of basic salary ranges assigned to specific classes of positions in the City service and as approved by the City Council. [The City's current Salary Schedule can be found here.](#)

2.69 Seniority

The seniority date shall be based upon the original date of hire for regular City employees or, in cases where there has been a break in continuous employment (except due to layoff), the most recent date of hire for regular City employment.

- (a) “Department Seniority” is defined as an employee’s most recent period of unbroken, continuous regular paid service with the Department.
- (b) “Classification Seniority” is defined as the period of service in the employee’s classification. Employees shall not attain classification seniority until completion of the probation period in that classification.

2.70 Suspension

The temporary separation from City service of an employee with or without pay for disciplinary purposes or pending investigation of charges.

2.71 Transfer

A change of an employee from one position to another position in the same class or another class having the same maximum salary limits, involving the performance of similar duties and requiring the same basic qualifications.

2.72 Work Period

56-hour employees have a twenty-seven (24) day work period consisting of 182 regular hours and 10 overtime hours for a total of 192 (8 24- hour shifts). Work periods will be calculated beginning Tuesday, January 7, 2015, at 0800 hours.

2.73 Workweek

A regularly recurring period of 168 consecutive hours – seven (7) consecutive 24-hour periods. The workday can begin and end at any hour of the day as determined by the Department Head, subject to approval by the City Manager.

## **SECTION 3.0 – CLASSIFICATION PLAN**

The purpose of the classification plan is to provide a complete and continuous inventory of all classifications in the City service and to provide accurate descriptions and specifications for each class.

### **3.1 Preparation of Plan**

The City Manager shall prepare and maintain a classification plan. The class title will be the official designation of an individual position or group of positions, which are approximately equal in difficulty and responsibility, sufficiently similar with respect to duties, responsibilities, authority and character of work to permit grouping under that title. Classes shall be arranged in series whenever possible.

### **3.2 Contents of Class Specifications**

A class specification will be a written record providing the title and definition of a class, a listing of illustrative examples of duties to be performed and the qualifications necessary for consideration of appointment. The class specifications will be descriptive and explanatory but not restrictive. The class specifications will not be construed as limiting the assignments or duties of any position, nor as limiting or modifying the power of the appointing authority to direct and control the work of employees under his or her supervision.

### **3.3 Allocation of Positions**

The City Manager shall allocate each position to a class as established by the plan.

### **3.4 New Positions and Reclassifications**

Only the City Manager may authorize new positions. No new position or class will be filled until the classification and salary plans have been amended to provide for the new position and approval has been granted by the City Council. The duties of positions, which have changed materially as determined by the City Manager, may be reviewed and reclassified to a more appropriate class. No reclassifications will be effective until approved by the City Manager.

### **3.5 Revision of the Classification Plan**

The City Manager, with the approval of the City Council, may create new classes, revise or abolish existing classes and adjust salary ranges in order to meet the changing requirements of municipal government.

### 3.6 Maintenance of the Classification Plan

The Human Resources/Risk Director shall be responsible for the maintenance of the Classification Plan. The Human Resources/Risk Director shall be responsible for conducting classification studies in the following circumstances:

- 3.6.1 When notified by the City Manager that new positions are being authorized.
- 3.6.2 When notified by a Department Head that the duties and responsibilities of a position or group of positions may be improperly classified or have undergone significant change.
- 3.6.3 Periodically or as a need arises, to review a certain position or group of positions in the City service.
- 3.6.4 When an incumbent has reason to believe that his or her position has evolved because of a gradual growth of duties to an assignment that may be outside the regular classification, he or she may initiate a request for review through the Human Resources/Risk Director by completing a [Request for Classification Study" form.](#)
- 3.6.5 Upon receipt of a reclassification request related to the position and its proper class and not to the incumbent's qualifications for appointment to the reclassified position.
- 3.6.6 If Human Resources/Risk approves the reclassification, the reclassification and new pay range will be in effect the first pay period after approval of the reclassification study. There will be no retroactive compensation unless required by law.
- 3.6.7 Further information can be found in [MOU Article V, Section 1 – Salaries.](#)

## **SECTION 4.0 – RECRUITMENT AND SELECTION**

### **4.1 Fair Employment Practices**

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 shall be used which, in the opinion of the Human Resources/Risk Director, is not justifiably linked to successful job performance.

### **4.2 Recruitment Process**

The techniques utilized in the selection process will be impartial and practical in nature. The City Manager shall determine the techniques which relate to subjects that fairly measure the relative capacity of applicants to execute the duties and responsibilities of the position sought. The determination of the type of recruitment to be conducted shall be made by the Human Resources/Risk Director. Recruitments may be conducted in any of the following manners:

- 4.2.1 Open Competitive** - Open competitive recruitments shall be those in which any individual may apply.
- 4.2.2 Closed Promotion** - Closed promotional recruitments shall be those in which any regular City employee who has passed the original probationary period may apply. The procedures outlined in **SECTION 4.7** below will be utilized for closed promotional recruitments.
- 4.2.3 Open-Until-Filled** - An open competitive recruitment may be conducted on an “open until filled” basis, when deemed necessary by the Human Resources/Risk Director. An Open Until Filled recruitment does not have a specified filing period, but continues at the discretion of the Human Resources/Risk Director. Examinations may be given repeatedly and names placed on eligibility lists on a continuous basis. The names of all eligible candidates who took the same test on different dates shall be ranked by score on one eligibility list.

### **4.3 Job Announcements**

All positions, which become vacant and are not subject to a closed promotional recruitment, will be published and advertised by posting

announcements in City Hall, on the internet, or other public places. If the City Manager deems it advisable, the job announcement may also be published in newspapers and professional and trade publications. The announcement will specify at a minimum, the job title, salary range, minimum qualifications, the opening and closing.

4.4 Applications

- 4.4.1 Application shall be made as prescribed on the announcement. Application for employment with the City of San Marcos shall be made on standardized forms which request information pertinent to the applicant's background in order to determine the eligibility of the applicant. Additional documentation such as supplemental questionnaires, certificates, licenses, records, etc., may be required at time of application as determined by the Human Resources/Risk Director.
- 4.4.2 Applicants shall file a separate, complete, signed application form for each recruitment. Applicants shall complete application forms in sufficient detail to allow comprehensive review and evaluation and shall certify the truth of all statements contained on the application.
- 4.4.3 Any false statement or willful omission of information on the application form may be grounds for rejection of the application or subsequent discharge of the employee.
- 4.4.4 In order to be considered for a position, the application must be signed by the applicant and received in Human Resources/Risk within the filing period prescribed on the job announcement. Such filing periods may be extended as deemed necessary by the Human Resources/Risk Director. Application through the mail may be accepted if received in Human Resources / Risk by the close of business on the final filing date. Human Resources/Risk shall mark each application as to the date of receipt.

- 4.4.5 No facsimile applications are accepted.
- 4.4.6 Accurately completed application packets are the sole responsibility of the applicant. Defective/incomplete applications may be returned to the applicant with notice to amend the same within a determined timeframe, providing the time limit for receiving applications has not expired, subject to the discretion of the Human Resources/Risk Director. Minor defects or omissions in an application on file may be corrected at the discretion of the Human Resources/Risk Director.
- 4.4.7 Applications filed in Human Resources/Risk shall become the property of the City and will not be returned to applicants.

#### 4.5 Rejection and/or Disqualification of Application

The Human Resources/Risk Director may reject an application, disqualify an applicant in any phase of the examination, or refuse to place a name on an eligibility list for nondiscriminatory reasons. The following list, while not all- inclusive, provides reasons that may be appropriately used to reject or disqualify an applicant.

- 4.5.1 The application indicates on its face that the applicant does not possess the minimum requirements established for the examination or position for which application has been made.
- 4.5.2 Failure to submit a complete and/or signed application correctly or within the specified time limits.
- 4.5.3 The applicant is a relative or member of an employee's household, and is subject to [SECTION 4.13 - Employment of Relatives and Household Members](#).
- 4.5.4 False statement or omission of any material fact or attempted deception or fraud in the examination process.
- 4.5.5 Physical or mental inability to perform the essential duties of the classification, with or without reasonable accommodation if disabled.

- 4.5.6 The applicant is a current user of illegal drugs.
- 4.5.7 Conviction of a crime, either a misdemeanor or felony, which renders the applicant unsuitable for a position in the classification.
- 4.5.8 Directly or indirectly obtaining information regarding the examination to which the applicant is not entitled.
- 4.5.9 Use or attempted use of political pressure or bribery to secure an advantage in the examination or appointment.
- 4.5.10 Failure to reply to communications concerning availability for employment.
- 4.5.11 Applicant has requested that his or her name be withheld from consideration.
- 4.5.12 Applicant has requested that his or her name be withheld from consideration.
- 4.5.13 The applicant has had his or her privilege to operate a motor vehicle in the State of California suspended or revoked, if driving is job related.
- 4.5.14 For any material cause which in the judgment of the City Manager would render the applicant unsuitable for the position, including a prior resignation from the City, termination from the City, or a significant disciplinary action.

If an applicant is rejected or deemed disqualified for any reason, the Human Resources/Risk Director will notify the applicant in writing at his or her last known address, of the action taken. An applicant has the right to respond orally or in writing within five (5) working days from the date of mailing to the Human Resources/Risk Director, with no further right of appeal.

#### 4.6 Criminal Convictions

Convictions, including pleas of guilty and nolo contendere, (a plea that does not explicitly admit guilt but subjects the defendant to punishment) may disqualify an applicant from employment by the City. Criminal convictions do not necessarily disqualify individuals

from employment with the City. In determining whether an individual with a conviction is disqualified, the Human Resources/Risk Director will consider the following factors:

- 4.6.1 The employment classification to which the person is applying, including its sensitivity.
- 4.6.2 Nature and seriousness of the conduct.
- 4.6.3 The length of time since the conduct.
- 4.6.4 The age of the individual at the time of conduct.
- 4.6.5 Circumstances surrounding the conduct.
- 4.6.6 Contributing social or environmental conditions.
- 4.6.7 The presence or absence of rehabilitation or efforts at rehabilitation.

4.7 Closed Promotional Recruitments

When conducting closed promotional recruitments, the following procedure is utilized to provide all employees an opportunity to apply for promotions:

- 4.7.1 The City will post each promotional recruitment flyer on a specified bulletin board at each City facility as soon as possible once the position has been opened.
- 4.7.2 The City will leave each promotional recruitment open for a period of not less than ten (10) calendar days.
- 4.7.3 The City will make a good faith effort to provide applications and flyers to employees within the affected Department that might qualify for the promotional opportunity.
- 4.7.4 The City will make a good faith effort to apprise any employee in the affected Department out on a recognized leave, including Workers' Compensation, vacation leave, sick leave, or other applicable leave that the opening

exists if the employee has provided the Department with means of contact.

- 4.7.5 It is the responsibility of employees on such leaves, as listed in [SECTION 4.7.4](#) above, to provide the Department with the means to contact them should such an opening occur and to contact the Department every five (5) calendar days to determine if an opening exists.
- 4.7.6 The City has no obligation to extend the recruitment period based on an employee's inaccessibility resulting from the absence(s) listed in [SECTION 4.7.4](#) above.
- 4.7.7 Employees who have completed their probationary period with the City may participate in a closed competitive examination for the promotion. Such employees must meet the minimum qualifications for the applicable position.

#### 4.8 Examination Process

- 4.8.1 The City Manager shall determine the manner and method by which the examinations will be prepared and administered. The City Manager may contract with any competent agency or individual for the performance of such examinations. In the absence of such contract, the City Manager shall perform such duties.
- 4.8.2 Examinations shall consist of one or more recognized personnel selection techniques: application review, training and experience evaluation, written tests, personality assessments, qualification appraisal boards, skills assessment centers, performance demonstrations, psychological evaluations, physical ability tests, evaluations of work samples, medical examinations, background investigations, fingerprinting at the State and/or Federal levels, as appropriate, or any combination of these or other tests. The probationary period, which may include the evaluation of daily work performance and work samples and the successful completion of prescribed training,

shall be considered as an extension of the examination process.

- 4.8.3 Where permitted and/or required by law, medical tests, including testing and screening for alcohol and substance abuse, will be made a part of all examinations. No employee will hold any position unless he or she will be physically and mentally able to perform fully the essential job duties of such position without hazard to themselves or others.
- 4.8.4 Examinations will be conducted in accordance with the City's fair employment policy. In conducting examinations, there will be no consideration of race, color, age, ancestry, national origin, citizenship status, marital status, pregnancy, political or religious affiliation, sex, gender, sexual identity, sexual orientation, any non, job-related physical or mental disability (whether perceived or actual), medical condition, or other functional limitation or any other basis protected by law, except where a bona fide occupational qualification so dictates.

4.9 Scoring of Examinations

The Human Resources/Risk Director shall establish a procedure for scoring each examination. A candidate's score in a given examination will be the score or combination of scores attained on each part of the examination. Failure in one part of the examination may be grounds for declaring such applicant as failing in the entire examination, or as disqualified for subsequent parts of an examination. The Human Resource Director may include, as part of the examination, tests, which are qualifying only, and establish a minimum passing score. Applicants for a position will be notified of the results of the examination in writing.

4.10 Examination Review

For a period of thirty (30) calendar days immediately following the completion of the examination process, candidates may receive feedback from Human Resources/Risk regarding their performance during the testing process. Rating records of interviews or performance demonstrations such as assessment centers or qualification appraisal boards are confidential and may not be reviewed by candidates. However, verbal feedback regarding rating records may be provided upon request to individual candidates,

provided such requests are made according to the timeline indicated for examination review. Candidates shall not copy any examination materials.

#### 4.11 Eligibility List

- 4.11.1 If the City Manager deems it advisable, an eligibility list consisting of names of candidates who qualified in the examination may be kept on file. A candidate will be deemed qualified if the candidate achieved a ranking meeting or exceeding an established passing point on the examination. Eligibility lists are confidential and the relative ranking and scores of candidates on a list shall not be disclosed. The eligibility list will be maintained for a period of two years. With City Manager approval, the eligibility list may be extended. Applicants may be selected from the list without additional advertising.
- 4.11.2 Names appearing on the eligibility list will be submitted to the Department Head as technically qualified candidates. When selecting a final candidate to fill a vacancy, the Department Head will not consider race, color, age, ancestry, national origin, citizenship status, marital status, pregnancy, political or religious affiliation, sex, gender, sexual identity, sexual orientation, any non, job-related physical or mental disability (whether perceived or actual), medical condition, or other functional limitation or any other basis protected by law, except where a bona fide occupational qualification so dictates.
- 4.11.3 Applicants whose names appear on the eligibility list are not guaranteed a position. Upon discovery that an omission or error has occurred in the preparation of an eligibility list, a corrected list shall be prepared by the Human Resources/Risk Director. The City Manager may reject all applications.

#### 4.12 Selection

Once the Department Head or designee has selected a candidate, the Human Resources/Risk Director will be notified to extend an offer of a probationary position. Only the Human

Resources/Risk Director, Fire Chief or designee is authorized to extend an offer of City employment. The new employee will report to Human Resources/Risk on the employee's first day on the job for orientation and processing.

4.13 Employment of Relatives and Household Members

- 4.13.1 Federal and State laws and regulations require public and private agencies to ensure that hiring and other personnel actions take place in an open and objective manner and that applicants are not discriminated against due to race, color, age, ancestry, national origin, citizenship status, marital status, pregnancy, political or religious affiliation, sex, gender, sexual identity, sexual orientation, any non, job- related physical or mental disability (whether perceived or actual), medical condition, or other functional limitation or any other basis protected by law, except where a bona fide occupational qualification so dictates.
- 4.13.2 Relatives or household members are eligible for employment by the City. However, it is the policy of the City to prevent family relationships and relationships involving members of the same household from adversely influencing employment selections, job assignments, promotions, performance evaluations and other personnel matters.
- 4.13.3 The City has an obligation to avoid the appearance of patronage and favoritism and to avoid sanctioning employment relationships, which have the potential for creating adverse impact on supervision, safety, security or morale or involve potential conflicts of interest. Therefore, the City may prohibit relatives or household members from working in the same department, division or City facility. The following definitions apply for this policy:
  - 4.13.3.1 "Relative" means spouse, California registered domestic partner, child, step-child, parent, step-parent, grandparent, step-grandparent, grandchild, step- grandchild, brother, half-brother, step-brother, sister, half- sister, step-sister, aunt,

uncle, niece, nephew, cousin, parent-in-law, brother-in-law, sister-in-law, and any other persons related by blood or marriage or by means of a “foster” relationship.

4.13.3.2 “Spouse” means two persons who have a valid marriage and who are wife and husband, or two people who are registered domestic partners, as California Law defines that term.

4.13.3.3 “Household Member” means any individual currently residing at the same residence as the employee.

4.13.3.4 “Supervisory Relationship” means one in which one- employee exercises the right to control, direct, reward, or discipline another by virtue of the duties and responsibilities assigned to his or her City appointment.

4.13.3.5 “Employee,” for purposes of this section only, is one who receives a City payroll check for services rendered.

4.13.4 This policy is intended to prevent, but is not limited to, the following:

4.13.4.1 Situations that might result in unfair preferential treatment of other employees and/or the public;

4.13.4.2 Professional decisions that might be disadvantageous for the operations of the City;

4.13.4.3 An employee being in a position to supervise, control or influence a relative or household member; and

4.13.4.4 An employee having access to the personnel file and other confidential information of a relative or household member.

4.13.5 Policy as to Relatives

A Department Head has discretion not to appoint, promote or transfer a person to a position within the same department in which the person's relative already holds a position, when such employment would result in any of the following:

- 4.13.5.1 A direct or indirect supervisory relationship;
- 4.13.5.2 The two employees having job duties which require performance of shared duties on the same or related work assignment;
- 4.13.5.3 Both employees having the same immediate supervisor; or
- 4.13.5.4 A potential for creating an adverse impact on supervision, safety, security, morale or efficiency that is greater for relatives than for unrelated persons.

4.13.6 Policy to Employees Who Become Spouses or Domestic Partners

- 4.13.6.1 If two City employees who work in the same department become spouses or domestic partners, the Department Head has discretion to transfer one of the employees to a similar position in another department. Although the wishes of the employees in question will be given consideration, the Department Head retains sole discretion to determine which employee is to be transferred based upon City needs, operations, or efficiency. Notwithstanding any provision in these Sections, any such transfer that results in a salary reduction is not disciplinary and is not subject to any appeal or grievance.
- 4.13.6.2 If continuing employment of both employees cannot be accommodated in a manner the Department Head finds to be consistent with the

City's interest in the promotion of safety, security, morale, and efficiency, then the Department Head retains sole discretion to separate one employee from City employment. Notwithstanding any provision in these Sections, any such separation is not considered to be disciplinary and is not subject to any appeal or grievance.

4.13.6.3 If two employees become subject to the restrictions of this policy after they are hired, the City will meet with the affected individuals and their representative(s) and make reasonable efforts to reassign one of the affected individuals to a different position or area within the City. If a reasonable accommodation is not reached and a legitimate business reason exists, the City may require, at its sole discretion, one of the affected employees to end his or her employment with the City. The decision regarding which employee will end employment with the City will be at the discretion of the affected employees.

#### 4.14 Physical/Mental Requirements

The City shall require that all applicants and employees be in such physical or mental condition to perform the duties of their jobs and may require medical or psychological evaluation at City expense. No employee shall hold any position in a classification in which he/she cannot physically or mentally perform the duties of the position at a satisfactory level or without hazard to him/her self or others. Within the limitations indicated below, the City's policy shall be to make such efforts as are consistent with the provisions of these Sections to place physically disabled employees in such positions as are available in the City service where their disabilities will not affect their performance of duties, their safety or the safety of others. The employees' length of service, nature of past performance and the availability of openings may be considered in placing disabled employees.

#### 4.15 Residency Requirement

Safety employees must reside in the local counties of San Diego, Riverside, Orange and Los Angeles.

## **SECTION 5.0 – APPOINTMENTS AND PROBATIONARY PERIODS**

### **5.1 Types of Appointments**

- 5.1.1 Probationary - Shall be the appointment of a person to an authorized position which the employee must serve a probationary period of a certain designated time span to demonstrate fitness for the position.
- 5.1.2 Regular - Shall be the appointment of a person who has satisfactorily completed his or her probationary period in an authorized position.
- 5.1.3 Out-of-Class (Acting) - Shall be the temporary assignment of a regular or probationary employee to a higher-level classification to fill a position on a temporary basis. To be eligible for an Acting out-of-class assignment, the employee must have passed the most recent promotional examination for the higher level position and be on a current eligibility list. The Duty Chief must approve all Acting out-of-class assignments in advance. There is no out-of-class pay for Acting assignments. An Acting assignment shall normally be for a maximum duration less than 24 hours. Employees assigned to an Acting assignment shall not acquire a property interest or seniority in the elevated classification.
- 5.1.4 Out-of-Class (Limited Term) - Shall be the temporary assignment of a regular employee to a higher-level classification to fill a vacant position or to provide a replacement for an employee who remains on a leave of absence. To be eligible for an out-of-class assignment, the employee must have passed the most recent promotional examination for the higher level position and be on a current eligibility list. The Fire Chief and the City Manager must approve all out-of-class assignments in advance. Once approved, the out-of-class pay will begin at the first hour of the out-of-class assignment and will continue through the duration of the assignment. An out-of-class assignment shall only be made for periods of thirty (30)

calendar days or more, and shall last for a maximum duration of one (1) year. Employees assigned to an out-of-class assignment shall not acquire a property interest or seniority in the elevated classification. "Out of Class" appointments may end at any time without advance notice or right of appeal (refer to [Personnel Manual Section 100.02](#)).

5.2 Probationary Period

- 5.2.1 The probationary period will be used as an aspect of the examination process. The objective is to observe the employee's performance and to provide the new employee a chance to receive immediate feedback and direction from their Department Head regarding performance. Informal review (i.e., feedback concerning the employee's job performance) will occur on an on-going basis during the probationary period.
- 5.2.2 All original appointments, other than closed promotional appointments, will be tentative and subject to a probationary period of twelve (12) months. The probationary period is an extension of the examination process, and the employee's performance shall be carefully observed. Periods of time on paid or unpaid leave (excluding approved vacation time off) totaling four (4) consecutive twenty-four (24) hour shifts or more during a probationary period will not be included for the purpose of completing the probationary period.
- 5.2.3 During the probationary period, the employee may be dismissed at any time without cause and without right of appeal, grievance or hearing. Notification of termination shall be in writing and shall be given to the probationary employee with a copy placed in the employee's permanent personnel file. Rationale for rejection will be in accordance with the City's fair employment policy. The probationary employee shall be notified prior to the expiration of the probationary period that he or she has

been rejected for regular appointment. A liberty interest hearing will be provided when required by law.

5.2.4 When circumstances merit, upon City Manager's approval, the probationary period may be extended. Such extension shall be for not longer than six (6) months. If the Department Head or designee determines that the probationary period should be extended, the probationary employee shall be given notice in writing prior to the expiration of the original probationary period. If the employee's probationary period is extended, the employee will not be eligible to receive a merit or step increase until his or her probationary period has been successfully completed.

5.3 Probationary Period for Promotions

5.3.1 Employees who are promoted will undergo a twelve (12) month probationary period in the new position.

5.3.2 An employee who does not pass his or her promotional probationary period will be afforded the opportunity to be demoted back to his or her original position; provided, however, that if the cause for not passing probation was sufficient grounds for termination, the employee shall be subject to termination without reinstatement to the lower position. Such termination shall be subject to discipline procedures as contained in these Sections.

5.3.3 An employee retains the right to return to his or her former position until the probationary period is over. Once the employee passes probation, he or she forfeits the right to return to the former position.

5.4 Probationary Period for Demotions

A new probationary period need not be served when demoting to a classification in which an employee previously held regular status, or to a lower classification in the same classification in that classification series.

## 5.5 Orientation and Training

- 5.5.1 The Human Resource/Risk Division and Fire Department shall jointly orient new employees, initially upon hire, as to City policies, procedures, and benefits. Each employee will be responsible for being familiar with the policies in these manuals.
- 5.5.2 The Fire Department shall acquaint employees with all aspects of the job function as described in a job description. Training courses and conferences are available which will benefit the City and the employee.
- 5.5.3 Upon approval of the Fire Chief, employees may be permitted to attend conferences/training sessions that will provide a benefit to the City and the City will pay for costs associated with those conferences/training sessions. All expenses for such training programs will be placed in the budget and must be accounted for in detail.

## **SECTION 6.0 – EMPLOYEE PERFORMANCE EVALUATION**

### **6.1      Policy**

Performance evaluations are an essential tool to be utilized toward meeting the goal of delivering services effectively and efficiently. It is the policy of the City that regular reports are made as to the efficiency, competency, conduct and merit of its employees. To this end, it is the responsibility of the City Manager, the Department Heads and their subordinate supervisors that these ratings are made and that they are made in a timely manner.

### **6.2      Initial Probationary Appointment**

During the initial probationary period, an evaluation report will be provided to the supervisor at least fourteen (14) days prior to the completion of the employee's first six (6) months of service and at least fourteen (14) days prior to completion of the twelve (12) month probationary period.

### **6.3      Annual Performance Evaluations**

Any employee who has completed probation will have his or her work evaluated in the form of a written report at least annually.

### **6.4      Promotional Probationary Appointment**

During the promotional probationary period, an evaluation report will be provided to the supervisor at least fourteen (14) days prior to the completion of the employee's first six (6) months of service in the position and at least fourteen (14) days prior to completion of the twelve (12) month promotional probationary period. The only exception to these time frames would be in cases of an extension to the probation period ([SECTION - 5.2.4](#))

### **6.5      Performance Evaluation Schedule for Employees**

The employee is eligible for a merit increase to the next step after twelve (12) months of service. Although the employee will receive a performance evaluation at six (6) months of service, he or she will not be eligible for a merit increase at that time. Evaluations and merit increases will occur annually thereafter.

### **6.6      Performance Evaluation Interview and Written Report**

It is acknowledged that one of the prime benefits of a sound performance rating system is that it can bring together the employee and his or her supervisor in a constructive discussion of work performance. Therefore, all performance evaluations will be accompanied by a frank private discussion with the subject

employee. The employee will be made aware, in writing, of satisfactory areas of his or her performance and what corrective actions can be taken to improve unsatisfactory performance areas. The employee does not have the right to appeal any matter relating to a performance evaluation. However, the employee shall be provided the option to comment regarding his or her work performance, either in a written statement attached to the report or orally. The performance evaluation will be signed by the reviewing supervisor(s), the Department Head, Human Resources/Risk Director, the employee, and the City Manager (as applicable). The employee's signature is to acknowledge that he or she is aware of its contents and has discussed the report with the evaluator. The employee's signature does not necessarily mean that he or she fully agrees with the contents of the report. If the employee disagrees with any information provided in the evaluation, the employee may request a meeting with the Fire Chief to discuss the evaluation, or other matters. Reports of performance will be considered in making salary advances, promotions, reductions-in-salary, demotions, lay-offs or other disciplinary actions.

6.7 Distribution of Reports

Completed reports shall be forwarded to Human Resources/Risk for the Human Resources/Risk Director's approval and for distribution. Human Resources/Risk shall provide a copy of the approved report to the employee. A copy of the approved report, along with any comments provided by the employee, will be filed in the employee's permanent personnel file.

6.8 Effects of Unsatisfactory Ratings

All merit salary step increases will be earned, are subject to satisfactory service and will not be considered a right of the employee ([Personnel Manual Sect. 200.00 - Evaluation Procedure - General](#)).

- 6.8.1 An employee who has performance criteria marked as "Needs Improvement" or "Needs Major Improvement" may be eligible for a partial merit step increase at the discretion of the City Manager.
- 6.8.2 If the employee's performance has improved during the ninety (90) day re-evaluation period to such an extent that the supervisor and the Department Head believes it is justified, the improvement shall be indicated on the ninety

(90) day re-evaluation report. At that time, the supervisor and the Department Head may specifically recommend the commencement of any merit or longevity step increase or stipend, or portion thereof, which was previously withheld.

## **SECTION 7.0 – COMPENSATION PROGRAM**

### **7.1 Compensation Plan Structure**

The City Manager shall prepare a compensation plan covering all classes of positions in the City service showing the salary ranges and listing other forms of compensation, which the classes receive. In arriving at such salary ranges, consideration may be given to prevailing rates of pay for comparable work in other public and private employment, consideration of the current cost of living, suggestions of Department Heads and consideration of the City's financial condition. The City Manager may make further studies of the compensation plan as needed, or as may be requested by the City Council. All such studies will be done in accordance with applicable laws or current agreements affecting employer-employee relations in the City. The City Council shall adopt the compensation plan as part of the City's budget each fiscal year.

### **7.2 Advancement Through the Plan**

Further information can be found in [MOU Article V, Section 2 – Advancement Through the Plan.](#)

### **7.3 Withholding of a Step Increase**

Further information can be found in [MOU Article V, Section 3 – Withholding of a Step Increase.](#)

### **7.4 Special Merit Increases**

Further information can be found in [MOU Article V, Section 4 – Special Merit Increases](#) and [SECTION 6.0 – EMPLOYEE PERFORMANCE EVALUATIONS.](#)

### **7.5 Compensation – Longevity Stipends**

Further information can be found in [MOU Article V, Section 16 – Salaries and Stipends.](#)

### **7.6 Pay Periods**

Further information can be found in [MOU Article V, Section 5 – Pay Periods.](#)

#### **7.6.1 Mandatory Payroll Deductions**

On each bi-weekly payroll and in such form as the City Manager may determine, the Finance Department is authorized and directed to deduct and withhold from the salary paid to each employee of the City:

- 7.6.1.1 The minimum amount required by Federal law for income tax purposes and to make payment to the United States as required by law.
- 7.6.1.2 The minimum amount required by State law for income tax purposes and to make payment to the State of California as required by law.
- 7.6.1.3 The minimum amount required for said employee's contribution to the California Public Employees Retirement System (CalPERS).
- 7.6.1.4 The minimum amount for said employee's contribution to the Federal Medicare System.
- 7.6.1.5 Court mandated payments.
- 7.6.1.6 RHS contributions as outlined in the [January 1, 2014 - June 30, 2017 MOU](#).

7.6.2 Voluntary Deductions

Any employee may authorize the Finance Department, as approved by the City Manager, to make deductions from his or her salary to be paid to:

- 7.6.2.1 The carrier(s) of the City's health insurance program and other applicable benefit programs, including, but not limited to, the City's Deferred Compensation Programs with ICMA and ING as well as the ICMA Retiree Health Savings (RHS) Program, if applicable.
- 7.6.2.2 The City's Section 125 Flexible Benefit Plan.
- 7.6.2.3 A charitable organization.
- 7.6.2.4 A financial institution such as a Bank, Credit Union, etc.
- 7.6.2.5 An employee organization.

When so authorized by the employee, the Finance Department may make such deductions from the employee's salaries and pay the amounts designated to the appropriate organization. Such authorization will be filed in writing with the Finance Department.

7.6.3 Special Pay Requests

Further information can be found in [MOU Article V, Section 6 – Special Pay Requests.](#)

7.7 Timing of Salary Increases and Salary Range Adjustments

Further information can be found in [MOU Article V, Section 7 – Timing of Salary Increases.](#)

7.8 Compensation on Promotion

When an employee is promoted, he or she will be placed on the salary step of the new salary range, which is a minimum of six percent (6%) above current salary not to exceed maximum of new pay range [\(as defined in MOU Article V, Section 8 – Compensation on Promotion\)](#). An employee who is promoted will be eligible for a salary step merit increase on an annual basis from the date of promotion.

7.9 Compensation on Reclassification

When a position is reclassified, the employee staffing the position will be placed on a step of the range for the new classification which does not decrease their existing earnings. The employee will then be eligible for a salary step merit increase after one (1) year of service in the reclassified position and will be eligible for an increase to the next step once a year thereafter. The employee staffing the reclassified position will not be placed on probationary status when the position is reclassified.

7.10 Compensation – Overtime

Further information can be found in [MOU Article V, Section 9 – Overtime Compensation.](#)

7.10.1 56-hour employees have a twenty-four (24) day work period consisting of 182 regular hours and 10 overtime hours for a total of 192 (8 24- hour shifts). Work periods will be calculated beginning Tuesday, January 7, 2015, at 0800 hours.

7.11 Compensation – Callback Pay  
Further information can be found in [MOU Article V, Section 10 – Compensation – Callback Pay.](#)

7.12 Out-of-Class Limited Term  
Further information can be found in [MOU Article V, Section 17 – Out-of-Class Assignments.](#)

7.13 Compensation – Conversion of Vacation to Cash  
An employee may be granted compensation in lieu of vacation at full pay with the approval of the City Manager. The number of days will be deducted from the employee's vacation accrual balance.

7.14 Compensation – Jury Duty  
Further information can be found in [MOU Article V, Section 18 – Jury Duty Pay.](#)

7.15 Compensation – Court Time Pay  
Further information can be found in [MOU Article V, Section 19 – Court Time Pay.](#)

7.16 Compensation – Termination Pay  
Further information can be found in [MOU Article V, Section 20 – Termination Pay.](#)

7.17 EMT Certification Pay  
Further information can be found in [MOU Article 5, Section 21 – EMT Certification Pay.](#)

7.18 Compensation – Allowances and Stipends

7.18.1 Uniform Allowance/ Duty Boot Maintenance and Repair  
Further information can be found in [MOU Article V, Section 12 – Uniform Allowance / Duty Boot Repair.](#)  
For standards of maintenance regarding uniforms and equipment information, see [Uniform and Grooming Policy](#) (ref. Administrative Manual Section 300).

7.18.2 Paramedic Certification Stipend  
Further information can be found in [MOU Article V, Section 13 – Paramedic Certification Stipend.](#)

Employees participating in this program agree to maintain their continuing education requirements on their own. The Department will, however, provide continuing education as part of the Department training program. Continuing education requirements remain the responsibility of the employee as required by the State EMS Authority regarding Paramedic licensure.

Employees failing to maintain satisfactory performance may be from this program at the Department's discretion.

Employees holding the rank of Engineer and Captain are not required to maintain their Paramedic Certification. However, if an employee is originally hired as a Paramedic in lieu of being an EMT and then voluntarily elects to downgrade to EMT status, the employee shall be responsible to meet the initial certification requirements as an EMT.

The Department will cover re-certification fees payable to the State and County.

7.18.3 Bilingual Pay

Further information can be found in [MOU Article V, Section 14 – Bilingual Pay.](#)

7.18.4 Education Incentive Stipend

Further information can be found in [MOU Article V, Section 15 – Education Incentive Stipend.](#)

## **SECTION 8.0 – EMPLOYEE FRINGE BENEFITS**

In addition to the basic monthly salary, which is paid bi-weekly (26 times a year), the City provides other fringe benefits to employees. These benefits may be amended from time to time by the City Council, as may the basic salaries, depending on a variety of factors including but not limited to the City's financial situation, cost of living index, negotiations, and management recommendations.

### **8.1      Vacation Leave**

Further information can be found in [MOU Article VI, Section 11 – Vacation Leave Accrual](#), including:

- 8.1.1     Accrual Schedule – [MOU Article VI, Section 11.1.](#)
- 8.1.2     Eligibility for Leave – [MOU Article VI, Section 11.2.](#)
- 8.1.3     Vacation Requests  
All vacation requests shall follow the [staffing policy in PM 100.00.](#)
- 8.1.4     Accumulation – [MOU Article VI, Section 11.4.](#)
- 8.1.5     Compensation in Lieu of Vacation  
Further information can be found in [MOU Article VI, Section 12 – Conversion of Vacation to Cash.](#)
- 8.1.6     Illness During Vacation  
Further information can be found in [MOU Article VI, Section 13 – Holidays and Illness During Vacation.](#)
- 8.1.7     Vacation Pay at Separation  
Further information can be found in [MOU Article V, Section 11 – Contribution to the Retiree Health Savings \(RHS\) Program.](#)

### **8.2      Sick Leave**

Further information can be found in [MOU Article VI, Section 14 – Sick Leave Policy](#), including:

- 8.2.1     Penalty for Sick Leave Abuse – [MOU Article VI, Section 14.6.](#)

- 8.2.2 Conditions Upon Sick Leave Use – [MOU Article VI, Section 14.7.](#)
- 8.2.3 Payment for Unused Sick Leave on Separation – [MOU Article VI, Section 14.8.](#)
- 8.2.4 Incentive Plan for Non-Use (Sick Leave) – [MOU Article VI, Section 14.9.](#)
- 8.3 **Holiday-in-Lieu Pay**  
Further information can be found in [MOU Article VI, Section 16 – Holiday-in-Lieu Pay.](#)
- 8.4 **Holiday-in-Lieu Vacation Conversion**  
Further information can be found in [MOU Article VI, Section 17 – Holiday-in-Lieu Vacation Conversion.](#)
- 8.5 **Retirement**
  - 8.5.1 California Public Employees Retirement System (CalPERS)  
Further information can be found in [MOU Article VI, Section 3 - Retirement.](#)
  - 8.5.2 ICMA Retiree Health Savings (RHS) Program  
Further information can be found in [MOU Article V, Section 11 – Contribution to the Retiree Health Savings \(RHS\) Program.](#)
- 8.6 **Group Health Insurance Plan**
  - 8.6.1 Eligibility Requirements  
New employees will become members of the City's Health Care Program effective the first day of the month following the employee's date of hire. Membership of the employee's dependent(s) may be provided at the option of the employee. Eligible dependents include the following:
    - 8.6.1.1 A legal spouse;
    - 8.6.1.2 A California registered domestic partner;
    - 8.6.1.3 Any unmarried, dependent children, step-children or children of a California registered

domestic partner whom the employee supports, up to age nineteen (19) or up to age twenty-five (25) if a full-time student; and

8.6.1.4 Unmarried, dependent children, step-children or children of a California registered domestic partner of any age, if they are incapable of self-support due to a physical or mental disability (whether perceived or actual).

8.6.2 City Contribution to Premium

Further information can be found in [MOU Article VI, Section 1 – Group Health Insurance.](#)

The parties agree that the maximum annual City contribution amount includes the Mandatory CalPERS City Contribution, which varies based upon CalPERS law.

8.6.3 Incentive for Non-Use (Opt-Out) of Medical Benefits

Further information can be found in [MOU Article VI, Section 1 – Group Health Insurance.](#)

8.6.4 Coverage Upon Separation of Service

The City will comply with COBRA (Consolidated Omnibus Budget Reconciliation Act), the Federal law that requires employer groups to provide a member the ability to purchase health insurance if the member's job or coverage is terminated. This applies to both the employee and any dependents that are covered by the plan.

8.6.5 Retiree Group Insurance Coverage

At the time of retirement, City employees will qualify to remain with CalPERS Health as a Retiree. The employee will be responsible for the applicable premium amount.

8.7 [Employee Benefit Allocation Program \(EBAP\)](#)

Further information can be found in [MOU Article V, Section 22 – Employee Benefit Allocation Program \(EBAP\).](#)

8.8 [Section 125 Flexible Benefit Plan](#)

Further information can be found in [MOU Article VI, Section 4 – Section 125 Flexible Benefit Plan.](#)

8.9 [Group Life and Accidental Death and Dismemberment Insurance Plan](#)

Further information can be found in [MOU Article VI, Section 5 – Group Life and Accidental Death and Dismemberment Insurance Plan.](#)

8.10 [Long Term Disability Group Insurance Plan](#)

All employees will become members of the City's Long Term Disability Group Insurance Plan. Long-term disability benefits help to provide employees a monthly income if the employee becomes disabled and is unable to work. The City's plan provides coverage of 66 2/3% of the employee's monthly base salary up to a maximum of Fifteen Thousand Dollars (\$15,000) per month following a thirty (30) day waiting period. The City pays for the premium.

Upon providing the City a minimum of 60 days advance notice, the SMPFF Association may elect to purchase a long-term disability insurance plan for its members. In such event, unit employees will no longer be covered under the City's LTD plan, and the City shall pay to the Association on behalf of each member an amount equal to the actual monthly premium of the Association's LTD plan, not to exceed Fifty Dollars (\$50) per member per month (Further information can be found in [MOU Article VI, Section 6 – Long Term Disability Plan.](#)).

8.11 [Workers' Compensation Insurance](#)

Further information can be found in [MOU Article VI, Section 9 – Workers' Compensation Insurance.](#)

8.12 [Transitional Return to Work \(TRTW\) Program](#)

The [TRANSITIONAL RETURN TO WORK \(TRTW\) POLICY](#), outlines the details of the policy. Further information can be found in [MOU Article VI, Section 9 – Workers' Compensation Insurance](#) and [Personnel Manual-Modified Duty \(PM100.04\)](#).

8.13 [Private Motor Vehicle Mileage Reimbursement](#)

Further information can be found in [MOU Article VI, Section 2 – Mileage Reimbursement.](#)

8.14 [Replacement of Personal Property](#)

The City Manager may approve replacement coverage of up to two-hundred dollars (\$200) per incident for personal property used by employees in the performance of municipal affairs. The Department Head must authorize use of personal property before the employee begins using the item for work. In addition, the City Manager's office must be given a description of the personal property when the employee begins using the item for work. With prior approval for replacement coverage, the City may reimburse employees for damaged items upon final approval by the City Manager.

8.15 Voluntary Deferred Compensation  
These plans allow the employee to set aside pre-tax dollars each pay period to prepare for retirement. No City contribution is made to these plans. Further information can be found in [MOU Article VI, Section 7 – Deferred Compensation](#).

8.16 Voluntary Group Life and Accidental Death and Dismemberment Program  
Further information can be found in [MOU Article VI, Section 8 – Voluntary Life and Accidental Death and Dismemberment Insurance Program](#).

## **SECTION 9.0 – ATTENDANCE AND LEAVES**

### **9.1 Attendance**

Employees shall be in attendance at their work in accordance with the Sections regarding hours of work, holidays and leaves. All departments shall keep daily attendance records of employees, which shall be reported to the Finance Office in the specified form and on the specified dates.

#### **9.1.1 Unauthorized Leave of Absence Without Pay**

If the employee is absent without approved leave for four (4) hours or more, or the employee fails to return to duty within twenty-four (24) hours, it shall be grounds for discipline. Failure on the part of an employee to return to duty from any authorized leave or to report to duty as scheduled or ordered shall be an unauthorized leave of absence without pay. Notice shall have been made when the employee receives direct verbal notice to return to work from an authorized employee or when a written notice is personally delivered to the employee or when written notice with returned receipt requested by Certified Mail, addressed to the employee's last known place of address, has been deposited in the United States Mail.

#### **9.1.2 Current Address Records**

It shall be the responsibility of the employee to provide Human Resources/Risk with his or her most current mailing address through [MUNIS ESS](#).

### **9.2 Hours of Work**

Further information can be found in [MOU Article VI, Section 10 – Hours of Work](#).

#### **9.2.1 Employee's Duty to Notify of Late Arrival or Absence**

An employee who is unexpectedly unable to report for work as scheduled must notify his or her immediate supervisor. The employee must report the expected time or duration of any late arrival or absence. An employee who fails to timely notify the supervisor of absences, or who is not present and ready to work during all scheduled work times will be deemed to have an unauthorized absence.

#### **9.2.2 Excessive Tardiness/Absenteeism**

Excessive tardiness or absenteeism will be grounds for discipline, up to and including termination. Abuse of, or misrepresentation of any form of accrued or unpaid leave time will be grounds for discipline, up to and including termination.

9.2.3     Lunch Periods and Breaks

Meals and rest periods will be permitted at scheduled intervals, insofar as they are practical and consistent with operational interests.

9.2.4     Notice of Schedule Change

All employees shall be given two weeks' notice of any routine change in their hours or shift schedule unless by mutual consent.

9.3        Leaves

9.3.1     Leave With Pay

Further information can be found in [MOU Article VI, Section 19 – Leave With Pay.](#)

9.3.2     Leave Without Pay

Further information can be found in [MOU Article VI, Section 20 – Leave Without Pay.](#)

9.3.3     Administrative Leave

The City has the right to place an employee on leave at any time with full pay. An employee may be placed on administrative leave pending investigation of misconduct, potential disciplinary action, or other reasons that the Department Head or Human Resources/Risk Director, in his or her discretion, believes warrant such leave.

9.3.4     Jury Duty Leave

Employees who attend Jury Duty must provide a copy of the Juror's Timesheet upon return to duty. Further information can be found in [MOU Article V, Section 18 – Jury Duty Pay.](#)

9.3.5     Industrial (Work-Related) Disability Leave

9.3.5.1 Further information can be found in [MOU Article VI, Section 9 – Workers’ Compensation Insurance](#). The filing of the accident report, as required, shall be the responsibility of the employee’s supervisor.

9.3.5.2 Documentation of Industrial Disability Leave

All City employees who lose time from work as a result of injury or illness covered by Workers’ Compensation shall receive a medical examination and, when required, treatment. The City Manager may approve industrial leave without medical examination on the day of the injury. Medical treatment documentation forms prescribed by the Director of Human Resources/Risk shall be returned to Human Resources/Risk whenever an employee loses time from work as a result of an industrial disability injury or illness.

9.3.5.3 Disability Retirement

An employee who is unable to perform the usual duties of his/her current position due to an illness or injury that is expected to be permanent or of an undetermined duration may be eligible to receive a disability retirement (cause of disability need not be related to employment) or an industrial disability retirement (disability is due to job-related injury or illness). Government Code Section 21150 et seq. governs the procedures for filing an application, eligibility, determination, appeal rights and reinstatement.

9.3.6 Pregnancy Disability Leave

An employee who is disabled because of pregnancy, miscarriage, abortion, childbirth, or a related medical condition is entitled to an unpaid pregnancy disability leave for up to four months.

9.3.6.1 Notice of Certification Requirements

Requests for pregnancy disability leave must be submitted in writing and must be approved by the employee’s Department Head before the leave

begins. The request must be supported by a written certification from the attending physician stating that the employee is disabled from working by pregnancy, childbirth or a related medical condition. The certification must state the expected duration of the disability and the expected date of return to work.

All leaves must be confirmed in writing, have an agreed- upon specific date of return, and be submitted to the Department Head prior to being taken. Requests for an extension of leave must be submitted in writing to the Department Head prior to the agreed date of return and must be supported by a written certification of the attending physician that the employee continues to be disabled by pregnancy, childbirth, or a related medical condition. The maximum pregnancy disability leave is four (4) months.

#### 9.3.6.2 Compensation During Leave

Pregnancy Disability Leaves are without pay. However, an employee on pregnancy leave must first utilize all accumulated sick leave and may elect to use any available vacation time before being placed on a leave without pay status. All Sections outlined in the above [Section 9.3.2](#) [Leave Without Pay](#) will apply for the period of pregnancy leave when the employee is on without pay status.

#### 9.3.6.3 Reinstatement

Upon the expiration of pregnancy leave and the City's receipt of a written statement from the health care provider that the employee is fit to return to duty, the employee will be reinstated in her original or an equivalent position, so long as it was not eliminated for a legitimate business reason during the leave. If the employee's original position is no longer available, the employee will be assigned to an open position that is substantially similar in job content, status, pay, promotional opportunities, and geographic location as the employee's original position. If upon return from leave an employee is unable to perform the essential

functions of her job because of a physical or mental disability (whether perceived or actual), the City will initiate an interactive process with the employee in order to identify a potential reasonable accommodation. An employee who does not return after her granted leave period has expired forfeits her job and loses all reinstatement rights.

#### 9.3.7 California and Federal Family Leave

The City will comply with the California Family Rights Act and the Federal Family and Medical Leave Act laws as outlined in [FAMILY AND MEDICAL LEAVE \(FMLA\) AND CALIFORNIA FAMILY RIGHTS ACT \(CFRA\) POLICY](#). Further information can be found in [MOU Article VI, Section 14.5 – Sick Leave Policy, Family Assistance Sick Leave](#).

#### 9.3.8 School Related Leave

Per Labor Code Section 230.8, a regular employee who is a parent or guardian having custody of one or more children in kindergarten or grades 1 through 12 or attending a licensed day care facility shall be allowed up to forty (40) hours each school year, not to exceed eight (8) hours in any calendar month of the school year, to participate in activities of the school of their child. Such employee must provide reasonable advance notice of the planned absence and the time used may be with or without pay. If with pay, the employee will use vacation leave time. The City may require the employee to provide documentation from the school as verification that the employee participated in school activities on a specific date and at a particular time. If both parents or guardian having custody work for the City, only the first parent requesting time off shall be entitled to leave under this provision.

#### 9.3.9 Catastrophic Leave

The purpose of the Catastrophic Leave Program is to provide a means of reducing personal financial hardship for employees who are suffering from a long-term catastrophic illness or injury. The City Manager, upon a positive recommendation from the Department Head, may qualify an employee for participation in the Program, as outlined in the [CATASTROPHIC LEAVE POLICY](#).

9.3.10 Time Off for Victims of Violent Crime or Domestic Abuse

9.3.10.1 Any employee who has been a victim of a violent crime or domestic violence may take time off to:

9.3.10.1.1 Appear in court to comply with a subpoena or other court order as a witness in any judicial proceeding.

9.3.10.1.2 Seek medical or psychological assistance.

9.3.10.1.3 Participate in safety planning to protect against further assault.

9.3.10.2 The affected employee must provide reasonable notice that he or she is required to be absent for a purpose stated above. In cases of unscheduled or emergency court appearances or other emergency circumstances, the affected employee must, within a reasonable time after the appearance, provide the City with written proof that the absence was required for any of the above reasons. Leave under this section is unpaid unless the employee desires and the City approves the use of paid accrued leave.

9.3.11 Military Leave

The City will comply with all applicable State and Federal laws regarding military leave. All employees entitled to military leave shall give the City written notice of the requirement for such leave and shall provide a copy of the documents ordering such military service.

9.3.12 Time Off to Vote

If an employee does not have sufficient time outside of working hours to vote at a statewide election, the employee may take up to two hours off without loss of pay at the beginning or end of the day. Prior

approval for this time off by the employee's supervisor is required. (See Election Code Section 14000.) Fire Department employees are encouraged to vote by mail by requesting a temporary or permanent absentee ballot.

9.3.13 Bereavement Leave

Further information can be found in [MOU Article VI, Section 14.5 – Sick Leave Policy, Bereavement Leave.](#)

## **SECTION 10.0 – CHANGES IN EMPLOYMENT STATUS**

### **10.1 Promotion**

- 10.1.1 When it is practicable and consistent with the best interest of the City, vacancies in the competitive service may be filled by promotion, after a closed promotional examination has been given and a promotional list established. Promotions will be conducted in accordance with the City's merit system policy.
- 10.1.2 Employees who have completed their initial twelve (12) month probationary period with the City may participate in a closed promotional examination for the promotion. Such employees must meet the minimum qualifications for the applicable position.
- 10.1.3 Employees who are promoted will undergo a twelve (12) month probationary period in their new position.

### **10.2 Demotion**

- 10.2.1 The City Manager may demote an employee for any of the following reasons or conditions:
  - 10.2.1.1 When an employee's work performance falls below acceptable standards.
  - 10.2.1.2 For disciplinary reasons, as set forth in **SECTION 13.0 - DISCIPLINARY ACTION**.
  - 10.2.1.3 When the need for a position that an employee fills no longer exists.
  - 10.2.1.4 When an employee requests such position and has the consent of both the current and prospective supervising Department Heads.
- 10.2.2 Written notice of the demotion will be given to the employee within thirty (30) days of the decision, but no

later than forty-eight (48) hours before the effective date of the demotion. If the purposes of the demotion are for punishment, the employee will be afforded a disciplinary appeal right under the Firefighter's Bill of Rights.

10.2.3 Upon approval of the City Manager, an employee may be demoted to a new position but retain their current salary level.

10.3 **Suspension**

Subject to the approval of the City Manager, the Department Head may suspend an employee from his or her position, with or without pay, at any time for the good of the service for disciplinary purposes in accordance with the appeal rights under the Firefighter's Bill of Rights Act. Suspensions without pay shall not be less than one (1) full day nor exceed sixty (60) calendar days at one time, nor shall any employee be penalized by suspension for more than sixty (60) calendar days in any fiscal year.

10.4 **Transfer**

After approval by the City Manager, an employee may be transferred by his or her Department Head at any time from one position to another position in the same or comparable class. Transfer will not be used to effectuate a promotion, demotion, advancement, or reduction, each of which must be accomplished only as provided in these Sections. No person will be transferred to a position for which he or she does not possess the minimum qualifications. If the purposes of the transfer are for punishment, the employee will be afforded a disciplinary appeal right under the Firefighter's Bill of Rights Act.

## **SECTION 11.0 – SEPARATION FROM THE SERVICE OF THE CITY**

### **11.1 Resignation**

An employee wishing to leave the service in good standing shall file with their Department Head at least fourteen (14) calendar days before leaving the service, a written resignation stating the effective date and reasons for leaving. Resignations will be forwarded to the City Manager with an evaluation by the Department Head as to the resigned employee's service performance. The Human Resources/Risk Director, or his or her designee, shall conduct an interview with employees who have submitted a written resignation prior to their termination date. The purpose of the interview will be to discuss the cause of resignation and explain any benefits after termination. Once a resignation has been accepted by the appointing authority, it cannot be withdrawn.

### **11.2 Reduction-in-Force**

Reduction-in-force shall be based on seniority, least senior first. Should a reduction in force be necessary, the following will apply:

- 11.2.1 When a position is to be eliminated, classification seniority will be used as the initial criterion. For more than one employee with the same classification seniority, the next criterion will be Department seniority.
- 11.2.2 An affected employee shall be given the choice of either being laid off or being reduced to the previous rank (pay grade) held by that employee.
- 11.2.3 An employee being reduced may not replace an employee who has more Department seniority, but instead must move to the next lower rank.
- 11.2.4 When re-strengthening the Department, all those affected by the reduction in force shall be given the opportunity to move back into their former positions before any new personnel are hired or promoted.
- 11.2.5 The time limit for rehire shall be left up to the City Council.

### **11.3 Seniority Defined**

11.3.1 Department Seniority is defined as an employee's most recent period of unbroken, continuous permanent paid service with the Department. Employees shall not attain departmental seniority until the completion of the required probationary period, at which time Department seniority shall relate back to the commencement of the most recent date of appointment.

11.3.2 Classification Seniority is defined as the period of service in the employee's classification. Employees shall not attain classification seniority until completion of the probationary period in that classification.

11.3.3 Seniority Credit  
In computing seniority, credit shall be given for all classified service in the Department except that a resignation or discharge shall be considered a break in service and seniority credit shall be given for any service rendered prior to that break, as provided below.  
Seniority credit shall be allowed only for the following types of absence from a position in the classified service.

11.3.3.1 Absence without pay not exceeding fourteen (14) calendar days.

11.3.3.2 Absence during authorized vacation.

11.3.3.3 Absence on leave for active service in the Armed Forces for the State of California or the United States of America.

11.3.3.4 In the event that an employee does not complete the probationary period in his or her classification due to layoff, seniority shall be allowed for the new service classification upon completion of that probationary period.

11.3.3.5 Absence or leave made necessary by injuries sustained in the line of duty.

11.3.3.6 Absence or leave made necessary by injuries sustained in the course of employment by the Department.

11.3.3.7 Absence or leave while on loan to another agency if, in the opinion of the City Manager, the Department stands to benefit from the specific experience obtained from such other employment or activity.

11.3.3.8 Leave of absence approved by the Department Head for pregnancy.

#### 11.3.4 Other Seniority Credit Provisions

11.3.4.1 In computing length of service, all periods of absence without pay in excess of ten (10) calendar days, notwithstanding the reason or necessity therefore, shall be deducted and no seniority credit granted.

11.3.4.2 Seniority credits for periods of absence from one class in order to temporarily fill another position (actor or limited term) shall be granted in the former position.

11.3.4.3 If an employee is dismissed through no fault of his or her own and is later re-employed, he or she shall not lose any seniority credit for any period of actual service.

11.3.4.4 If an employee promotes from one classification to another, and later demotes due to disciplinary action or an unsuccessful probationary period, the time of service in the higher rank shall not count towards Classification Seniority in the current rank.

11.3.4.5 When two or more employees are appointed on the same date in the same classification, seniority shall be established based on the

cumulative score of the six (6) month and twelve (12) month probationary testing results.

11.3.4.6 When two or more employees have the same cumulative score of the six (6) month and twelve (12) month probationary testing results, seniority will be based on age.

#### 11.4 Dismissal

An employee may be dismissed from his or her position by the City Manager for disciplinary purposes. Employees on probationary status who are dismissed for disciplinary purposes may be dismissed without right of appeal. A liberty interest hearing will be provided when required by law. Dismissal of employees who have completed their probationary period must be conducted in accordance with the City's disciplinary procedure. Employees who have completed their probationary period have the right of appeal. (See [SECTION 13.0 - DISCIPLINARY ACTION](#).)

#### 11.5 Abolition of Position

Whenever, in the judgment of the City Manager, it becomes necessary in the interest of economy or because the necessity for the position or employment involved no longer exists, the City Manager may abolish any position, and the City Manager shall layoff, demote, or transfer an employee holding such position of employment. The action of the City Manager is final and conclusive.

#### 11.6 Job Abandonment

An employee is deemed to have resigned if the employee is absent for three (3) consecutive workdays without prior authorization and without notification during the period of absence. Only regular employees will receive notice of intent to terminate.

#### 11.7 Non-Discrimination Policy

Please refer to [City of San Marcos Non-Discrimination Policy](#).

#### 11.8 Reinstatement After Separation

The employee who was separated from the City in good standing, resigned or laid off, and has a history of good performance evaluations may be considered for future re-employment to a vacant position for which he or she is qualified. Such action must have approval of the City Manager.

11.9 Reinstatement After Reduction-in-Force

Employees re-employed within one (1) year after reduction-in-force shall receive a rate of pay for that position in effect at time of reinstatement. When re- strengthening the Department, all those affected by the reduction-in-force shall be given the opportunity to move back into their former positions before any new personnel are hired or promoted.

## **SECTION 12.0 – JOB RELATED CONDUCT**

### **12.1 Personal Conduct**

All municipal employees shall cooperate at all times with other members of the staff and with the public. Repeated discourteous treatment of the public or co-workers will be cause for disciplinary action. The conduct of all employees will be governed by reasonable rules of behavior of law-abiding citizens and shall not reflect unfavorably upon the City.

Safety employees shall familiarize themselves and act accordingly to the Mission Statement and Core Values of the Fire Department and obey Laws, Rules and Regulations, Manuals of Operation and Orders affecting the operation of the Fire Department.

All Safety employees shall carry their identification cards while off duty and at other times when necessary for identification purposes, when practical.

### **12.2 Discrimination and Sexual Harassment Policy**

The City of San Marcos is committed to maintaining a workplace for all employees, applicants, and contractors that is free from all types of discrimination, harassment and retaliation. Therefore, the City has established a [DISCRIMINATION AND HARASSMENT POLICY](#). This policy prohibits discrimination or harassment on the basis of any of the following protected classifications, including but not limited to an individual's race, color, age, ancestry, national origin, citizenship status, marital status, pregnancy, political or religious affiliation, sex, gender, sexual identity, sexual orientation, any non, job-related physical or mental disability (whether perceived or actual), medical condition, or other functional limitation or any other basis protected by law. It sets forth the types of conduct that will not be tolerated under any circumstances and outlines the procedures for reporting, investigating and acting upon complaints.

### **12.3 Anti-Violence Policy**

The City of San Marcos is committed to maintaining a work environment that minimizes the risk of violence to employees and members of the public. In consideration of the health and safety of others, the City has established an [ANTI-VIOLENCE POLICY](#), stating its "Zero Tolerance" position relative to threats or acts of violence in the workplace. This policy sets forth the types of conduct that will not be tolerated under any circumstances and

outlines the procedures for reporting, investigating and acting upon complaints.

#### 12.4 Physical and Mental Fitness

It is the policy of the City of San Marcos that physical and mental fitness of City employees are reasonable requirements to perform the duties of the job and instill public confidence. The City, with reasonable cause, may require medical and psychological assessment(s) of employees, provided the City pays for such assessment(s) and provides time off without loss of pay for same. Appropriately qualified health care professionals shall conduct all such assessments. The City may require certain types of physicals as required by applicable State and Federal laws of employees engaged in specific job duties in the course of their employment, i.e. Respirator physicals as required by OSHA for employees utilizing respirators, DMV physicals for employees driving certain City vehicles, etc.

#### 12.5 Reasonable Accommodation Policy

The City provides employment-related reasonable accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act.

##### 12.5.1 Request for Accommodation

An employee who desires a reasonable accommodation in order to perform essential job functions should make such a request in writing to Human Resources/Risk. The request must identify the following:

The job-related functions at issue;  
And the desired accommodation(s).

##### 12.5.2 Reasonable Documentation of Disability

Following receipt of the request, the Human Resources/Risk Director may require additional information, such as reasonable documentation of the existence of a disability.

##### 12.5.3 Fitness for Duty Examination

For information on Fitness for Duty Examination, see [Personnel Manual-Guidelines Sections 102.00 and 108.00](#), and [Fire Department Intranet-Health & Safety-“HPE”](#).

###### 12.5.3.1 Interactive Process Discussion

After receipt of the results of a fitness for duty report and reasonable documentation of disability, the City will arrange for a discussion, in person or via telephone conference call, with the employee and his or her representatives, if any. The purpose of the discussion is to work in good faith to fully discuss all feasible potential reasonable accommodations.

#### 12.5.4 Case-by-Case Determination

The City determines, in its sole discretion, whether reasonable accommodation(s) can be made, and the type of accommodation(s) to provide. The City will not provide accommodation(s) that would pose an undue hardship upon City finances or operations, or that would endanger the health or safety of the applicant, employee or others. The City will inform the employee of its decision as to reasonable accommodation(s) in writing.

### 12.6 Substance Abuse Policy

- 12.6.1 It is the policy of the City that no employee shall be intoxicated or under the influence of drugs or alcohol while on the job. This includes prescribed or over-the-counter medication that causes impairment. The purchase, use or possession of alcohol while driving a City vehicle, whether on duty or off, is prohibited. In addition, no employee shall have at the work site, to include all City facilities, any alcohol, illegal substance, illegal drug, or legal drug for which he or she does not have a prescription.
- 12.6.2 When an employee shows behavior which creates a “reasonable suspicion” that the employee is intoxicated or under the influence of drugs or alcohol while on the job, the City may require that the employee undertake a test to determine if he or she is intoxicated or under the influence of drugs or alcohol while on the job. The type of test administered, i.e. blood, urine, breath, etc., will be determined by the attending physician at the City-approved industrial medical center. Any employee who is involved in a work related injury is subject to drug testing at the discretion of the City Manager.

12.6.3 “Reasonable suspicion” is a belief based on objective facts sufficient to lead a reasonable, prudent supervisor to suspect that an employee is intoxicated or under the influence of drugs or alcohol, so that the employee’s ability to perform the functions of the job is impaired or so that the employee’s ability to perform his or her job safely is reduced.

12.6.4 Examples of such behavior\* which alone or in combination may constitute “reasonable suspicion” include slurred speech, alcohol odor on breath, unsteady walking and movement, an accident involving City property, physical altercation, verbal altercation, unusual behavior, possession of alcohol or drugs, information obtained from a reliable person with personal knowledge, inability to perform work properly, behavior that creates a safety hazard, blank stare or glassy eyes.

*\* It is recognized that some medical problems may have similar symptoms as those identified above.*

12.6.5 The use of, being under the influence of, or being in possession of illegal drugs, illegal substances or alcohol by the employee on the job will be grounds for discipline.

12.6.6 In [RESOLUTION #91-3761 DRUG FREE WORKPLACE](#), the City stated its intent to provide a safe working environment in accordance with the Drug-Free Work Place Act of 1988 by formalizing a policy to address substance abuse and its effects in the work place.

12.7 Use of City/Personal Vehicles

An employee may be required to use a City vehicle while on City business or at times they may be permitted, upon approval of their Department Head, to use their own vehicle while conducting municipal business. Since City vehicles are easily identified as such and thus constitute a traveling advertisement seen by many citizens, employees should be aware that the way in which they interact with other motorists and pedestrians while operating City vehicles can result in both positive and negative public relations for the City. [SMFD VEHICLE OPERATOR’S MANUAL SECTION](#)

[102.00, USE OF STAFF VEHICLES](#), establishes guidelines to be followed for all employees assigned a City vehicle or permitted to use their own vehicle while conducting City business.

12.8 Use of City Property and Equipment

- 12.8.1 City property is to be used only for conducting City business unless otherwise authorized by the City Manager or designee. City property includes, but is not limited to: telephones, desks, computers (including hardware and software), communications stored or transmitted on City property (such as e-mail and voice mail), vehicles and other City property used by City employees in the course of their work. Employees do not have a reasonable expectation of privacy in City property or equipment.
- 12.8.2 City property may be monitored and searched at any time and for any reason. Messages sent or received on City equipment may be saved and reviewed by others. As a result, City employees have no expectation of privacy in the messages sent or received on City property or equipment.
- 12.8.3 Every City employee is required to adhere to all City Sections while on City property or using City property or equipment.
- 12.8.4 Lockers are provided to employees for the purpose of storing work- related and personal items. If the City has a need to search an employee's locker, the employee will either be present or have given consent, or received prior notification unless a valid search warrant has been obtained.

12.9 Information Systems Policy

The purpose of the [INFORMATION TECHNOLOGY POLICY](#), [THE ELCONTRIC MAIN \(E-mail\) Policy](#), and the [MOBILE DEVICE POLICY](#) are to establish guidelines governing the use of electronic communications media by City employees in the performance of their duties. To that end, the Policy has been created to advise all users regarding the use of, access to and the disclosure of information created, transmitted, received and stored

via the use of the City's electronic communications equipment and software. Further information can be found in [MOU Article II, Section 4 – Use of Bulletin Boards and City E-Mail.](#)

12.10 City Functions

Those employees required to be in attendance at municipal functions may be reimbursed for the actual expenses incurred, with the City Manager's prior approval.

12.11 Political Activity

Nothing in this Section is intended to unlawfully restrict union activities. Political activity of employees will be restricted in accordance with State law as currently provided in the State Government Code, Chapter 9.5, Sections 3201 through 3209 and State Government Code, Chapter 9.6, Sections 3252 (a) and (b) including (but not limited to) the following:

12.11.1 City officers and employees are prohibited from soliciting political funds or contributions from City employees. This does not mean, however, that officers and employees are not allowed to communicate through the mail (or by other means) for requests for political funds or contributions to a significant segment of the public, which may include employees of the City.

12.11.2 City officers and employees shall not be coerced or required to engage in political activities and are prohibited from engaging in political activity whenever on duty or in uniform.

12.11.3 Examples of prohibited conduct include the following:

- Participate in political activities of any kind while in uniform;
- Participate in political activities during working hours;
- Use equipment to make political communications;
- Solicit a political contribution from an officer or employee of the City, or from a person on a City employment list, with knowledge that the person from whom the contribution is solicited is a City officer or employee while on duty or in uniform;
- Favor or discriminate against any employee because of political opinions or affiliations;
- Interfere with any election; or

- Attempt to trade job benefits for votes.

12.11.4 Examples of permitted conduct include:

- Express opinions on all political subjects or candidates;
- Become a candidate for any local, state, or national election except for the jurisdiction where the employee is employed; Contribute to political campaigns;
- Join and participate in the activities of political organizations; Request, during off-duty time, political contributions, through the mail or other means from City officers or employees if the solicitation is part of a solicitation made to a significant segment of the public which may include City officers or employees;
- Solicit or receive, during off-duty time, political contributions from a City employee organization if the funds, when collected, were not earmarked for a clearly identifiable candidate for a federal, state or local office; or
- Solicit or receive, during off-duty time, political funds or contributions to promote the passage or defeat of a ballot measure which would affect the rate of pay, hours of work, retirement, or other working conditions of City officers or employees.

12.11.5 Public Office

Fire Department employees may seek election to the governing board of a school district or any elected government office other than within the City of San Marcos. However, such activities must not interfere with the employee's job performance.

12.12 Conflict of Interest/Outside Employment

A conflict of interest in outside employment, in outside business interests, or personal transactions will not be permitted and may be grounds for dismissal.

Prior to an employee accepting outside employment, approval will first be received from the applicable Department Head. If the Department Head does not approve the outside employment, the employee may appeal the decision to the City Manager. The written appeal is to be submitted to the City Manager no later than five (5) calendar days from the date the appeal was denied by the Department Head. The employee must ensure that a conflict of interest will not develop from outside employment. The employee is also expected to keep the Department Head apprised of any

changes to the approved outside employment. The [Outside Employment Form](#) must be completed and signed by the employee and the Department Head and placed in the employee's personnel file. Each request for outside employment must be renewed annually. Prior approval of outside employment will not be cause for abusing hours or failing to perform assigned City duties.

12.13 **Employee Conduct Policy**

The purpose of this policy is to establish guidelines for employee conduct that the City sees as essential in maintaining a good public image. The public has a right to expect a level of service, which is not compromised by unacceptable employee conduct. All employees' conduct shall be in accordance with the San Marcos Fire Department Mission Statement and Core Values.

It is the policy of the City of San Marcos that:

- 12.13.1 Employees shall perform their assigned duties to the best of their ability at all times.
- 12.13.2 The public interest shall take precedence in the performance of job duties except where an employee's safety would be jeopardized.
- 12.13.3 Employees shall treat the public and their co-workers courteously and impartially at all times.
- 12.13.4 Employees shall not grant or permit any consideration, treatment, advantage or favor to any member of the public beyond that which is general practice, in accordance with City Sections, regulations and procedures.
- 12.13.5 City owned or supported property, equipment, vehicles, labor or services shall be used for City purposes only.
- 12.13.6 No unauthorized private business of any kind shall be conducted while on City time.
- 12.13.7 Employees shall conduct all business and personal affairs within the legal limits of the law.

12.13.8 Political activity of employees shall be restricted in accordance with State law as currently provided in the State Government Code, Chapter 9.5, Sections 3201 through 3209 and Chapter 9.6, Section 3252 (a) and (b), and as outlined in Section 12.12 Political Activity.

12.13.9 Employees shall not allow their position with the City to be used for the personal gain of themselves or others.

12.13.10 Employees shall not make recommendations to members of the public relative to any individuals or businesses they regulate, or come in contact with, in the scope of their duties for the City.

12.13.11 Employees shall not engage in any employment, activity, or enterprise, whether compensated or not, which is inconsistent or in conflict with their duties as employees. Besides their assigned City responsibilities, employees shall not perform any work, service, or counsel, whether compensated or not, that is not first approved by the employee's immediate supervisor or the appropriate Department or Division Head.

12.13.12 Employees shall neither disclose nor use for their personal interest any confidential information acquired by them in the course of their official duties.

12.13.13 Gifts, gratuities, loans of money or materials, and bribes shall be refused. All information relating to the above offerings shall be reported to the employee's immediate supervisor or the appropriate Department or Division Head. See also [Section 12.14, Receipt of Gifts.](#)

12.13.14 Employees shall record and maintain a true and accurate account of their hours worked on time sheets, overtime logs, or other reasonable accounting of work hours.

12.13.15 While not all inclusive, the following provides examples of unacceptable conduct:

- 12.13.15.1 Possession or use of alcohol or controlled substances on City premises or while on duty\* or while in City uniform. Exceptions may be made in the event of a City-sponsored sponsored function at which such beverages may be served.
- 12.13.15.2 Fighting, coercing, interfering with or threatening injury to other employees, the public or supervisors or causing harm to others.
- 12.13.15.3 Engaging in physical, sexual, or racial taunts, threats, or harassment.
- 12.13.15.4 Any form of harassment or discrimination in the workplace. This includes but is not limited to harassment or discrimination based on race, color, age, ancestry, national origin, citizenship status, marital status, pregnancy, political or religious affiliation, sex, gender, sexual identity, sexual orientation, any non-job-related physical or mental disability (whether perceived or actual), medical condition, or other functional limitation or any other basis protected by law.
- 12.13.15.5 Possession of armaments, weapons, explosives or non- job-related cutting instruments (other than pocket knives), on City premises or while on duty\*, except items which may be authorized by the City in the specific performance of their job.
- 12.13.15.6 Falsification or misrepresentation of information in connection with the preparation of City records, documents, or correspondence including an application for employment.
- 12.13.15.7 Falsifying one's own time sheet or the time sheet of another employee.

- 12.13.15.8 Stealing, willful damage, willful abuse or willful destruction of City property or the property or equipment of another employee or the public.
- 12.13.15.9 Removing City property from City premises without authorization/permission
- 12.13.15.10 Reckless driving or illegal operation of a City vehicle.
- 12.13.15.11 Unauthorized use of City property or City vehicles
- 12.13.15.12 Repeated documented personal use of City telephones.
- 12.13.15.13 Indecent or morally offensive behavior while on duty,\*which is in violation of State, County and/or Federal law.
- 12.13.15.14 Careless, reckless or unsafe conduct, endangering the employee him or herself, fellow employees, the public or City or private property.
- 12.13.15.15 Discourteous treatment of the public, fellow employees or supervisors.
- 12.13.15.16 Unauthorized sleeping while on duty\*.
- 12.13.15.17 Deliberately delaying or restricting services or work efforts or inciting others to do the same.
- 12.13.15.18 Selling, soliciting or distributing literature or goods on City premises and time without permission.
- 12.13.15.19 Posting unauthorized material on City bulletin boards or removing or defacing notices thereon

without permission. City bulletin boards are considered to be those bulletin boards located on City premises in faculties furnished and maintained by the City.

12.13.15.20 Leaving regularly assigned work locations without supervisor's knowledge and permission except to take usual breaks and lunch periods or to perform assigned work duties.

12.13.15.21 Deliberate failure to observe scheduling Sections regarding assigned workdays, starting and quitting times, breaks and lunch periods established by a supervisor.

12.13.15.22 Misuse of time on the job.

12.13.15.23 Unauthorized tardiness or excessive absenteeism.

12.13.15.24 Insubordination, including refusal to perform work as directed by a supervisor, except in such cases where the activity directed or the equipment involved is unsafe.

12.13.15.25 Unsatisfactory, negligent or incompetent work performance.

12.13.15.26 Political campaigning of any kind on City premises, while on duty or while in a City uniform.

12.13.15.27 Unauthorized absence.

12.13.15.28 Abuse of sick leave privileges.

12.13.15.29 Dishonesty.

12.13.15.30 Any acts or actions which are incompatible with or contrary to the public service.

12.13.15.31 Other conduct described in these Personnel Sections and Regulations, [SECTION 12.0 JOB RELATED CONDUCT.](#)

\*Note: On-duty time is considered to be the hours of each working day that employees are expected to be performing their duties.

12.14 [Receipt of Gifts](#)

For information refer to [Administrative Manual-Receipt of Gifts-Section 103.00.](#)

12.15 [Dress Code Policy](#)

Safety employees are expected to comply with the personal appearance requirements set forth in the Department Uniform Policy in the [Administrative Manual \(AM Section 300\).](#)

12.16 [Accident, Illness and Injury Prevention Program](#)

The City of San Marcos is committed to the health and safety of its employees and to providing a safe work environment. The City recognizes the need to comply with regulations governing accident, injury and illness prevention and to promote overall employee safety. It is City policy to fully comply with Labor Code Section 6401.7 (formerly referred to as Senate Bill 198) and General Safety Order Section 3203 (Injury and Illness Prevention Program). Employees shall not be expected under any circumstances to perform work that violates these regulations or any other occupational health or safety standards. Effective July 1, 1991, the City has established a comprehensive accident, injury and illness program containing the following elements:

- Responsibilities of staff for program implementation.
- Procedures for identifying hazards and inspection methodology. Plans for correcting unsafe conditions or work practices.
- Safety training by Department and/or similar City positions. Employee communication of safety concerns.
- System for adherence to program. Safety recordkeeping.

[A copy of the City's most current Accident, Injury and Illness Prevention Program is available here.](#)

## 12.17 Confined Space Protocol

At times, City employees are required to perform certain job duties in confined spaces. This program establishes policies and procedures to be utilized by employees in such situations and is geared to promote safe and effective work practices. CONFINED SPACE PROTOCOL is part of the City's Injury and Illness Prevention Program and complies with OSHA and CAL/OSHA (Title 8CCR, Article 108, Section 5156 (b)(1), 5157) regulations for confined space entry.

For more information on Confined Space Protocols refer to [Emergency Operations Manual Section 508.01](#).

## **SECTION 13.0 – DISCIPLINARY ACTION**

### **13.1    Purpose**

The following procedures are designed to ensure that all employees are treated fairly when subjected to discipline, and that a formal procedure of due process is followed for all employees having successfully completed his or her probationary period.

### **13.2    Range**

Disciplinary actions may range from informal conversations to formal discharge. An effective, reasonable system of disciplinary action is founded on the premise that the actions are to be corrective rather than punitive; the actions are progressively more severe; and the actions fit the nature of the problem. The City Manager reserves the right to administer more severe discipline when necessary due to the nature of the cause for discipline.

### **13.3    Skelly Procedure**

Employees who have completed the initial probationary period will be afforded a Skelly Procedure in order to guarantee the protection of due process. For any CLASS A actions which include non-emergency disciplinary dismissals, demotions, reductions in salary and suspensions without pay for five (5) days or more, employees will be afforded the protection of a pre-discipline procedure. For any CLASS B actions that include non-emergency disciplinary suspensions of less than five (5) days, and any CLASS C actions that include emergency disciplinary actions, the action may be immediately implemented with the Skelly Procedure promptly following. Employees receiving written reprimands will not be afforded the protection of a Skelly procedure. However, written reprimands are appealable to the Department Head. The Department Head's decision is final. Employees have the right to review and sign any adverse comment before it is placed in his/her personnel file. If the employee refuses to sign the adverse comment, the refusal will be noted on the document and the employee will sign or initial the document.

### **13.4    Firefighters Procedural Bill of Rights Act**

In accordance with the Firefighters Procedural Bill of Rights Act, when a non- probationary suppression employee is under investigation and subjected to interrogation by his or her supervisor, or anyone designated by the Fire Chief, that could lead to punitive action, the interrogation/investigation shall be conducted under the following conditions:

- 13.4.1 The interrogation shall be conducted at a reasonable hour, at a time when the employee is on duty, unless an imminent threat to the safety of the public requires otherwise. If the interrogation does occur during off-duty time of the employee being interrogated, the employee shall be compensated for any off-duty time.
- 13.4.2 The employee under investigation shall be informed, prior to the interrogation, of the rank and name of the officer or other person in charge of the interrogation, the interrogating officer, and all other persons to be present during the interrogation. All questions directed to the employee under interrogation shall be asked by and through no more than two interrogators at one time.
- 13.4.3 The employee under investigation shall be informed of the nature of the investigation prior to any interrogation.
- 13.4.4 The interrogating session shall be for a reasonable period taking into consideration the gravity and complexity of the issue being investigated. The person under interrogation shall be allowed reasonable breaks to attend to his or her own personal physical necessities.
- 13.4.5 The employee under interrogation shall not be subjected to offensive language or threatened with punitive action. A promise of reward shall not be made as an inducement to answering any question. The Fire Department shall provide to, and obtain from, an employee a formal grant of immunity from criminal prosecution, in writing, before the employee may be compelled to respond to incriminating questions in an interrogation. Subject to that grant of

immunity, an employee refusing to respond to questions or submit to interrogations shall be informed that the failure to answer questions directly related to the investigation or interrogation may result in punitive action.

- 13.4.6 The Fire Department shall not cause the employee under interrogation to be subjected to visits by the press or news media without his or her express written consent free of duress, and the employee's photograph, home address, telephone number, or other contact information shall not be given to the press or news media without his or her express written consent.
- 13.4.7 The complete interrogation of an employee may be recorded. If a recording is made of the interrogation, the employee shall have access to the recording if any further proceedings are contemplated or prior to any further interrogation at a subsequent time. The employee shall be entitled to a transcribed copy of any notes made by a stenographer or to any reports or complaints made by investigators or other persons, except those portions that are otherwise required by law to be kept confidential. Notes or reports that are deemed to be confidential shall not be entered in the employee's personnel file. The employee being interrogated shall have the right to bring his or her own recording device and record any and all aspects of the interrogation.
- 13.4.8 If, prior to or during the interrogation of an employee, it is contemplated that he or she may be charged with a criminal offense, he or she shall be immediately informed of his or her constitutional rights.
- 13.4.9 Upon the filing of a formal written statement of charges, or whenever an interrogation focuses on matters that may result in punitive action against an employee, that employee, at his or her request, shall have the right to be represented by a representative of his or her choice who may be present at all times during the interrogation. The representative shall not be a person subject to the same

investigation. The representative shall not be required to disclose, or be subject to any punitive action for refusing to disclose, any information received from the employee under investigation for noncriminal matters. This section shall not be construed to apply to counseling, instruction, or informal verbal admonishment by, or other routine or unplanned contact with, a supervisor or any other employee.

- 13.4.10 An employee shall not be loaned or temporarily reassigned to a location or duty assignment if another employee would not normally be sent to that location or would not normally be given that duty assignment under similar circumstances.
- 13.4.11 Employees shall be afforded all of their rights under the Firefighter Procedural Bill of Rights.

### 13.5 CLASS A DISCIPLINARY PROCEDURE

The following procedures are designed to ensure that all employees are treated fairly when subjected to CLASS A discipline, and, in the case of non-emergency dismissal, demotions, and reductions in salary or suspensions without pay of five (5) days or more, that a formal pre-disciplinary procedure of due process is followed. The following procedures will only be required for employees who have completed their probationary period.

- 13.5.1 Pre-Notice of Proposed Action. The employee will receive pre- disciplinary written notification from the Department Head stating:
  - 13.5.1.1 The proposed action, the effective date, Sections or statutes violated.
  - 13.5.1.2 Factual bases for findings.
  - 13.5.1.3 Reasons for the proposed action, including a brief description of the relevant facts.
  - 13.5.1.4 The notice shall include copies of all documents and written materials compiled to support the proposed action.

- 13.5.1.5 The notice shall inform the employee of the right to respond, orally or in writing, within seven (7) calendar days and advise employee that failure to provide a timely request will waive the firefighter's right to respond prior to the imposition of the discipline.
- 13.5.1.6 The notice will be personally delivered to the employee's home address if the employee is unavailable at work.
- 13.5.1.7 When the Department Head and employee are able to discuss the notice, the employee shall acknowledge by signature on the notice that he or she understands the notice and the right to respond to the notice.

13.5.2 Employee's Right to Respond. Within seven (7) calendar days after receipt of the notice, the employee may request a Skelly meeting with the Department Head to respond to the charges. The employee may utilize this opportunity to present his or her side in response to the charges and has a right to have a representative at the meeting. This need not be an evidentiary review.

13.5.3 Upon response from the employee (or after the seven (7) calendar day deadline) and within 30 days of the decision but not less than 48 hours before imposing the discipline, the Department Head will either,

- 13.5.3.1 Withdraw the proposed disciplinary action,
- 13.5.3.2 Administer a modified disciplinary action, or
- 13.5.3.3 Administer the proposed disciplinary action.

13.5.4 Implementation of the Disciplinary Action. If discipline is warranted, the employee shall receive written notice of such, including the effective date, which will constitute the

Accusation as described in Government Code §§ 11500, et seq. The notice shall be prepared and served in conformity with the requirements of Government Code §§11500, et seq. The employee will be advised of the right to appeal.

13.5.5 Post-Disciplinary Procedure. All employees who have completed their probation may appeal any CLASS A personnel action relative to any disciplinary action, layoff, or alleged violation of the personnel Sections to the City Manager.

If the employee appeals a disciplinary action, the appeal must be presented in writing to the City Manager within fifteen (15) calendar days. The review will be conducted as follows, which the City and Association stipulate to as being in accordance with Chapter 5, section 11500 of the California Government Code and otherwise satisfying the administrative appeal right established under section 3250 of the California Government Code:

The formal appeal shall be presided over by an administrative law judge on staff of the State Office of Administrative Hearings, hereafter referred to as the "ALJ". The ALJ shall preside at the appeal hearing, Section on the admission and exclusion of evidence and determine and Section on all matters of law both procedural and substantive. In conducting the appeal hearing the ALJ shall follow the provisions set forth in section 11513 of the California Government Code.

The appeal proceedings shall be reported by a stenographic reporter. However, upon the consent of all the parties, the proceedings may be reported electronically. Within 30 days after the case is submitted to him or her, the ALJ shall prepare a proposed written decision to be submitted to the City Manager. Within 60 days of receipt by the City Manager of the ALJ's proposed decision, the City Manager may take any of the following actions:

13.5.5.1 Adopt the proposed decision in its entirety.

- 13.5.5.2 Reduce or otherwise mitigate the proposed penalty and adopt the balance of the proposed decision.
- 13.5.5.3 Make technical or other minor changes in the proposed decision and adopt it as the decision. Action by the City Manager under this paragraph is limited to a clarifying change or a change of a similar nature that does not affect the factual or legal basis of the proposed decision.
- 13.5.5.4 Reject the proposed decision and refer the case to the same ALJ if reasonably available, otherwise to another ALJ, to take additional evidence. If the case is referred to the ALJ pursuant to this subparagraph, he or she shall prepare a revised proposed decision based on the additional evidence and the transcript and other papers that are part of the record of the prior appeal hearing. A copy of the revised proposed decision shall be furnished decision shall be served to each party and his or her attorney.
- 13.5.5.5 Reject the proposed decision, and decide the case upon the record, including the transcript, or upon an agreed statement of the parties, with or without taking additional evidence. By stipulation of the parties the City Manager may decide the case upon the record without including the transcript. The City Manager's decision will be reduced to writing and shall be final and binding on the parties. The City Manager's written decision shall be served on the parties in accordance with Code of Civil Procedure section 1094.6 and the decision shall be subject to judicial review pursuant to Code of Civil Procedure section 1094.5.

## 13.6 CLASS B DISCIPLINARY ACTION PROCEDURE

The following procedures are designed to ensure that all employees are treated fairly when subjected to CLASS B non-emergency disciplinary suspensions of less than five (5) days. While such action may be immediately implemented without pre-disciplinary notice and hearing, the employee will be provided the Skelly Procedure promptly after the implementation of discipline. The following procedures will only be required for employees who have completed their probationary period.

13.6.1 Notice of Action. The employee will receive written notification of the disciplinary action taken by the Department Head stating:

13.6.1.1 The proposed action, the effective date, Sections or statutes violated.

13.6.1.2 Factual bases for findings.

13.6.1.3 Reasons for the proposed action, including a brief description of the relevant facts.

13.6.1.4 The notice shall include copies of all documents and written materials compiled to support the proposed action.

13.6.1.5 The notice shall inform the employee of the right to respond, orally or in writing, within seven (7) calendar days and advise employee that failure to provide a timely request will waive the employee's right to respond prior to the imposition of the discipline.

13.6.1.6 The notice will be personally delivered to the employee's home address if the employee is unavailable at work.

13.6.1.7 When the Department Head and employee are able to discuss the notice, the employee shall acknowledge by signature on the notice that he

or she understands the notice and the right to respond to the notice.

- 13.6.2 Employee's Right to Respond. Within seven (7) calendar days after receipt of the notice, the employee may request a Skelly meeting with the Department Head to respond to the charges. The employee may utilize this opportunity to present his or her side in response to the charges and has a right to have a representative at the meeting. This need not be an evidentiary review.
- 13.6.3 Upon response from the employee (or after the seven (7) calendar day deadline) and within 30 days of the decision but not less than 48 hours before imposing the discipline, the Department Head will either,
  - 13.6.3.1 Withdraw the proposed disciplinary action,
  - 13.6.3.2 Administer a modified disciplinary action, or
  - 13.6.3.3 Administer the proposed disciplinary action.
- 13.6.4 Implementation of the Disciplinary Action. If discipline is warranted, the employee shall receive written notice of such, including the effective date. The employee will be advised of the right to review or appeal. The written notice will be given by registered mail if the employee is unavailable at work.
- 13.6.5 Post-Disciplinary Procedure. All employees who have completed their probation may appeal any CLASS B personnel action relative to any disciplinary action to the City Manager. Pursuant to Government Code § 11445.20, the following informal hearing procedure shall be utilized for an appeal by a firefighter of a CLASS B personnel action:
  - 13.6.5.1 Notice of Appeal- Within five (5) calendar days of receipt by a firefighter of notification of any CLASS B personnel action as set forth above,

the firefighter shall notify the Fire Chief in writing of the firefighter's intent to appeal the punitive action. The notice of appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal.

13.6.5.2 Presiding Officer- In an informal hearing, the Fire Chief or his/her designee shall be the presiding officer. The Fire Chief or his/her designee shall conduct the informal hearing in accordance with these procedures. The determination of the Fire Chief shall be final and binding. If the Fire Chief cannot serve as the hearing officer because of actual bias, prejudice or interest as defined by Government Code §11425.40, then the City Manager or his/her designee shall serve as the Presiding Officer. In such cases, the determination of the City Manager shall be final and binding.

13.6.5.3 Burden of Proof- The employer shall bear the burden of proof at the hearing.

13.6.5.3.1 If the action being appealed does not involve allegations of misconduct by the employer, the limited purpose of the hearing shall be to provide the officer the opportunity to establish a record of the circumstances surrounding the action. The Department's burden of proof shall be satisfied if the Department establishes by a preponderance of the evidence that the action was reasonable. The Department's burden of proof may be satisfied even though reasonable persons may disagree about the appropriateness of the action.

13.6.5.3.2 However, if the punitive action involves charges of misconduct, the Department shall have the burden of proving by a preponderance of the evidence the facts which form the basis for the charge and that the punitive action was reasonable under the circumstances.

#### 13.6.5.4 Conduct of Hearing

13.6.5.4.1 The formal Sections of evidence do not apply, although the Presiding Officer shall have discretion to exclude evidence which is incompetent, irrelevant or cumulative, or the presentation of which will otherwise consume undue time.

13.6.5.4.2 The parties may present opening statements.

13.6.5.4.3 The parties may present evidence through documents and testimony.

- i. Witnesses shall testify under oath.
- ii. Subpoenas may be issued pursuant to Government Code §§11450.05-11450.50.
- iii. Unless the punitive action involves a loss of compensation, the parties shall not be entitled to confront and cross-examine witnesses.

13.6.5.4.4 Following the presentation of evidence, if any, the parties may submit oral and/or written closing arguments for consideration by the hearing officer.

13.6.5.5 Recording of the Hearing- If the punitive action involves the loss of compensation, and then the hearing shall be stenographically recorded by a certified court reporter. Otherwise, the hearing may be tape recorded. The per diem cost of the court reporter shall be equally borne by the parties. The cost to receive a transcript of the hearing shall be borne by the party requesting the transcript.

13.6.5.6 Representation- The firefighter may be represented by an association representative or attorney of his or her choice at all stages of the proceedings. All costs associated with such representation shall be borne by the firefighter.

13.6.5.7 Decision- The decision shall be in writing pursuant to Government Code §11425.50. The decision shall be served by first class mail, postage pre-paid, upon the firefighter as well as his/her attorney or representative, shall be accompanied by an affidavit or certificate of mailing, and shall advise the firefighter that the time within which judicial review of the decision may be sought is governed by Code of Civil Procedure § 1094.6.

### 13.7 CLASS C DISCIPLINARY ACTION PROCEDURE

In circumstances when an employee's behavior presents an immediate danger to the safety or welfare of the employee, fellow workers, or the public, or is an aggravated breach of these regulations, and with forty-eight (48) hours notice, the employee may be suspended without pay by the Fire Chief. Any suspension imposed pursuant to this section shall only be an interim measure designed to protect the safety and welfare of the employee and/or others. Imposition of a suspension pursuant to these provisions shall not prevent further or different disciplinary measures from subsequently being imposed.

The following procedures are designed to ensure that all employees are treated fairly when subject to CLASS C emergency

disciplinary actions. The following procedures will only be required for employees who have completed their probationary period.

- 13.7.1 Notice of unpaid suspension. The employee shall receive written notification at least forty-eight (48) hours prior to the imposition of the unpaid suspension. The notice shall state the reasons for the suspension, Sections or statutes violated, factual bases for the suspension, the effective date of the suspension and copies of all documents and written materials compiled to support the suspension. Prior to imposition of the unpaid suspension, the employee may submit a response to the Fire Chief regarding the impending suspension.
- 13.7.2 An employee subject to suspension under Section 13.7 will be entitled to an administrative appeal within a reasonable period of time following imposition of suspension. If the employee chooses to appeal the suspension, the employee must file a notice of appeal in writing with the City Manager within fifteen (15) calendar days from the employee's receipt of the City Manager's decision. Failure to file a timely appeal will constitute a waiver of the employee's right to appeal. The type of administrative appeal will be dictated by the length of the unpaid suspension as stated in Sections 13.5 and 13.6 above.

## **SECTION 14.0 – GRIEVANCE PROCEDURE**

A grievance shall be considered as the complaint of an employee or group of employees arising out of the application or interpretation of existing Sections, regulations, policies or practices.

### **14.1 Purpose**

To afford employees as individuals or groups of employees through a representative and systematic means of obtaining further consideration of problems after every reasonable effort has failed to resolve them through discussion.

To resolve grievances as near as practicable to the point of origin.

### **14.2 Scope**

For the purpose of this procedure, grievances shall be considered reviewable or non-reviewable.

**14.2.1 Reviewable Grievance** – To be reviewable under this procedure a grievance shall involve a matter for which appeal is not elsewhere provided concerning the interpretation or application of this agreement or a decision or omission affecting working conditions over which the Department Head has control.

Reviewable grievances shall be filed and shall include:

14.2.1.1 The facts surrounding the specific incident; and

14.2.1.2 The specific act or omission by management regarding working conditions or other aspects of employer- employee relations over which the Department Head has control; and

14.2.1.3 The specific inequity or damage suffered by employee as a result of 14.2.1.1 and 14.2.1.2 above; and

14.2.1.4 The specific relief sought by the employee, which must be within the power of the Department Head to grant.

14.2.2 Non-Reviewable Grievance – A grievance is not reviewable if it involves a matter:

14.2.2.1 Subject to items affecting wages, hours and conditions of employment specifically reserved as City management rights.

14.2.2.2 Reviewable under any other administrative procedure. For example, applications for changes in job titles, job classification or salary increase; appeals from formal disciplinary proceedings; appeals from work performance evaluations; and appeals that have affirmative action or civil rights remedies.

14.2.2.3 Where processing of the grievance would require the modification of a policy as established by City Council or by law in the form of an ordinance or resolution.

### 14.3 Procedure

The time limits specified in the following procedure may be extended at any level of review to a definite date by mutual agreement of the employee and the reviewer concerned.

Failure of the employee to take action within the specified time limits at each level of review shall constitute withdrawal of the grievance.

#### 14.3.1 Informal Grievance

An employee who has a problem or complaint shall first try to resolve the matter through discussion with their immediate supervisor and/or Department Head within ten (10) calendar days after the specific incident. Every effort should be made to find an acceptable solution by informal means at the department level. If the employee is not in agreement with the decision reached by discussion, a formal grievance must be submitted in writing, using the Grievance Form, within five (5) calendar days after receiving the informal decision.

#### 14.3.2 Formal Grievance

#### 14.3.2.1 Departmental Review:

A grievance shall be presented in writing or in person to the Department Head, who shall render a decision and comments in writing, and return them to the employee within five (5) calendar days after receiving the grievance. If the employee does not agree with the Department Head, or if no answer has been received within the five (5) calendar days, the employee may present the appeal in writing to the City Manager within five (5) additional calendar days.

#### 14.3.2.2 City Manager Review:

If the grievance has not been settled at the department level, pursuant to step #1, and the employee has presented a timely appeal, the City Manager or his or her representative shall within fifteen (15) working days, investigate the grievance and submit a written decision to the employee. The decision of the City Manager shall be final.

**SECTION 15.0 – EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS**  
**RESOLUTION #88-2746**

**15.1     General Provisions**

**15.1.1    Statement of Purpose**

This Resolution implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et. seq.) captioned “Local Public Employee Organizations,” by providing orderly procedures for the administration of employer-employee relations between the City and its employees. However, nothing contained herein shall be deemed to supersede the provisions of the State law, City ordinances, resolutions and Sections which establish and regulate the City merit system, or which provide for the other methods of administering employer-employee relations. This resolution is intended, instead, to strengthen merit and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the City.

It is the purpose of this Resolution to provide procedures for recognition of employee organizations and for meeting and conferring in good faith with employees or recognized employee organizations regarding matters that directly affect and primarily involve the wages, hours, and other terms and conditions of employment of employees in appropriate units and that are not preempted by Federal or State law. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others: the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion

over its organization and the technology of performing its work.

15.1.2 Definitions

As used in this Resolution, the following terms shall have the meanings indicated:

15.1.2.1 "Appropriate Unit" means a unit of employee classes or positions, established pursuant to Article II hereof.

15.1.2.2 "City" means the City of San Marcos, and, where appropriate herein, refers to the City Council or any duly authorized City representative as herein defined.

15.1.2.3 "Confidential Employee" means an employee who, in the course of his or her duties, has access to confidential information relating to the city's administration of employer-employee relations.

15.1.2.4 "Consult/Consultation in Good Faith" means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions; and, as distinguished for meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counterproposals with an exclusively recognized employee organization in an endeavor to reach agreement in the form of a memorandum of understanding, nor is it subject to Article IV hereof.

15.1.2.5 "Day" means calendar day unless expressly stated otherwise.

15.1.2.6 "Employee Relations Officer" means the City Manager or his or her authorized representative.

15.1.2.7 “Impasse” means the representatives of the City and recognized employee organization have reached the point in their meeting and conferring in good faith where their differences on matters to be included in a memorandum of understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

15.1.2.8 “Management Employee” means an employee having responsibility for formulating, administering or managing the implementation of City policies and programs.

15.1.2.9 “Proof of Employee Support” means (1) an authorization card recently signed and personally dated by an employee; or (2) a verified authorization petition or petitions recently signed and personally dated by an employee; or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one considered as proof of employee support for any employee organization. The only authorization that shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words “recently signed” shall mean within one hundred eighty (180) days prior to the filing of a petition.

15.1.2.10 “Exclusively Recognized Employee Organization” means an employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate representation unit pursuant to Article II hereof, having the exclusive right to meet and confer in

good faith concerning statutorily required subjects pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees.

15.1.2.11 “Supervisory Employee” means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not a merely routine or clerical nature, but requires the use of independent judgment.

## 15.2 Representation Proceedings

### 15.2.1 Filing of Recognition Petition by Employee Organization

An employee organization that seeks to be formally acknowledged as the Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer containing the following information and documentation:

15.2.1.1 Name and address of the employee organization.

15.2.1.2 Names and titles of its officers.

15.2.1.3 Names of employee organization representatives who are authorized to speak on behalf of the organization.

15.2.1.4 A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the City.

15.2.1.5 A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state,

national or international organization, and, if so, the name and address of each such other organization.

15.2.1.6 Certified copies of the employee organization's constitution and bylaws.

15.2.1.7 A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.

15.2.1.8 A statement that the employee organization has no restriction on membership based on race, color, creed, sex, national origin, age or physical disability.

15.2.1.9 The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.

15.2.1.10 A statement that the employee organization has in its possession, proof of employee support as herein defined to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for the confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.

15.2.1.11 A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

The Petition, including the proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

#### 15.2.2 City Response to Recognition Petition

Upon receipt of the Petition, the Employee Relations Officer shall determine whether:

15.2.2.1 There has been compliance with the requirements of the Recognition Petition, and

15.2.2.2 The proposed representation unit is an appropriate unit in accordance with Sec. 8 of this Article II.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, he or she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters is not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefore in writing. The petitioning employee organization may appeal such determination in accordance with Sec. 10 of this Resolution.

#### 15.2.3 Open Period for Filing Challenging Petition

Within thirty (30) days of the date written notice was given to the affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some but not all of the classifications or positions set forth

in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Sec. 3 of this Article II. If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organization shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Sec. 9 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date of notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Sec.10 of this Article II.

#### 15.2.4 Election Procedure

The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned employee organization(s), in accordance with its Sections and procedures subject to the provisions of this Resolution. All employee organizations that have duly submitted petitions which have been determined to be in conformance with this Article II shall be included on the ballot. The ballot shall also reserve to employees the choice of representing themselves individually in their employment relations with the City. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices

receiving the largest number of valid votes cast; the Sections governing an initial election being applicable to a run-off election.

There shall be no more than one valid election under this Resolution pursuant to any petition in a 12-month period affecting the same unit.

In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the State Conciliation Service.

Costs of conducting elections shall be borne in equal share by the City and by each employee organization appearing on the ballot.

#### 15.2.5 Procedure for Decertification of Exclusively Recognized Employee Organization

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the month of March of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of the memorandum of understanding then having been in effect less than three (3) years, whichever occurs later. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

15.2.5.1 The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.

15.2.5.2 The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as the representative of that unit.

15.2.5.3 An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.

15.2.5.4 Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section.

An Employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent that includes the allegation and information required under paragraph (c.) of this Section 7, and otherwise conforms to the requirements of Section 3 of this Article.

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If his/her determination is in the negative, he or she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Sec. 10 of this Article II. If the determination of the Employee Relations Officer is in the affirmative, or if his or her negative determination is reversed on appeal, he or she shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to the unit employees.

During the “open period” specified in the first paragraph of this Sec. 7, the Employee Relations Officer may on his or her own motion, when he or she has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all unit employees that he or she will arrange for an election to determine that issue. In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this Sec. 7, which the Employee Relations officer shall act on in accordance with this Sec. 7.

If, pursuant to this Sec. 7, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any memorandum of understanding then in effect for its remaining term.

#### 15.2.6 Policy and Standards for Determination of Appropriate Units

The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the City and its compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest. Factors to be considered shall be:

15.2.6.1 Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.

15.2.6.2 History of representation in the City and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.

15.2.6.3 Consistency with the organizational patterns of the City.

15.2.6.4 Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.

15.2.6.5 Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing single or related classifications among two or more units.

Notwithstanding the foregoing provisions of this Section, managerial, supervisory and confidential responsibilities, as defined in Sec. 2 of this Resolution, are determining factors in establishing appropriate units hereunder, and therefore managerial, supervisory and confidential employees may only be included in a unit consisting solely of managerial, supervisory or confidential employees respectively. Managerial, supervisory and confidential employees may not represent any employee organization that represents other employees.

The Employee Relations Officer shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this Section.

15.2.7 Procedure of Modification of Established Appropriate Units  
Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Sec. 7 of this Article II. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Sec. 3 of this Article, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Sec. 8 hereof. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Employee Relations Officer may on his or her own motion propose during the period specified in Sec. 7 of this

Article that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organizations and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Sec. 8 of this Article II, and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 10 of this Article. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Sec. 3 hereof.

#### 15.2.8 Appeals

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer under this Article II may, within ten (10) days of notice thereof or thereafter appeal such determination to the City Council for final decision with fifteen (15) days of notice of the Employee Relations Officer's determination or the termination of proceedings pursuant to the Government Code Sections 3507.1 and 3507.3, whichever is later.

An employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Sec. 3), Challenging Petition (Sec. 5), or Decertification of Recognition Petition (Sec. 7), or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Sec. 7), has not been filed in compliance with the applicable provisions of this Article may, within fifteen (15) days of notice of such determination, appeal the determination to the City Council for final decision.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the Employee Relations Officer. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any

decision of the City Council on the use of the substance of the dispute shall be final and binding.

15.2.9 Submission of Current Information by Recognized Employee Organizations

All changes in the information filed with the City by Exclusively Recognized Employee Organization under items (a.) though (h.) of its Recognition Petition under Sec. 3 of this Resolution shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

15.2.10 Payroll Deductions on Behalf of Employee Organizations

Upon formal acknowledgement by the City of an Exclusively Recognized Employee Organization under this Resolution, only such Recognized Employee Organization may be provided payroll deductions of membership dues upon written authorization of employees in the unit represented by the Exclusively Recognized Employee Organization on forms provided therefore by the City. The providing of such service to the Exclusively Recognized Employee Organization by the City shall be contingent upon and in accordance with the provisions of memoranda of understanding and/or applicable administrative procedures.

15.2.11 Employee Organization Activities – Use of City Resources

Access to City work locations and the use of City paid time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in a memoranda of understanding and/or administrative procedures, shall be limited to lawful activities consistent with the provisions of this Resolution that pertain directly to the employer-employee relationship and not such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

15.2.12 Administrative Sections and Procedures

The City Manager is hereby authorized to establish such Sections and procedures as appropriate to implement and administer the provisions of this Resolution after consultation with affected employee organizations.

### 15.3 Impasse Procedures

#### 15.3.1 Initiation of Impasse Procedures

If the meet and confer process has reached impasse as defined in this Resolution, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its positions on all issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such meeting shall be:

- 15.3.1.1 To review the position of the parties in a final effort to reach agreement on a memorandum of understanding; and
- 15.3.1.2 If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

#### 15.3.2 Impasse Procedures

##### 15.3.2.1 Impasse procedures are as follows:

15.3.2.1.1 If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.

15.3.2.1.2 If the parties fail to agree to submit the dispute to mediation or fail to agree on the selection of a mediator, or fail to resolve the dispute through mediation within fifteen (15) days after the mediator commenced meeting with

the parties, the parties may agree to submit the impasse to fact-finding.

15.3.2.1.3 If the parties agree on fact-finding, they may agree on the appointment of one or more fact-finders. If they fail to so agree on one or more fact-finders, a fact-finding panel of three (3) shall be appointed in the following manner: One member of the panel shall be appointed by the Employee Relations Officer, one member shall be appointed by the Exclusively Recognized Employees Organization, and those two shall name a third, who shall be the chairperson. If they are unable to agree upon a third, they shall select by agreement the third member from one or more lists of seven (7) names of individuals having fact-finding experience in the municipal sector to be provided by the State Conciliation Service.

15.3.2.2 The following constitute the jurisdictional and procedural requirements for fact-finding:

15.3.2.2.1 The fact-finders shall consider and be guided by applicable Federal and State Laws.

15.3.2.2.2 Subject to the stipulations of the parties, the fact-finders shall determine and apply the following measures and criteria in arriving at their findings and recommendations:

15.3.2.2.3 First, as relevant to the issues in dispute, the fact-finders shall compare the total compensation,

hours and conditions of employment of other employees performing similar services in public and private employment of other employees performing similar services in public and private employment in the same and comparable communities. "Total compensation" shall mean all wage compensation, including but not limited to premium, incentive, minimum, standby, out-of-class and deferred pay; all paid leave time; all allowances, including but not limited to educational and uniform benefits; and employer payments for all health, welfare and pension benefits.

15.3.2.2.4 The fact-finders shall then adjust the results of the above comparisons based on the following factors:

- i. The compensation necessary to recruit and retain qualified personnel
- ii. Allowance for equitable compensation increases for other employees and employee groups for the corresponding fiscal period(s); and
- iii. Revenue projections not to exceed currently authorized tax and fee rates for the relevant fiscal year(s); and
- iv. Assurance for sufficient and sound budgetary reserves; and
- v. Constitutional, statutory (and charter) limitation on the level and use of revenues and expenditures.

15.3.2.2.5 The fact-finder(s) shall make written findings of fact and recommendations for the resolution of the issues in dispute, which shall be presented in terms of the criteria, adjustments, and limitations specified above. Any member of a fact-finding panel shall be accorded the right to file dissenting written findings of fact and recommendations. The fact-finder or chairperson of the fact-finding panel shall serve such findings and recommendations on the Employee Relations Officer and the designated representative of the Exclusively Recognized Employee Organization. If these parties have not resolved the impasse within ten (10) days after service of the findings and recommendations upon them, the fact-finder or the chairperson of the fact-finding panel shall make them public by submitting them to the Council's legislative consideration of the impasse.

15.3.2.2.6 If the parties did not agree on mediation or the selection of a mediator and did not agree on fact-finding, or having so agreed, the impasse has not been resolved, the matter shall be submitted to the City Council for resolution. The City Council may establish procedures for presentation of the impasse and may take such action regarding the

impasse as it in its discretion deems appropriate as in the public interest. Any legislative action by the City Council on the impasse shall be final and binding.

#### 15.3.3 Costs of Impasse Procedures

The costs for the services of a mediator and fact-finder or chairperson of a fact-finding panel utilized by the parties, and other mutually incurred costs of mediation and fact-finding, shall be borne equally by the City and Exclusively Recognized Employee Organization. The cost of a fact-finding panel member selected by each party, and other separately incurred costs, shall be borne by such party.

### 15.4 Miscellaneous Provisions

#### 15.4.1 Construction

This Resolution shall be administered and construed as follows:

15.4.1.1 Nothing in this Resolution shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by Federal or State law.

15.4.1.2 This Resolution shall be interpreted so as to carry out its purposes as set forth in Article I.

15.4.1.3 Nothing in this Resolution shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of giving employers or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout or other total or partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions by them are in violation of their conditions of employment except

as expressly otherwise provided by legally preemptive State or contrary to local law. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination, and may be permanently replaced, to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit any rights accorded them under City law or contract.

#### 15.4.2 Severability

If any provision of this Resolution, or the application of such provision to any persons or circumstances, shall be held invalid, the remainder of this Resolution, or the application of such provision to persons or circumstances other than those as to which it is held valid, shall not be affected thereby.