


Agenda Report Reviewed by:

City Manager: 

CITY OF SEBASTOPOL  
CITY COUNCIL  
AGENDA ITEM

**Meeting Date:** May 16, 2023  
**To:** Honorable Mayor and City Councilmembers  
**From:** Mary Gourley, Assistant City Manager  
Deborah Muchmore, Human Resources Consultant  
**Subject:** Approve Amended Personnel Rules  
**Recommendation:** It is recommended that the Council: Approve Amendments to Personnel Rules  
**Funding:** Currently Budgeted: \_\_\_\_\_ Yes \_\_\_\_\_ No   X   N/A  
Net General Fund Cost:   0  

Account Code/Costs authorized in City Approved Budget (if applicable)   N/A   (verified by Administrative Services Department)

**INTRODUCTION:**

This item is to request City Council Approval and Adoption of Amendments to the Master Personnel Rules and Regulations (MPRR) Section XI - Disciplinary Appeal (Resolution 6261-2019) to remove conflicting language and remove references to “Arbitrator” and in their place adding references to “Hearing Officer”. The changes provide consistency in process and remove confusion from the language. Approval of the Resolution affects these changes, and which are shown in the redline version of Section XI – Disciplinary Appeal (Attachment A).

**BACKGROUND**

Over the course of the last few revisions to the Personnel Rules, sections of the language in Section XI – Disciplinary Appeal have been revised and sections of the language have fallen out of alignment.

**DISCUSSION:**

Approval of this item aligns the processes and language so that all references in process are to “the Hearing Officer” and not “the Arbitrator”. Redundancy and conflicting sections were also removed. The City met and conferred with the Sebastopol Police Officers’ Association, the Service Employees’ International Union, Local 1021, and the City Management Unit. All represented groups concur with these changes.

**CITY COUNCIL AND/OR GENERAL PLAN GOALS**

Goal 5: Provide Open and Responsive Municipal Government Leadership

Goal 6: Maintain a highly qualified Staff that works to provide services to serve and protect the residents, visitors, and businesses of this community.

**ENVIRONMENTAL REVIEW**

This action is exempt from the California Environmental Quality Act (CEQA) because it is not a project which has the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment, according to CEQA Guideline section 15378.

PUBLIC COMMENT:

As of the writing of this staff report, the City has not received any public comment. However, if staff receives public comment from interested parties following the publication and distribution of this staff report such comments will be provided to the City Council as supplemental materials before or at the meeting. In addition, public comments may be offered during the public comment portion of the consent calendar.

PUBLIC NOTICE:

This item was noticed in accordance with the Ralph M. Brown Act and was available for public viewing and review at least 72 hours before the scheduled meeting date.

FISCAL IMPACT:

There is no fiscal impact from the approval of this item and Resolution.

RECOMMENDATION:

That the City Council Approve and Adopt amendments to the Master Personnel Rules and Regulations, Section XI – Disciplinary Appeal as reflected in Attachment A.

ATTACHMENTS:

1. Resolution – Master Personnel Rules and Regulations (MPRR)
2. Attachment A – Redline version of changes to the MPRR

RESOLUTION NO. xxxx - 2023

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF SEBASTOPOL APPROVING AND  
ADOPTING THE MASTER PERSONNEL RULES AND REGULATIONS (MPRR)

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WHEREAS, Ordinance Number 563 of the City of Sebastopol provides that the City Council may, by resolution, establish rules and regulations regarding salaries, vacations, sick leave and other benefits; and uniform rules and regulations for the appointment and discharge of City employees; and

WHEREAS, the uniform rules and regulations was initially established and adopted by the City Council in the late 1970's; and

WHEREAS, throughout the years, changes were made to adhere to current laws and practices related to Employer/Employee relations, and in June 2016, minor revisions were made to the document; and

WHEREAS, during the 2019 labor negotiation process, the City's negotiation team worked with each bargaining group and the rules were updated and new sections added, and

WHEREAS, in 2022 and 2023, the City again met with each bargaining group to amend Section XI. Disciplinary Appeal Processes, and

WHEREAS, the City has fulfilled its obligation to provide the bargaining units an Opportunity to review and provide comments on this one master document; and

WHEREAS, this document will supersede any prior resolutions and amendments, and may be changed only upon approval of the City Council.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Sebastopol hereby approves and adopts the amended Master Personnel Rules and Regulations (MPRR) which shall govern City employees on the 16<sup>th</sup> day of May 2023.

**VOTE:**

Ayes:

Noes:

Absent:

Abstain:

APPROVED:

Neysa Hinton, Mayor

ATTEST:

Mary Gourley, Assistant City Manager/City Clerk, MMC

APPROVED AS TO FORM:

Larry McLaughlin, City Attorney

CITY OF SEBASTOPOL  
PERSONNEL RULES

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## I. INTRODUCTION AND GENERAL PROVISIONS

### A. PURPOSE

The City has established a personnel management system consistent with the following merit system principles which are intended to:

- Institute equitable and uniform procedures for managing personnel matters;
- Attract the most competent workforce available to municipal service;
- Ensure that appointment/advancement of employees is based on merit and ability; and
- Provide reasonable job security for regular employees.

This Resolution is designed to outline the personnel rules, and general administrative policies that govern employment with the City of Sebastopol (“City”). These are policies and procedures which apply to ALL employees regardless of departments and bargaining units. Employees who are exempt from certain provisions of these Rules are listed below in the section title “Application of Personnel Rules”. This manual does not create any contract of employment, expressed or implied, or any rights in the nature of a contract.

The rules, policies and procedures contained in this manual supersede any and all previously issued City policies, procedures, or rules related to matters discussed in the manual.

Circumstances will require that rules, policies, procedures, and benefit programs described in this manual change from time to time. Consequently, subject to any meet and confer obligations under the Meyers-Milias-Brown Act (“MMBA”), Government Code section 3500 et seq., the City reserves the right to amend, supplement, or rescind any provisions of this manual.

Prior to any such change, the City will provide advance written notice of its intentions to labor organizations and afford the opportunity to meet and confer on the impact of the proposed change(s) upon represented employees.

### B. AUTHORITY

The City Council of the City has approved the provisions of these Personnel Rules. The City Council must approve all additions, amendments and revisions to the personnel policies and procedures contained in this manual.

### C. ADMINISTRATION

These personnel rules do not preclude the City Manager (or designee) from developing and administering supplemental departmental rules or policies as long as they do not conflict with these rules, other Council resolutions and ordinances, existing laws, or memorandums of understanding.

Further, the City Manager (or designee) is responsible for implementing, administering, and ensuring compliance with the provisions of this manual. In the event any provision of this manual needs clarification, the City Manager may issue administrative instructions clarifying the intent of said provision as adopted by the City Council. The City Manager may develop and issue procedures, consistent with this manual, to facilitate the manual’s implementation.

### D. CONFLICTING POLICIES



If there is any conflict between the policy or practices stated in a provision of these Rules and an applicable adopted Memorandum of Understanding between the City and a Recognized Employee Organization, the provisions contained in the Memorandum of Understanding will prevail.

The Rules are subject to all current and future applicable federal, state and local laws and regulations. If any part or provision of the Rules is in conflict or inconsistent with such applicable provisions of federal, state or local laws or regulations, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such parts or provisions will be suspended and superseded by such applicable law or regulations, and the remainder of the Rules will not be affected thereby.

Members of the City's management team may issue additional departmental policies as deemed necessary for the efficient administration of particular units of the organization. However, such policies shall not conflict with these Rules. In cases where there is deemed to be a conflict between a unit policy or rule and these Rules, these Rules will prevail.

#### E. DUTIES OF PERSONNEL OFFICER

The Personnel Officer of the City is the City Manager. The City Manager may delegate any personnel powers or duties to another employee of the City or may recommend to the City Council that certain personnel powers or duties be performed under contract by a qualified individual or firm. The City Manager will:

- Prepare and recommend personnel rules and revisions of personnel rules to the City Council.
- Administer all the provisions of the City's personnel system not specifically reserved to the City Council.
- Appoint all department directors and employees of the City, except the City Attorney, City Clerk, and City Treasurer.

#### F. APPLICATION OF PERSONNEL RULES

The provisions of these Personnel Rules will apply to all regular employees, except as described below. Except as noted below, these Rules do not apply to the following employees or officials:

- Elected or appointed City Council Members.
- Members of appointive boards, commissions, committees and agencies (unless they are also regular City employees).
- City Manager, City Attorney, and City Treasurer, and City Clerk are at will and employed under an individual employment agreement.

All employees will receive, or be provided access to, a copy of this manual when they are hired. The manual may be updated from time to time and be redistributed, and available on the City's website or in the Finance Department. The City may require employees to sign a statement of receipt acknowledging that: a) he or she has received a copy or has been provided access to the manual; and b) understand that he or she is responsible to read and become familiar with the contents of the manual. Changes or revisions to this manual will be provided in writing, in advance, to employees after advance notice to and process with labor organizations as described in section 1A.

## **II. CLASSIFICATION PLAN**

### A. PURPOSE

As defined in the Sebastopol Municipal Code Section 2.60.040, all regular positions of employment in the City which are described by and budgeted for by Council action, and are of indefinite duration, will be organized by the Personnel Officer into a classification plan and presented to Council for approval. Appointments to such positions will be made consistent with these Rules. The purpose of the classification plan is to provide accurate descriptions and specifications for each class of employment in City service.

#### B. CLASSIFICATION SYSTEM

In order to facilitate equitable employment and compensation practices, a classification system shall be implemented which groups positions which are similar as to duties performed, degree of responsibility exercised, supervision received or given, and other relevant job factors, so that the same title and schedule of compensation will be applied to each position in the group, and substantially similar measures of required qualifications, and acceptable job performance will also be applied to each position in the group. The Personnel Officer will develop descriptions for each job classification. Such job descriptions will contain a descriptive title, a definition of purpose for the position, typical and essential, but non-exclusive list of duties performed by positions in the classification, general qualifications and typical demands of the work environment. Job classification descriptions are intended to be descriptive and explanatory, not restrictive, and should not be construed as limiting the ability of the City Manager to assign related duties as needed to any position.

#### C. RECLASSIFICATION

As position duties and general qualifications change from time to time or the needs of the organization change, and new duties are added or deleted, management may consider it necessary to conduct a classification study or job audit to determine the most appropriate classification for a position. Such a study may also be requested by an employee or representative of a bargaining unit. Upon determining that cause for such a study exists, the Personnel Officer may undertake, or cause to be undertaken, a study of a position or positions and will determine the most appropriate classification based on the findings and recommendations of the study. The City will offer to meet and confer over the impacts of any changes to working conditions or classification changes that come out of a reclassification or changes to existing represented classifications.

### III. APPOINTMENT OF EMPLOYEES

#### A. GENERAL POLICY

All employees shall be appointed by the Personnel Officer except as noted in Section I above. Appointments may be regular full-time, regular part-time, or temporary, depending on the needs of the City. The Personnel Officer may delegate recruitment and selection responsibilities at his or her discretion. The City's employment processes will be conducted in a manner that is fair, efficient, and results in the employment of qualified candidates.

#### B. DEFINITION

##### Regular Full-Time Employee

Employees in this category have successfully completed a probationary period and regularly work a minimum of forty (40) hours per week. Employees in this status are required to participate in the State retirement program (CalPERS), and are eligible to participate in all benefit programs offered by the City subject to the terms, conditions and limitations of each benefit program.

##### Regular Part-Time Employee

Employees in this category have successfully completed a probationary period and regularly work more than twenty (20) hours but less than forty (40) hours per week. Employees in this status are required to participate in the State retirement program (CalPERS), and may participate in other benefits at the City, on a prorated basis and as defined by Federal or State law.

##### Temporary Help

The City may hire full-time or part-time temporary help to assist City personnel in the accomplishment of specific projects or business goals. Such temporary help will be hired for less than nine hundred sixty (960) hours each fiscal year.

Temporary employees are paid on an hourly basis and are not eligible to participate in any benefits other than those that are mandated by State and/or Federal laws and regulations. Temporary employee status is not considered for seniority or benefit longevity purposes if the employee is subsequently hired as a regular full-time or regular part-time employee.

##### Disaster Workers

Government Code §3100-3109 designates all public employees as disaster workers in protection of State citizens and resources. As disaster workers, employees are required to serve during a State or local emergency providing disaster service activities as assigned by a City supervisor or manager.

#### C. RECRUITMENT PROCEDURES

The City may utilize any legitimate procedure for attracting and selecting qualified applicants. Recruitment techniques may vary depending on the type of position, availability of qualified candidates, economic climate, and other considerations which may exist. Recruitments shall be conducted in accordance with equal employment opportunity principles. Recruitments may be open or may be limited to City employees, depending on the City's needs. When necessary to meet requirements for filling positions, the closing date

for any selection process may be indefinite and applicants may be evaluated continuously in such manner and at such times and places as may be determined by the Personnel Officer.

When in the best interest of the City, the City Manager may make appointments of qualified persons through an equitable and compliant internal recruitment process.

The City Manager may authorize the transfer of an employee from one position in a department to another position of the same or comparable classification in another department. Any employee transferred to a different position must possess the minimum qualifications for the position.

#### D. APPLICATIONS & OTHER MATERIALS

Application materials shall require information covering training, experience, and other pertinent information designed to determine the most-qualified applicant. All applications and selection procedure materials are confidential records and shall not be returned to applicants. Falsification or misstatement of material facts on application materials or during the selection procedure may result in rejection of the applicant or dismissal of the employee at any time. No applicant information shall be asked that is prohibited under any state or federal law.

#### E. SELECTION PROCEDURES

All selection procedures are designed to assess the job-related qualifications of each applicant and consistent with merit system principles. The City may utilize any legitimate objective method to determine the qualifications of applicants, including without limitation, written tests, physical agility tests, oral examinations, training and experience review, panel interviews, assessment centers, and oral interviews. The methods used shall be impartial and fairly measure the relative capacities of the candidates to execute the duties and responsibilities of the job. As required by law, reasonable accommodation will be made for applicants with disabilities. The City may hold the selection processes itself or contract with any competent organization or individual to prepare and/or administer selections procedures.

#### F. BACKGROUND & MEDICAL VERIFICATIONS

As part of the pre-employment procedure, applicants may be required to supply references, and submit to a thorough background check. In addition, all employees must be physically and mentally capable of performing the essential functions of their jobs with or without reasonable accommodation. The City has the right to conduct a complete and exhaustive background investigation on all applicants seeking employment, including a criminal background check, where applicable, and a medical and/or psychological examination by City-retained medical practitioners, where deemed appropriate by the City. However, any medical or psychological examination shall be conducted only after a conditional job offer has been made, in accordance with applicable law.

## G. DISQUALIFICATION

The Personnel Officer may disqualify any candidate for any legitimate reason. An applicant has no right to grieve or appeal any such actions by the City. Any one or more of the following reasons may result in disqualification.

- Improperly Completed Application: The applicant did not properly complete the application materials.
- Minimum Qualifications: The application indicates on its face that the applicant does not possess the minimum qualifications for the position.
- Essential Duties: The applicant is unable to perform the essential functions of the position sought, with or without reasonable accommodations.
- Illegal Drugs: The applicant is currently using illegal drugs.
- Legal Right to Work: The applicant is not legally permitted to work within the United States.
- False Statements: The applicant has made false statement of any material fact or practiced or attempted to practice deception or fraud in making the application for employment.
- Close marital or familial relationship to a direct or indirect supervisor over or subordinate under the direction of the position they will be filling, if selected.
- Material Cause: Material cause, in the judgment of the Personnel Officer, is circumstances which would render the applicant unsuitable for the position, including but not limited to a prior resignation from the City, termination from the City or other employer, significant disciplinary action by City or other employer, or conviction of a crime which has a nexus to and may have an adverse impact on the applicant's ability to perform the job for which the applicant is applying.

Re-employment: Except for employees rehired after layoff in accordance with Section XII of these Rules, rehired former employees are considered new employees from the effective date of their re-employment for all purposes, including the calculation of benefit levels.

## IV. **PROBATIONARY PERIOD**

### A. PURPOSE

The probationary period will be regarded as a part of the selection process and will be utilized for determining the employee's ability to perform satisfactorily the duties of the position.

### B. DURATION

Except for appointments to positions within the Police Department, all appointments to regular employment are subject to a probationary period of not less than six (6) months or more than twelve (12) months actual service subsequent to appointment. Probationary periods longer than six months are documented in the job classification.

Appointments to regular positions within the Police Department are subject to a probationary period of not less than eighteen (18) months actual service after appointment.

Promotional appointments to positions within the Police Department are subject to a probationary period of not less than twelve (12) months actual service subsequent to appointment.

Probationary periods may only be extended with approval of the City Manager for a maximum of six months to provide additional assessment, training, and guidance or for approved leaves and protected medical absences longer than two weeks. Should this become necessary, the City will document the reasons for extension, provide communication to the employee regarding the requirements of the extension, and provide a courtesy notification to the employee's union representative should the employee be represented.

C. PROBATIONARY DETERMINATION OF NOT PASSING

During the probationary period, an employee may be deemed unable to pass at any time without cause and without the right of appeal. Notification of rejection will be made in writing to the employee prior to the expiration of the probationary period.

An employee who does not pass a probationary period following a promotional appointment will be reinstated to a position in their most recent former job classification or a comparable job classification, unless the cause for not passing during the probationary period was sufficient grounds for termination and such termination followed the process described in these Rules for separation from regular City service.

V. **SALARY ADMINISTRATION**

A. SALARY SCHEDULE

The Personnel Officer will prepare, or have prepared, a Salary Schedule for adoption by the City Council. The schedule sets forth the classifications approved by the Council, together with proposed salary ranges, for the upcoming fiscal year. Salary ranges are to be reviewed by Council each fiscal year, or as often as may be recommended by the Personnel Officer to maintain appropriate compensation.

B. SALARY UPON INITIAL APPOINTMENT AND ADVANCEMENT WITHIN THE RANGES

In positions covered by these Rules, appointment to any position in any class will be made at the minimum rate, and advancements from the minimum rate to the maximum rate will be made by successive steps in the salary schedule for the class.

In the event an employee entering City service is found to possess a unique skill set or extraordinary qualifications for a position or if impediments to hiring are found such that the pool of qualified candidates is extremely limited, the City Manager may authorize an advanced step placement above the Step A.

Employees may be considered for their first advancement along the salary range of a classification upon completion of twelve months of service or a probationary period. Advancement is not automatic. Employees may be considered for additional advancements in further steps annually. Additional annual advancement along steps in the salary range is dependent on sustained demonstration of skill in the duties of the position and a satisfactory or better overall evaluation score. Once approved for a merit increase, merit increases will occur in the next available pay period of the next month.

C. SALARY UPON PROMOTION

Upon promotion, an employee will receive the first step of the salary range of the new classification or a step that is closest to five percent higher than their current base salary. In no case will salary upon promotion exceed the top step of the salary range for the new position.

D. SALARY UPON DEMOTION & TRANSFER

Upon demotion, of an employee to a lower class of position than their current class, such employee may retain the salary step in the lower range classification equal to the step they previously held in the higher class before demotion.

At the discretion of the City Manager, in the case of the demotion of any employee in the City service to a lower class of position, employee's salary may remain frozen at the amount which s/he was receiving in the higher class before demotion, until the salary range for the lower classification is raised to equal that being paid to the employee. In such cases, which may take several years, the "frozen" salary will automatically end once future increases bring the employee's new salary range up to a level where it equals the employee's "frozen" salary. The City will make a reasonable effort to estimate the duration of a "frozen" salary. Demotions where an employee's salary will be reduced within the range of the lower classification, must follow the Disciplinary procedures noted in section X.

Upon Transfer of an employee from one position to another with the same salary range and similar duties and responsibilities, the employee will retain the same salary step in the new position as they held in the former position.

Except for involuntary transfers, in the discretion of the City Manager, in the case of the transfer of any employee in the City service to a lower class of position, employee's salary shall remain "frozen", which he was receiving in the higher class before, until such time as the salary range for the lower classification is raised to equal that being paid to the employee. In such cases, which may take several years, the City Manager shall determine when the employee is once again eligible for step increases. For involuntary transfers, the employee's salary will be "frozen" and the City will make a reasonable effort to estimate the duration of a "frozen" salary.

E. SALARY UPON SUSPENSION WITHOUT PAY

After due process as described in sections IX and X below, any employee who has been suspended for disciplinary reasons will not receive any pay for the duration of the suspension.

F. SALARY FOR TEMPORARY OUT-OF-CLASS ASSIGNMENTS

The length of a temporary out-of-class assignment is defined by Government Code 20480. In accordance with the Government Code, any employee who is assigned to temporarily perform the full range of duties for a vacant position allocated to a higher salary range will receive a 5% increase in pay for hours worked while on temporary duty. The increase will be effective after a number of days between 10 and 30 as determined by the City Manager acting upon recommendation of the department head. Such assignment will be made in writing, and the employee assigned must meet the minimum qualifications of the higher classification. This temporary assignment is not to exceed a period of 960 hours or six (6) months, whichever occurs sooner, unless an extension is approved by the Personnel Officer, and does not form the basis for a reclassification request. Upon completion of the out-of-class assignment, the employee will return to their previous salary. For the purposes of this section, a “vacant position” does not refer to a position that is temporarily available due to another employee's leave of absence.

G. LONGEVITY PAY

Regular employees are entitled to an additional 2% added onto their base rate of pay following 8 years of full-time service with the City of Sebastopol, and an additional 2% (a total of 4%) is authorized following 15 years of full-time service with the City. Following 20 years of service, the longevity benefit is increased another 2% (for a total of 6%) addition to base pay. Part-time prior service may be counted on pro-rata basis.

H. COMPENSATORY TIME

All overtime worked is normally paid in the paycheck directly following when the overtime is earned. Based on service level and business needs, Department Heads have discretion as to whether an employee may elect compensatory time for overtime worked. Effective July 1, 2019, employee elected cash buy back of compensatory time accrual balances will no longer be allowed and compensatory time will be capped at 120 hours. Overtime worked once an employee’s compensatory time accrual balance reaches 120 hours will be paid out at the overtime rate in the pay period in which it is incurred. Any employees with accrual balances greater than 120 hours on July 2, 2019 will receive payout of compensatory time over 120 hours in the first pay period in August of 2019.

VI. **ADMINISTRATION OF CITY-PAID LEAVE BENEFITS**

A. GENERAL LEAVE PROVISION

To ensure accountability and the integrity of public service, all employees are expected to account for their absences from work, whether in paid or unpaid leave status.



1. Leave Approval

Leaves will be subject to approval by the supervisor and must be scheduled through City's electronic leave request system, in advance whenever possible, based on department policies, and at the mutual convenience of the department and the employee. Vacation leave must be scheduled at the mutual benefit of the City and the employee. Unauthorized leaves taken by an employee may result in disciplinary action, up to and including discharge.

2. Leave Accounting

Leave time for all employees is chargeable in increments of .25 hours (15 minutes). The City may employ any reasonable measure to ensure employees are properly accounting for leaves, including requiring reasonable proof that the basis for the leave is legitimate. Employees may be required to submit a medical certification of illness or injury supporting a request for sick leave and must, if requested by a supervisor or human resources representative, provide medical verification after a sick leave for three consecutive work days even if one of those days is a holiday. The City may require a fitness-for-duty medical certification from any employee returning from a medical leave. Failure to provide requested medical certifications may result in denial of leave or in denial of reinstatement.

3. Leave Accruals

Employees eligible for accrued leaves will accumulate leave in the amounts specified in applicable MOU's, compensation resolutions, or individual employment agreements from the date of the employee's initial appointment until separation from employment. Leave accrues on hours in a paid status. No leaves will accrue when an employee is in an unpaid status unless otherwise required by law.

All paid leave accruals are calculated and recorded at the end of each pay period and are available for use beginning on the first day of the next pay period. Paid leave cannot be used until after it has been accrued and made available for use.

4. Failure to Comply with Terms of Leave

If an employee accepts other employment during a leave of absence, except with written permission of the City Manager or as otherwise provided by state or federal law or fails to return to work on the next regularly scheduled work day following the expiration of the leave without providing reasonable communication as defined in the use of leave section with their supervisor, it will be deemed that the employee is absent from work without authorization and may be considered as abandoning their position. Employees who are on unauthorized leave for longer than 3 days may be terminated by the City without due process. Such an employee will have no right to appeal this separation from employment.

5. Use of Paid Leaves Prior to Unpaid Leave Usage

Generally, employees must use applicable paid leaves balances down to 30 hours prior to taking time off without pay. This requirement may be waived at the City Manager's discretion.

6. Unpaid Leave Usage (Leave Without Pay - LWOP)

When an employee has exhausted all paid leave accruals or has used their sick leave or vacation balances down to 30 hours as provided for in the use of leave chart, an employee may request leave without pay. Leave Without Pay must be requested in advance and approved by a supervisor.

7. Legal Requirements

Nothing in this policy will prevent an employee from receiving a leave of absence required by law.

8. Leave Payment and Use Upon Separation from Service

In the case of death of an employee eligible for payment of leaves, payment will be made to employee's beneficiary, estate, or legal representative.

9. Leave Categories:

The City provides the following paid leave benefits: vacation leave, administrative leave, holiday leave, bereavement leave, jury duty and witness leave, and sick leave. As required by state and federal law, the City also provides specified compensation for military leave, job-incurred disability leave, paid sick leave under California law, and time off to vote. Subject to City policy on use of leaves, the City also permits unpaid leaves in accordance with the provisions of the Family and Medical Leave Act, the California Family Rights Act, CA Pregnancy Disability Leave, state paternal leave requirements, state and federal military leave requirements, school leave, and non-medical leaves of absence.

B. VACATION

Full-time City employees shall accrue paid vacation time based on the length of City service as follows:

0 through 4 years	10 working hours per month (4.61538hrs/pp)
5 through 10 years	12 working hours per month (5.53846hrs/pp)
11 through 20 years	16 working hours per month (7.38462hrs/pp)
21 years and over	20 working hours per month (9.2308hrs/pp)

Before six months of employment vacation will accrue but accruals will not appear on an employee's pay check. Accruals will appear on the first pay check following six months of employment. No employee will be eligible to be paid or eligible for use of vacation time before it is accrued.

Two hundred and sixty (260) hours will be the maximum vacation time taken in a calendar year. Total amount of vacation time an employee may accumulate is two times an employee's annual accrual with an absolute maximum of 400 accrued hours. Vacation time will cease accruing once an employee's balance reaches 400 hours.

Effective the first pay period in December of 2019, employees with greater than 400 hours in their vacation accrual banks will be cashed out down to 375 hours to allow space for vacation accruals to continue.

If any of the paid holidays authorized occur while an employee is on vacation, the employee will, if otherwise eligible for it, not be charged vacation time for such holiday.

Upon termination of employment, the employee will receive a lump sum payment of all accumulated accrued vacation time.

C. SICK LEAVE

Full-time City employees will accrue paid sick time at the rate of 120 hours per year or 10 hours a month (4.6154 hours per pay period). Part-time will accrue sick leave at a prorated rate based on hours worked.

Sick leave is a benefit intended to serve as a form of short-term disability insurance. It is in an employee's best interest to retain sufficient sick leave balance to cover short term needs. It is intended to be used to attend an appointment with a treating practitioner, for situations related to domestic violence, in cases of actual illness or disability for you or to care for a qualified family member. In the event sick leave balances are exhausted, employees must exhaust all other accrued leave balances prior to requesting leave without pay. Once other accrual balances are exhausted employees may request leave without pay which must be approved, in advance, by the City Manager except for those employees who are already on a protected medical leave. Employees must request and use sick leave in accordance with the provisions of law and the City's policies.

In accordance with California's Paid Sick Leave law, effective July 1, 2015, an employee may use paid sick leave for one of the following reasons:

- Non-industrial illness or injury when an employee has a medical or dental appointment which cannot be scheduled outside the workday, has a medical emergency or is indisposed by reason of illness, injury, exposure to contagious disease, or trauma from attending work and performing duties; or when an employee's illness would endanger or disturb coworkers;
- Diagnosis, care, or treatment of the employee's existing health condition or preventive care for an employee; or
- Diagnosis, care, or treatment of an existing health condition of, or preventive care for an employee's family member. For the purposes of using sick leave under this policy only, "family member" shall mean an employee's parent, child, spouse, registered domestic partner, parent-in-law, sibling, grandchild, or grandparent. Sick leave under this paragraph shall not exceed 50% of an employee's annual leave allotment unless extended by the City Manager or designee upon written request of an employee.

In addition, with appropriate certification an employee who is a victim of domestic violence, sexual assault, or stalking may use accrued paid sick leave under this policy for the following reasons:

- To obtain or attempt to obtain any relief, including, but not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the victim or the victim's child;
- To seek medical attention for injuries caused by domestic violence, sexual assault, or stalking;
- To obtain services from a domestic violence shelter, program, or rape crisis center;
- To obtain psychological counseling related to an experience of domestic violence, sexual assault, or stalking; or
- To participate in safety planning and take other actions to increase safety from future domestic violence, sexual assault, or stalking, including temporary or permanent relocation.

Sick leave accrues from the beginning of employment and may be accessed for use after the first 30 days of employment. There is no cap on sick leave accrual. Sick leave accrued balances may not be cashed out but may be rolled up at retirement in accordance with CalPERS regulations.

The City understands that there may be extenuating circumstances or departmental business needs which may affect an employee's ability to comply with some or all of the aspects of this paragraph. In those cases, clear documentation and communication as early as reasonably possible is important. As a rule, employees must request sick leave in advance. Some sick leave laws such as the California Family Relief Act require as much as 30 days of advance notice of a foreseen leave. If an employee has an unplanned absence or emergency the employee must speak to their department head, manager, or supervisor, as close to an hour before the start of their shift as possible. The employee is required to speak to their manager or supervisor in person. This is a verbal conversation and not a text or email. If the employee is unable to reach their manager or supervisor, the employee is required to phone another manager or supervisor or leave a voicemail for their supervisor.

An employee may be required to provide a physician's or licensed practitioner's verification of sick leave when:

- a) The employee has a demonstrable pattern of sick leave abuse; or
- b) The supervisor has good reason to believe the absence was for an unauthorized reason. A supervisor has good reason if a reasonable person would also believe the absence was for an unauthorized reason.

The City recognizes the confidential nature of the relationship between the health care provider and patient and if verification is required it shall be limited to the anticipated length of the absence, any restrictions upon return to work that prevents the employee from performing the full range of his/her normal work assignment and anticipated future absences. If the department head or designee does not consider the verification adequate, the request for sick leave may be disapproved. Upon request, a denial of sick leave shall be in writing stating the reason for denial.

## Use of Leave Reference Table

Employees are required to use accrued leaves before a leave of absence without pay as shown in the following table:

TYPE OF LEAVE	Amount Must Use Before Leave Without Pay	Required or Optional
During the time needed by the employee to undergo medical or dental treatment or examination.	Required. You may keep 30 hours.	Optional after use of sick leave down to 30 hours.
When a woman employee is disabled by pregnancy	Required. You may keep 30 hours.	Optional after use of sick leave down to 30 hours.
When the employee's family member is incapacitated by illness/injury and the employee must care for him/her; or for care, exam, or treatment of a family member*	Required. You may keep 30 hours.	Required after sick leave.
Non-sick FMLA/CFRA** qualifying event (e.g., child bonding leave)	N/A	Optional
Stipend Education Leave	N/A	Optional
Approved undisclosed reason or extended vacation	N/A	Optional

\* In the event an employee is eligible to receive Paid Family Leave to care for the serious health condition of a family member or to bond with a new child, they will not be required to use sick, vacation or CTO time, while receiving that benefit.

\*\*Family and Medical Leave Act (FMLA) / California Family Rights Act (CFRA).

### D. SICK LEAVE ABUSE REVIEW

The City will periodically review each employee's sick leave usage for the purpose of controlling sick leave abuse. Sick Leave abuse is defined as excessive unprotected sick leave usage. In reviewing each employee's sick leave usage, the City will pay particular attention to specific indicators to determine if abuse of sick leave may be occurring. The indicators to be reviewed, include but are not limited to:

- (1) The number of accrued and unused sick leave days in the employee's account;
- (2) The reasons given by the employee for sick leave usage;
- (3) Patterns of sick leave usage (including absences at the beginning or end of a work week, absences occurring in conjunction with shift days off, half days off, absences occurring in conjunction with pay days or holidays);
- (4) The number of sick leave occurrences;
- (5) The employee's length of service;

- (6) Limiting medical conditions that may exist;
- (7) The number of family sick leave occurrences; and
- (8) Unscheduled and unprotected sick leave usage.

Based upon a review of the above indicators, the City will determine if counseling or disciplinary action is appropriate. Should it be indicated that counseling or discipline is indicated, the City will identify those factors which were relied upon for the counseling/disciplinary action and follow its progressive disciplinary policy and procedure. Part of the counseling session will be an agreement that the employee will provide medical verification for each sick leave absence.

E. DENIAL OF SICK LEAVE BENEFITS

Sick leave with pay may be denied if it is substantiated that the employee's absence did not meet the definitions as specified above in this section and may be grounds for disciplinary action.

An employee who is on unscheduled and unprotected sick leave and has no sick leave accrual in their account and who has been counseled and noticed for sick leave abuse, may not use vacation and/or compensatory time for that time off. The employee must be on a leave of absence without pay.

F. HOLIDAYS

The City observes the following holidays:

- 1. New Year's Day (January 1<sup>st</sup>)
- 2. Martin Luther King's Birthday (3rd Monday in January)
- 3. Lincoln's Birthday (February 12<sup>th</sup>)
- 4. Washington's Birthday (3rd Monday in February)
- 5. Caesar Chavez Day (March 31<sup>st</sup>)
- 6. Memorial Day (Last Monday in May)
- 7. Independence Day (July 4<sup>th</sup>)
- 8. Labor Day (1<sup>st</sup> Monday in September)
- 9. Veteran's Day (November 11<sup>th</sup>)
- 10. Wednesday before Thanksgiving
- 11. Thanksgiving Day (4th Thursday in November)
- 12. Christmas Eve Day (December 24<sup>th</sup> )
- 13. Christmas Day (December 25<sup>th</sup>)
- 14. New Year's Eve Day (December 31<sup>st</sup>)

Holidays will be observed on the calendar day on which each fall, except that a holiday falling on Saturday will be observed the preceding regular City business day, and a holiday falling on Sunday will be observed on the following regular City business day and a holiday falling on a Friday will occur on the preceding City business day.

At his/her discretion, the City Manager may designate one additional holiday each year.

Generally, regular employees receive paid holiday leave in lieu of working on observed holidays. To qualify for holiday pay, employees must be on paid status on the regularly scheduled workday before and after the legal holiday. Holidays occurring during an employee's vacation will be treated as a paid holiday.

#### G. JURY DUTY AND WITNESS LEAVE (California Labor Code §230)

Any employee, including a temporary, seasonal, or extra help employee, who is summoned to serve on a jury, or subpoenaed or ordered to be a witness regarding an event or transaction in the course of his or her job duties at the City, must notify his or her supervisor or department director as soon as possible. The City will determine whether the matter involves an event or transaction in the course of the employee's job duties at the City. If so, leave to appear in court as a witness will be considered work time.

All overtime-eligible employees will be paid for actual work hours missed because of time spent in jury service. The time spent on jury duty is not work time for purposes of calculating overtime compensation.

The employee must deposit any fees for jury or witness service, other than mileage (unless a City vehicle is used for witness leave) and meals, with the City.

All FLSA-exempt employees will continue to receive their normal salary while on jury duty or when serving as a witness only for any work week in which they perform any work duties. The City will offset the amount from pay the employee receives from the Court for jury fees.

Any employee who is released from jury service two hours or more prior to the end of his or her scheduled work hours must report to work unless otherwise authorized by his or her supervisor.

#### H. MILITARY AND VETERAN'S LEAVE (Various statutes)

Military and Veteran's leave will be granted in accordance with the provisions of state and federal law. An employee requesting leave for this purpose will provide the Department Director with a copy of the military orders specifying the dates, site and purpose of the activity or mission. Within the limits of such orders, the Department Director may determine when the leave is to be taken and may modify the employee's work schedule to accommodate the request for leave.

#### I. TIME OFF TO VOTE (California Elections Code §14000)

If an employee does not have sufficient time outside of working hours to vote in a general or special public election that falls within the employee's county of residence, the employee may take up to two hours of paid work time to enable the employee to vote. The time off for voting will be only at the beginning or end of a regular working shift, whichever allows the greatest amount of free time for voting and the least time off from work. In no event is the employee eligible to take off more time than is necessary to vote. The employee will give the supervisor reasonable notice that time off for voting is desired. Absentee voting is encouraged, if possible.

### FUNERAL BEREAVEMENT LEAVE

In the event of the death of an employee's immediate family of either the employee or the employee's spouse, or of any other related person living in the employee's household, an employee who attends the funeral will be granted time off work with pay for a period not to exceed 40 hours. The first three working days will not be charged to either vacation or sick leave. The remainder will be charged to accrued vacation time. "Immediate family" means: husband, wife, child, domestic partner, father, mother, brother, sister, grandparent, grandchild, uncle, aunt, niece, nephew, step and in-law relationships of the previous family members and any relationship in lo parentis.

### K. SCHOOL PARTNERSHIP AND VISITATION LEAVE (CA Labor Code §230.7 & §230.8)

This California law allows parents, grandparents, and guardians to take unpaid time off from work for up to forty (40) hours in any calendar year and no more than eight hours in any calendar month to participate in their children's school or child care activities such as:

- Find, enroll, or reenroll a child in school or with a licensed child care provider
- Participate in school or childcare activities
- Address a childcare or school emergency
- Respond to a request from a school official or attend a back to school night
- To appear at a school in connection with a child's suspension

Employees must provide documentation from the school or licensed child care provider of proof of engagement in child-related activities. Employees may use vacation or compensatory time accruals during this leave.

### L. DISCRETIONARY UNPAID LEAVES OF ABSENCE

The City Manager may grant discretionary (for reasons not entitled by law) unpaid leaves of absence provided the City Manager determines that the City service will not be detrimentally affected by said leave. Such leaves of absence will not be granted to exceed three months unless an extension is granted by the City Council. All requests for leaves of absence shall be in writing from the employee. Upon expiration of an approved unpaid leave, the employee will be reinstated in the position held at the time leave was granted.

Failure to Return from Unpaid Leave: Failure of an employee on leave to report to work promptly at the leave's expiration without request and approval for an extension of said leave in writing will constitute voluntary resignation by the employee.

Benefits While on Unpaid Leave: Taking unpaid leave may impact certain benefits and employee seniority. Employees do not accrue vacation or sick leave, or any other paid time off, and seniority dates may be adjusted. Retirement system service credit does not accrue during any unpaid absence. City contributions to health and wellness insurances will cease while an employee is on a discretionary unpaid leave of absence.



## M. PROTECTED MEDICAL LEAVES

Information related to City offered unpaid leaves in accordance with the provisions of the Family and Medical Leave Act, the California Family Rights Act, CA Pregnancy Disability Leave, and state paternal leave requirements can be found in Attachment A, Family Medical Leave.

## N. WORKERS' COMPENSATION DISABILITY LEAVE

All employees are entitled to payment of workers' compensation insurance benefits to replace lost work income in accordance with law. Leave of absence from work due to incapacity from a work-related injury or illness will be granted according to applicable family and medical leave laws, workers' compensation law, and the City's leave policies. If injured employee is eligible for worker's compensation benefits and has accrued sick leave, said employee may have their sick leave coordinated with disability payments to receive full compensation, subject to any state or federal guidelines. An employee who has exhausted their leave benefits down to 30 hours will be entitled to only those leave and pay benefits as provided by law. Use of other benefit accruals may be approved on a case by case basis by the City Manager.

## **VII. MISCELLANEOUS PERSONNEL ADMINISTRATION**

### A. WORKWEEK

The basic workweek for full time employees shall be forty (40) hour per week, Monday through Thursday.

### B. HOURS OF OPERATION

All City offices must be open to the public from 7:00 to 12:00 and 12:30 - 5:30 Monday through Thursday. City Hall, Fire, and Public Works are closed from 12:00 to 12:30 for lunch.

### C. MEAL PERIODS

Employees will receive a thirty (30) minute meal period that shall not be compensated. Except as required by statute or regulation, such as for employees in the Police Department, during the meal period, the employee must be completely relieved of duties. If the employee is authorized in advance and performs work during the meal period, the employee shall be compensated for such time. Meal periods may not be used to shorten the workday.

### D. REST PERIODS

Employees must have a (10) minute rest period for each half of their shift, as scheduled by the Department Director. Emergency conditions and circumstances may cause breaks to be interrupted or cancelled. The rest periods may not be combined or used to shorten the workday – e.g., by taking a break at the beginning or end of the workday.

### E. PERSONNEL FILES

The City maintains a personnel file on each employee. A personnel file will contain only material that the City deems necessary and relevant or that is required by law. Personnel files are the property of the City, and access to the information they contain is restricted to protect employee privacy interests. There will be no disclosures of this information to third parties except as authorized by State or Federal law or as duly authorized in writing by the employee.

All medical information about an employee or applicant is kept in separate medical files and is treated as confidential. Access to employee or applicant medical information shall be strictly limited to only those

with a legitimate need to have such information for the City's business reasons, or if access is required by law, subpoena or court order. Managers and supervisors may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

F. EMPLOYEE ACCESS TO PERSONNEL FILES

A current employee may inspect his or her own personnel records as defined under California State law, at reasonable times and at reasonable intervals, within 10 calendar days of a written request. A former employee is entitled to inspect his or her personnel records one time per year. A current or former employee and/or his or her representative, who wishes to review his or her personnel file should make a written request to the Finance Department.

G. CHANGE IN STATUS

It is the employee's responsibility to notify the Finance Department of any changes in the employee's address, phone number, marital status, dependent status, name change, emergency contact information, or other pertinent information.

H. APPLICATION RETENTION

Applications submitted by candidates for City employment become the property of the City and will be retained for the term of the eligibility list for the position.

I. DESTRUCTION OF PERSONNEL RECORDS

Personnel and applicant records will be destroyed in accordance with the City's system for destruction of public records.

J. EMPLOYEE PERFORMANCE EVALUATION

Except for employees serving their probationary period, all employees in City Service shall have their performance evaluated by the Department Director or by the Supervisor designated for this purpose no less than annually on a cycle determined by the Department Director and approved by the City Manager. The employee's supervisor shall review the findings of the evaluation with the Department Director. A copy of the completed evaluation shall be provided to the employee and a copy shall be placed in the employee's personnel file.

Employees serving their probationary period shall have their performance evaluated in the same manner as prescribed for regular employees. Probationary employees shall be evaluated every three (3) months during their probationary period, or at different intervals as determined by the City Manager. Any decision to extend an employee's probationary period must be made prior to the expiration of the original probationary period.

Any evaluation which warrants a merit increase but is not completed by the designated review date will be retroactively paid back to that review date. In addition to those occasions referenced by this Section, a Supervisor may render a performance evaluation at any time when performance issues arise, whether positive or negative, when there is a change in assignment and/or when there is a change in supervisor or management.

Based upon the Performance Evaluation Report, the Supervisor may make appropriate recommendations to the Personnel Officer regarding a possible merit increase, or other appropriate action. City Manager approval is required for all such actions.

The employee will have an opportunity to review the performance evaluation report and to attach a written response to the corresponding performance evaluation in his/her personnel file. This response must be made within ten (15) working days of receiving the evaluation. No other administrative reply or appeal will be allowed. Performance evaluations will not be subject to the grievance process.

#### K. PAY PERIODS

Salaries and wages will be paid in installments every two weeks, 26 times per year. Paychecks will be issued every other Thursday, four business days after the end of each pay period.

### VIII. **GENERAL TERMS OF HEALTH AND WELFARE BENEFITS**

#### A. QUALIFYING FOR BENEFITS

Certain insurances and other benefits are available to specified employees with costs shared by City and/or the employee as defined and specified in applicable MOU's, compensation resolutions, or individual employment agreements, which may be amended from time to time by the Council.

#### B. INSURANCE BENEFITS

Insurance benefits are afforded to eligible employees and their eligible dependents as governed by the terms and conditions of the contractual agreements with the benefit providers. Insurance premiums not paid in whole or part by City will be the responsibility of the employee. Insurance benefits may include medical, dental, and vision care plans, short-term and long-term disability, life insurance, accidental death and dismemberment, and any other such insurance benefits.

#### C. RETIREMENT

All regular full-time City employees will participate in the Public Employees' Retirement System and will be governed by its rules and regulations. Specific details regarding Retirement can be found in the employee's respective MOU. Any changes to Retirement Benefits are made by the Council through the meet and confer process, and subject to CalPERS regulations.

#### E. CHANGE IN RELATIONSHIP

It is the responsibility of the employee to notify the City to cancel a spouse or registered domestic partner's coverage if the relationship terminates. It is the responsibility of the employee to notify the City to cancel an adult child's coverage once the adult child reaches the benefit limit. If the employee does not notify the City of the termination of the relationship within 30 days of the event, the employee will be held responsible for any City paid costs after the change in relationship.

#### H. COBRA REQUIREMENTS

COBRA medical insurance will be offered to employees, and their legal dependents as required by law. Other COBRA required insurance will be offered through CITY's insurance plans. In the event of termination of marriages, registered domestic partnership, the death of the employee, or a depend child reaching the age limit for insurance, under the same conditions used for traditional marriages, COBRA will be offered. Should the spouse or partner elect COBRA, the coverage will continue as required by law. The spouse or partner of the employee pays for COBRA benefits.

Retiree Medical Benefits: Retirees may be provided post-employment medical benefits based on several factors, including the MOU that applied to their classification based on the date of hire, and/or date of

retirement. Please refer to the MOU associated with the employee's job classification. The City does not provide any other post-retirement benefits.

#### **IX. DISCIPLINARY ACTION**

An employee will not be discharged, nor discipline imposed, without just cause.

The City Manager, or his designee, with just cause, may temporarily reduce an employee's pay; or suspend an employee from his/her position, without pay, for disciplinary purposes. Temporary pay reductions and suspension without pay will not exceed thirty (30) calendar days.

The City Manager, with just cause, may demote or discharge an employee.

#### **X. CAUSES FOR DISCIPLINARY ACTION**

The following reasons will be deemed sufficient for disciplinary action. The following list is not exhaustive, and disciplinary action may also be taken for other cause:

- Violation of any departmental or City policy, regulation, rule, ordinance or resolution;
- Absence without authorized leave; excessive absenteeism and/or tardiness as defined by the employee's department head, and/or these rules or City policies; misuse or abuse of leave; use of leave from work in a manner not authorized or provided for under City rules or policies;
- Dishonesty, fraud, waste or theft, including: misuse or unauthorized use of any public funds or City property, including, but not limited to: physical property, electronic resources, supplies, tools, equipment, City communication systems, City vehicles or intellectual property; damaging any City property, equipment, resource, or vehicle, or the waste of City resources through negligence or misconduct; falsifying or tampering with any City record, including work time or financial records or employment applications; providing false or misleading information, concealing information, or making any omission of a material fact; working overtime without prior authorization
- Unsatisfactory job performance; Inefficiency or incompetency; Failure to possess and/or maintain the minimum qualifications required for the position; egregious neglect of duty
- Insubordination; or insulting or demeaning the authority of a supervisor or manager; willful disobedience; refusing to work assigned overtime
- Violation of the City's or a department's confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity
- Discourteous, disrespectful, or offensive treatment of the public, City officials, or other employees; Abusive conduct, including malicious verbal, visual or physical actions, or the gratuitous sabotage or undermining of a person's work
- Any conduct that impairs, disrupts or causes discredit to the City, to the public service, or to the employee's employment, including: Unapproved outside employment or activity, or other enterprise that constitutes a conflict of interest with service to the City; Commission or conviction, meaning any judicial determination of guilt, whether a felony or misdemeanor, of a crime that has a nexus to the employee's job duties

- Reckless or unsafe conduct; Carrying firearms or other dangerous weapons while on duty when not required by job duties; horseplay or fighting; Failure to comply with safety rules, standards or regulations
- Drunkenness, intoxication, consuming or possessing an open container of, or being under the influence of, an alcoholic beverage, while on duty; Illegally using, consuming, injecting, possessing, being under the influence of, selling or offering for sale, while on duty, any controlled substance as that term is defined in the California Health and Safety Code
- Acceptance from any source of a reward, gift or other form of remuneration in addition to regular compensation to any employee for the performance of his or her official duties

#### A. Pre-disciplinary Due Process

The following discipline procedures only apply to the City's regular employees. All remaining employees may be disciplined or separated at will, with or without cause, and without the discipline procedure and disciplinary appeal procedure listed below. The following discipline procedures apply only to suspensions without pay, reductions in pay, demotions, or dismissals.

"Skelly" Notice of Intended Disciplinary Action to Employee: A written notice of the intended disciplinary action shall be given to the employee and copied to the official business representative for represented employees, which will include the following information:

- The level of the intended discipline
- The specific charges that support the intended discipline
- A summary of the facts that show that the elements of each charge at issue in the intended discipline
- A copy of the materials upon which the intended discipline is based
- Notice of the employee's right to respond to the Skelly officer regarding the intended discipline within five working days from the date of the notice, either by requesting a Skelly conference, or by providing a written response, or both
- Notice of the employee's right to have a representative of his or her choice at the Skelly conference
- Notice that failure to respond by the time specified constitutes a waiver of the right to respond prior to final discipline being imposed

Response by Employee and Skelly Conference: If the employee requests a Skelly conference, the Skelly officer will conduct an informal meeting with the employee. Generally, the Department Director or designee will serve as the Skelly officer. During the informal meeting, the employee shall have the opportunity to rebut the charges against him or her and present any mitigating circumstances. The Skelly officer will consider the employee's response or presentation, if any, before issuing the disciplinary action. The employee's failure to attend the conference, or to deliver a written response by the date specified in the Skelly notice, is a waiver of the right to respond, and the intended disciplinary action will be imposed on the date specified in the Skelly letter. The Skelly officer and the employee may audio-record the Skelly conference.

Notice of Discipline:

After the Skelly conference and/or timely receipt of the employee's written response, the Skelly officer will: 1) take no disciplinary action; 2) modify the intended discipline; or 3) impose the intended disciplinary action. In any case, the Skelly officer will provide the employee with a notice that contains the following:

- The level of discipline, if any, to be imposed and the effective date of the discipline;
- The specific charges upon which the discipline is based;
- A summary of the facts that show that the elements of each charge at issue in the intended discipline;
- A copy of all materials upon which the discipline is based; and
- A reference to the employee's appeal right and deadline to appeal.

Delivery of the Notice of Discipline: The notice of discipline will be sent by U.S. mail or other method that verifies delivery to the last known address of the employee or will be delivered to the employee in person. If the notice is not deliverable because the employee has moved without notifying the City or the employee refuses to accept delivery, the effective date of discipline will be the date the post office or delivery service attempted delivery.

## **XI. DISCIPLINARY APPEAL PROCEDURES**

The following appeal procedures only apply to the City's regular employees. The following appeal procedures apply only to suspensions without pay, demotions, reductions in pay or dismissals. In addition, where applicable, the provisions of this section shall be administered in compliance with the requirements of California state law governing peace officer rights as set forth under Public Safety Officers Procedural Bill of Rights Act (Government Code § 3300, et seq.).

- Request for Appeal Hearing: An employee may submit a written request for appeal to the Personnel Officer within 10 working days from: 1) receipt of the final notice of discipline; or 2) the date of attempted delivery by the post office or delivery service of the notice to the last known address of the employee. Failure to file a timely written request for an appeal waives the right to an appeal hearing and any appeal of the discipline.
- Appeal Hearing Officer: The appeal hearing officer shall be an individual selected through the State Mediation and Conciliation Service (SMCS). The parties shall request that the SMCS supply a list of seven (7) names of persons experienced in hearing public employment discipline matters. If the City and the employee and/or his or her employee organization are unable to mutually agree on a hearing officer, each party shall alternately strike a name from the list until only one remains. The order of strike shall be determined by lot.
- Date and Time of the Appeal Hearing: Once the appeal hearing officer has been designated, the Personnel Officer or designee will schedule a mutually agreeable hearing date based on the hearing officer's availability. The employee shall be notified in writing at least 21 calendar days prior to the hearing of the scheduled date.
- Prehearing Notice of Witnesses and Evidence: No later than 10 calendar days before the hearing date or as directed by the hearing officer, the City and the employee (or his or her representative) will provide the other and the appeal hearing officer a list of all witnesses to be called (except rebuttal witnesses), and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. The City will use numbers to identify its evidence; the employee will use alphabet letters. Neither party will be permitted to call any witness or evidence that has not been listed as part of

its/his/her case-in-chief, unless that party can show that the party could not have reasonably anticipated the need for the witness or exhibit

- Subpoenas: Upon the request of either party, and upon his or her own motion, the hearing officer will issue subpoenas to compel attendance at the appeal hearing. Each party is responsible for serving his/her/its own subpoenas. City employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. City employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually spend testifying
- Continuances: The appeal hearing officer may continue a scheduled hearing only upon good cause shown
- Record of the Appeal Hearing: The hearing shall be recorded, either electronically or by a court reporter, at the option of the either party. If the City orders a transcript or makes a transcript of the recording, the City will notify the employee within three days of ordering or making the transcript and will provide a copy of the transcript upon receipt of the costs of duplication
- Employee Appearance: The employee must appear personally before the hearing officer at the time and place set for the hearing. The employee may be represented by any person he or she may select

#### A. CONDUCT OF THE HEARING

##### 10. Sworn Testimony:

All witnesses shall be sworn in prior to testifying. The hearing officer or court reporter shall request each witness to raise his or her hand and respond to the following: "Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?"

##### 11. Evidence:

Hearings need not be conducted according to technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner that the hearing officer decides is the most conducive to determining the truth. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but over timely objection shall not be sufficient in itself to support a finding, unless such evidence would be admissible over objection in civil actions. The rules dealing with privileges shall be effective to the same extent that they are recognized in civil actions. Irrelevant or unduly repetitious evidence may be excluded. The appeal hearing officer shall determine the relevance, weight and credibility of testimony and evidence.

Exclusion of Witnesses: During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing.

Burden of Proof: The City has the burden of proof by the preponderance of the evidence.

#### B. AUTHORITY OF HEARING OFFICER

The appeal hearing officer shall not have the power to alter, amend, change, add to, or subtract from any of the terms of these Policies.

##### 12. Presentation of the Case:

The parties will address their remarks, evidence, and objections to the appeal hearing officer. The appeal hearing officer may terminate argument at any time and issue a ruling regarding an objection or any other matter. The appeal hearing officer may limit redundant or irrelevant testimony, or directly question the witness. The hearing will proceed in the following order unless the appeal hearing officer directs otherwise:

- The City is permitted to make an opening statement;
- The employee is permitted to make an opening statement;
- The City will produce its evidence;
- The employee will produce its evidence;
- The City may present rebuttal evidence;
- Oral closing arguments of no more than 30 minutes may be permitted at the discretion of the appeal hearing officer. The City argues first, the employee argues second, and if the City reserved a portion of its time for rebuttal, the City may present a rebuttal.

#### 13. Written Briefs:

In lieu of, or in addition to, oral closing arguments, either party may request to submit a written brief and/or a draft decision. The appeal hearing officer will determine whether to allow written briefs or draft decisions, the deadline for submitting briefs, and the page limit for briefs.

#### 14. Appeal Hearing Officer's Advisory Decision:

Within 60 calendar days of the conclusion of the hearing, or submission of the written closing briefs, whichever is later, the appeal hearing officer shall make proposed written findings and an advisory decision as to the discipline.

- The City Manager shall review the findings and advisory decision of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the City Council is final. There is no process for reconsideration.
- Proof of Service of the Written Findings and Decision: The City will mail a copy of the final written findings and decision, along with a proof of service of mailing that confirms that the City and its representatives and the employee and his/her representatives were mailed the final written findings and decision. It shall be the responsibility of the employee to inform the City of his/her current address. A copy of the decision shall also be provided to the Personnel Officer.

#### 15. Costs

All expenses of any hearing process must be borne equally by each party provided, however, that each party shall bear any expenses of their own representative or attorney. In the event the City Manager revokes, or modifies the findings, recommendations, or disciplinary action taken the City will absorb the full cost of the hearing officer and court reporter, if applicable.

## XII. **SEPARATION FROM SERVICE**

### A. RESIGNATION



The date of a resignation becomes effective upon the City's receipt of an oral, written, or e-mailed notice of resignation from an employee. Employees wishing to leave the competitive service in good standing are required to give at least 2 weeks written notice when resigning when practicable. Once a resignation becomes effective, it is irrevocable except that the City Manager may, at his/her discretion of what is in the best interests of the City, permit a resignation to be rescinded.

1. Automatic Resignation:

Employees are deemed to have resigned when failing to return to duty within three working days of the end of an authorized leave of absence, or when otherwise absent from work without authorization for at least three workdays. The City shall give written notice of such automatic resignation. The employee shall have no right to appeal the automatic resignation in such circumstances.

B. LAYOFF

Unless otherwise specified in applicable MOU's, compensation resolutions, or individual employment agreements, the City Manager may lay off any regular employee because of lack of funds, curtailment of work, organizational changes, or for other business reasons. The employee holding such position or employment may be laid off or demoted without disciplinary action and without the right of appeal. Layoffs will be by made in accordance with serving the best needs of the City. Such layoff takes effect no sooner than thirty (30) calendar days after the receipt by the employee of a notice in writing of the proposed layoff action. Prior to separating regular employees, the City Manager will consider reasonable and feasible alternatives to layoffs.

1. Order of Layoff:

The order of layoff shall be in reverse order of seniority in the affected classification. "Seniority" shall be defined as length of employment with the City. Seniority shall be calculated on the basis of an employee's time served in status or on a protected unpaid leave as a probationary or regular employee, and time served on military leave of absence.

2. Right of Displacement:

Employees subject to layoff shall be entitled to displace a less senior employee from a position in a lower classification in the same department, provided the employee meets the minimum qualifications for the position; any employee displaced under this subsection is an employee subject to layoff and is entitled to all the rights provided by this Section, including the right to displace another employee.

3. Re-employment Rights:

Employees who are laid off pursuant to this Section are eligible for re-employment for a period of twelve (12) months from the date of termination and will be offered re-employment in preference to new applicants. The right of re-employment is limited to the filling of vacancies (created either by termination or new approval) in the same job classification from which the employee was laid off.

Re-employment offers shall be made in the reverse order of layoff and shall be made via first class mail to the employee's last known address. It is the responsibility of the employee to provide the City with a current address for notification pursuant to this Section.

Acceptance of the re-employment offer must be received by the City Manager within twenty (20) calendar days of the date of mailing. Failure to accept the offer within that time period will be deemed a refusal.

Re-employment of a regular employee within the re-employment period shall result in reinstatement of the seniority, sick leave and salary placement in effect at the time of lay-off. The interval of lay-off status shall not be considered a break in service, but employees shall not earn salary, sick leave, vacation or benefits during that period.

#### C. EMPLOYEE GRIEVANCES

A grievance shall be defined as a timely complaint by an employee or group of employees concerning the interpretation or application of the rules and regulations as established by the Personnel Resolution or the City of Sebastopol or any Memorandum of Understanding approved by the City.

The employee has the right to the assistance of a representative in the preparation of a written grievance and to be represented in all grievance meetings.

Any level of review or any time limits established in this procedure may be waived or extended by mutual agreement, if confirmed in writing. Grievances of an unusual or unique nature that are or appear outside the scope of authority of an immediate supervisor, may be submitted to the City Manager. The City Manager will determine the appropriate level for filing such grievance. The determination of the City Manager in this regard will be final.

#### 4. Processing and Filing of a Grievance

All grievances will be processed in the following manner:

- The grieving employee will initiate an informal discussion regarding the grievance with the immediate supervisor within ten working days from the occurrence of the matter on which the grievance is based, or within ten working days from the time the employee would reasonably be expected to know of the occurrence. The supervisor will give an immediate decision, if possible, or within ten working days.
- If the employee is dissatisfied with the response from Step (A), the employee may discuss the grievance with their union representative. The Union may represent or assist the employee.
- The employee, with or without the representative has fifteen working days from the response of the supervisor to document the grievance in writing and submit the grievance to the Department Head.
- The Department Head will submit to the employee a written response within fifteen working days after receipt of the written grievance.
- If the employee or their representative are still dissatisfied, they may request a hearing with the City Manager. The request must be made within fifteen working days after receiving the supervisor's written response in Step (D).
- Within fifteen working days after that hearing, the City Manager will respond with a written decision.
- In the event the employee or group of employees is not satisfied with the decision of the City Manager, they may request in writing that the matter be submitted to arbitration.
- Grievance Hearing Officer: The grievance hearing officer shall be an individual selected through the State Mediation and Conciliation Service (SMCS). The parties shall request that the SMCS supply a list of seven (7) names of persons experienced in hearing public employment discipline matters. If the City and the employee and/or his or her employee organization are unable to

mutually agree on a hearing officer, each party shall alternately strike a name from the list until only one remains. The order of strike shall be determined by lot.

- Date and Time of the Grievance Hearing: Once the grievance hearing officer has been designated, the Personnel Officer or designee will set a date for a grievance hearing. The employee shall be notified in writing at least 21 calendar days prior to the hearing of the scheduled date.
- Prehearing Notice of Witnesses and Evidence: No later than 10 calendar days before the hearing date, the City and the employee (or his or her representative) will provide the other and the grievance hearing officer a list of all witnesses to be called (except rebuttal witnesses), and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. The City will use numbers to identify its evidence; the employee will use alphabet letters. Neither party will be permitted to call any witness or evidence that has not been listed as part of its/his/her case-in-chief, unless that party can show that the party could not have reasonably anticipated the need for the witness or exhibit
- Subpoenas: Upon the request of either party, and upon his or her own motion, the hearing officer will issue subpoenas to compel attendance at the grievance hearing. Each party is responsible for serving his/her/its own subpoenas. City employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. City employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually spend testifying
- Continuances: The grievance hearing officer may continue a scheduled hearing only upon good cause shown
- Record of the Grievance Hearing: The hearing shall be recorded, either electronically or by a court reporter, at the option of the City. If the City orders a transcript or makes a transcript of the recording, the City will notify the employee within three days of ordering or making the transcript and will provide a copy of the transcript upon receipt of the costs of duplication
- Employee Appearance: The employee must appear personally before the hearing officer at the time and place set for the hearing. The employee may be represented by any person he or she may select

Judicial review of any decision under this section shall be governed by Section 1094.6 of the Civil Code of Procedure.

An employee or group of employees shall have the right to be represented in all stages of the proceedings by representatives of their recognized employee organization and/or an attorney of their own choosing.

All expenses of any hearing process must be borne equally by each party provided, however, that each party shall bear any expenses of their own representative or attorney.

No time limits described in this grievance procedure may be extended without the mutual agreement of both parties.

BE IT FURTHER RESOLVED that preceding or existing ordinances, resolutions, or city or department policies, in conflict with provisions of this personnel rules resolution are hereby declared repealed; providing, however, that all provisions of such ordinances, sections, words, or phrases not in conflict herewith shall remain in full force and effect.

IN COUNCIL DULY PASSED this 16th day of May 2023.

VOTE:

Ayes:

Noes:

Absent:

Abstain

APPROVED: \_\_\_\_\_  
Mayor Neysa Hinton

ATTEST: \_\_\_\_\_  
Mary Gourley, MMC, Assistant City Manager/City Clerk

## I. DISCIPLINARY APPEAL PROCEDURES

The following appeal procedures only apply to the City's regular employees. The following appeal procedures apply only to suspensions without pay, demotions, reductions in pay or dismissals. In addition, where applicable, the provisions of this section shall be administered in compliance with the requirements of California state law governing peace officer rights as set forth under Public Safety Officers Procedural Bill of Rights Act (Government Code § 3300, et seq.).

- Request for Appeal Hearing: An employee may submit a written request for appeal to the Personnel Officer within 10 working days from: 1) receipt of the final notice of discipline; or 2) the date of attempted delivery by the post office or delivery service of the notice to the last known address of the employee. Failure to file a timely written request for an appeal waives the right to an appeal hearing and any appeal of the discipline.
- ~~Said appeal shall be to the City Manager. The City Manager shall render a decision on the merits of the appeal and comment within ten (10) calendar days after receiving the grievance. If the City Manager resolves the appeal, it shall be final and binding.~~
- ~~In the event the employee or group of employees is not satisfied with the decision of the City Manager, they may request in writing that the matter be submitted to arbitration.~~
- Appeal Hearing Officer: The appeal hearing officer shall be an individual selected through the State Mediation and Conciliation Service (SMCS). The parties shall request that the SMCS supply a list of seven (7) names of persons experienced in hearing public employment discipline matters. If the City and the employee and/or his or her employee organization are unable to mutually agree on a hearing officer, each party shall alternately strike a name from the list until only one remains. The order of strike shall be determined by lot.
- Date and Time of the Appeal Hearing: Once the appeal hearing officer has been designated, the Personnel Officer or designee will schedule a mutually agreeable hearing date based on the ~~arbitrator's~~ hearing officer's availability. The employee shall be notified in writing at least 21 calendar days prior to the hearing of the scheduled date.
- Prehearing Notice of Witnesses and Evidence: No later than 10 calendar days before the hearing date or as directed by the ~~arbitrator~~ hearing officer, the City and the employee (or his or her representative) will provide the other and the appeal hearing officer a list of all witnesses to be called (except rebuttal witnesses), and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. The City will use numbers to identify its evidence; the employee will use alphabet letters. Neither party will be permitted to call any witness or evidence that has not been listed as part of its/his/her case-in-chief, unless that party can show that the party could not have reasonably anticipated the need for the witness or exhibit
- Subpoenas: Upon the request of either party, and upon his or her own motion, the hearing officer will issue subpoenas to compel attendance at the appeal hearing. Each party is responsible for serving his/her/its own subpoenas. City employees who are subpoenaed to

testify during working hours will be released with pay to appear at the hearing. City employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually spend testifying

- Continuances: The appeal hearing officer may continue a scheduled hearing only upon good cause shown
- Record of the Appeal Hearing: The hearing shall be recorded, either electronically or by a court reporter, at the option of the either party. If the City orders a transcript or makes a transcript of the recording, the City will notify the employee within three days of ordering or making the transcript and will provide a copy of the transcript upon receipt of the costs of duplication
- Employee Appearance: The employee must appear personally before the hearing officer at the time and place set for the hearing. The employee may be represented by any person he or she may select

#### A. CONDUCT OF THE HEARING

##### 1. Sworn Testimony:

All witnesses shall be sworn in prior to testifying. The hearing officer or court reporter shall request each witness to raise his or her hand and respond to the following: “Do you swear that the testimony that you are about to give is the truth, the whole truth, and nothing but the truth?”

##### 2. Evidence:

Hearings need not be conducted according to technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner that the hearing officer decides is the most conducive to determining the truth. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but over timely objection shall not be sufficient in itself to support a finding, unless such evidence would be admissible over objection in civil actions. The rules dealing with privileges shall be effective to the same extent that they are recognized in civil actions. Irrelevant or unduly repetitious evidence may be excluded. The appeal hearing officer shall determine the relevance, weight and credibility of testimony and evidence.

Exclusion of Witnesses: During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing.

Burden of Proof: The City has the burden of proof by the preponderance of the evidence.

#### B. AUTHORITY OF HEARING OFFICER

The appeal hearing officer shall not have the power to alter, amend, change, add to, or subtract from any of the terms of these Policies.

##### 3. Presentation of the Case:

The parties will address their remarks, evidence, and objections to the appeal hearing officer. The appeal hearing officer may terminate argument at any time and issue a ruling regarding an objection or any other matter. The appeal hearing officer may limit redundant or irrelevant testimony, or directly question the witness. The hearing will proceed in the following order unless the appeal hearing officer directs otherwise:

- The City is permitted to make an opening statement;
- The employee is permitted to make an opening statement;
- The City will produce its evidence;
- The employee will produce its evidence;
- The City may present rebuttal evidence;
- Oral closing arguments of no more than 30 minutes may be permitted at the discretion of the appeal hearing officer. The City argues first, the employee argues second, and if the City reserved a portion of its time for rebuttal, the City may present a rebuttal.

#### 4. Written Briefs:

In lieu of, or in addition to, oral closing arguments, either party may request to submit a written brief and/or a draft decision. The appeal hearing officer will determine whether to allow written briefs or draft decisions, the deadline for submitting briefs, and the page limit for briefs.

#### 5. Appeal Hearing Officer's Advisory Decision:

Within 60 calendar days of the conclusion of the hearing, or submission of the written closing briefs, whichever is later, the appeal hearing officer shall make proposed written findings and an advisory decision as to the discipline.

~~If the The City Manager was not the Skelly officer, he or she~~ shall review the findings and advisory decision of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the City Manager is final. There is no process for reconsideration.

- ~~• If the City Manager was the Skelly officer, the City Council shall review the findings and advisory decision of the appeal hearing officer and may then affirm, revoke, or modify the findings, recommendations, or disciplinary action taken. The decision of the City Council is final. There is no process for reconsideration.~~
- Proof of Service of the Written Findings and Decision: The City will mail a copy of the final written findings and decision, along with a proof of service of mailing that confirms that the City and its representatives and the employee and his/her representatives were mailed the final written findings and decision. It shall be the responsibility of the employee to inform the City of his/her current address. A copy of the decision shall also be provided to the Personnel Officer.

#### 6. Costs:

All expenses of any hearing process must be borne equally by each party provided, however, that each party shall bear any expenses of their own representative or attorney. In the event the City Manager revokes, or modifies the findings, recommendations, or disciplinary action taken the City will absorb the full cost of the hearing officer and court reporter, if applicable.