

CITY OF TRACY

PERSONNEL RULES AND REGULATIONS



Think Inside the Triangle™

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TABLE OF CONTENTS

1. PURPOSE	1
1.1 Personnel Policy	1
1.2 Equal Employment Opportunity	1
1.3 Powers of the City Manager	2
1.4 Department Rules and Regulations	3
1.5 Application of Personnel Rules	3
1.6 Adoption of Personnel Rules	3
1.7 Amendment and Revision of Personnel Rules	3
1.8 Conflict of Personnel Rules	3
1.9 Rights of Management	4
1.10 Violation of Personnel Rules	4
2. DEFINITION OF TERMS	4
2.1 Actual Hours Worked	4
2.2 Advancement	4
2.3 Allocation	4
2.4 Applicant	4
2.5 Appointment	4
2.6 At-Will	4
2.7 Base Salary	4
2.8 Candidate	5
2.9 Certification	5
2.10 Certified Employee Organization	5
2.11 Class or Classification	5
2.12 Classification Series	5
2.13 Classification Plan	5
2.14 Compensation	5

2.15	Compensatory Time Off (CTO)	5
2.16	Competitive Service	5
2.17	Competitive Examination	5
2.18	Continuous Competitive Examination	6
2.19	Continuous Service	6
2.20	Days	6
2.21	Demotion	6
2.22	Department	6
2.23	Department Head	6
2.24	Dismissal	6
2.25	Domestic Partner	6
2.26	Elective Office	6
2.27	Eligible Candidate	6
2.28	Employment Date	6
2.29	Employment List	6
2.30	Employment Status	6
2.31	Examination	7
2.32	Executive Management	7
2.33	<i>Flexible (Flex) Staffing</i>	7
2.34	FLSA	7
2.35	FLSA Exempt	7
2.36	FLSA Non-Exempt	7
2.37	Grievance	7
2.38	Incumbent	7
2.39	Layoff	7
2.40	Limited Service	7
2.41	Limited Term Position	7

2.42	Open Examination	8
2.43	Overtime Work	8
2.44	Part-Time Position	8
2.45	Pay Range	8
2.46	Position	8
2.47	Probationary Appointment	8
2.50	Promotional Examination	8
2.51	Provisional Appointment	8
2.52	Provisional Employee	9
2.53	Reallocation	9
2.54	Reclassification	9
2.55	Recognized Employee Organization	9
2.56	Re-Employment	9
2.57	Regular Employee	9
2.58	Regular Position	9
2.59	Rehire	9
2.60	Reinstatement	9
2.61	Resignation	9
2.62	Safety Sensitive	9
2.63	<i>Salary Basis</i>	10
2.64	Salary Evaluation Date	10
2.65	Seniority in City Service	10
2.66	Seasonal Position	10
2.67	Selection Procedure	10
2.68	Separation	10
2.69	Service Anniversary Date	10
2.70	Step Advancement	10

2.71	Step Advancement Date	10
2.72	Student Position	10
2.73	Suspension	11
2.74	Temporary Position	11
2.75	Termination	11
2.76	Transfer	11
2.77	<i>Vacancy</i>	11
2.78	Y-Rated	11
3.	<i>POSITION CLASSIFICATION</i>	11
3.1	Classification Plan	11
3.2	Positions	12
3.3	Emergency or Temporary Positions	13
3.4	Classification Review	13
4.	<i>COMPENSATION PLAN</i>	14
4.1	<i>Compensation Plan Establishment</i>	14
4.2	<i>Compensation Plan Administration</i>	15
4.3	Errors in Compensation	18
5.	<i>RECRUITMENT, APPLICATIONS AND APPLICANTS</i>	18
5.1	Recruitment	19
5.2	Applications	19
5.3	Disqualification of Applicants	19
5.4	Notice of Rejection	20
5.5	Incomplete or Late Applications	20
6.	<i>EXAMINATIONS</i>	20
6.1	Responsibility	20
6.2	Need for Examinations	21
6.3	Qualifications Appraisal Board	21

6.4	Rating	21
6.5	Preparation of Employment Lists	21
6.6	Notification of Examination Results	22
6.7	Protests/Appeals to Director of Human Resources	22
6.8	Status of Examinations Being Protested orAppealed	23
7.	ESTABLISHMENT AND THE USE OF EMPLOYMENT LISTS	23
7.1	Types of Lists	23
7.2	Use of Employment Lists	23
7.3	Eligibility for Promotional Examinations	23
7.4	Employment Lists Resulting from Continuous Examinations	24
7.5	Restoration of Names of Laid-off Employees to Employment Lists	24
7.6	Availability of Candidates	24
7.7	Removal of Names from Employment, Reinstatement or Re-employment Lists	24
7.8	Request to Fill Vacancies	25
7.9	Employment List Priority	25
7.10	Certification of Employment Lists	26
8.	APPOINTMENTS	27
8.1	General Requirements for Appointment	27
8.2	Applicable Pay Upon Employment	28
8.3	Types of Appointments	29
8.4	Probationary Period	30
8.5	Promotion of an Employee	30
8.6	Transfer of an Employee	31
8.7	Voluntary Transfers	32
8.8	Reasonable Accommodations for Disabled Employees	32
8.9	Demotion of an Employee	32
8.10	Reclassification of an Employee's Position	33

9. OUTSIDE EMPLOYMENT AND USE OF CITY PROPERTY	34
9.1 Prohibited Activity	34
9.2 Outside Employment	34
9.3 Authorization of Outside Employment	35
9.4 Violations and Penalties	35
10. PERFORMANCE EVALUATIONS	36
10.1 Frequency	36
10.2 Personnel Files	36
11. DISCIPLINARY ACTION	36
11.1 Authority to Discipline	36
11.2 Grounds for Disciplinary Action	37
11.3 Types of Discipline	39
11.4 Procedures for Disciplinary Action	40
12. DISCIPLINARY APPEAL PROCESS	41
12.1 Employee's Right to Representation During Appeal Process	41
12.2 Appeal Process (for discipline greater than 5-day suspension or reduction in pay)	41
13. GRIEVANCE PROCEDURE FOR NON-DISCIPLINARY MATTERS	42
13.1 Definition of "Grievance"	42
13.2 Eligibility to File a Grievance	42
13.3 Exclusion from the Grievance Procedure	42
13.4 Group Grievances	42
13.5 Procedure	43
13.6 Representation	44
13.7 Waiver of Steps or Time Limits	44
13.8 Waiver of Grievance	44
13.9 No Interruption of Work	45
13.10 No Retaliation	45

14. LAYOFF, DISPLACEMENT AND REEMPLOYMENT	45
14.1 Notice	45
14.2 Layoff Order Determination	45
14.3 Bumping	46
14.4 Layoff List Preparation Procedure	46
14.5 Separations	47
14.6 Reemployment from Lay-off	47
15. WORK WEEK AND ATTENDANCE	47
15.1 Work Week	47
15.2 Attendance	48
15.3 Meals and Rest Periods	48
15.4 Timekeeping	49
16. VACATION AND HOLIDAYS	49
16.1 Vacation Accrual	49
16.2 Use of Vacation	49
16.3 Effect of Sick Leave On Vacation Leave	50
16.4 Compensation for City Work During Vacation Prohibited	50
16.5 Vacation Pay-Out Upon Termination	50
16.6 Holidays	50
17. SICK LEAVE	51
17.1 Certification	51
17.2 Prohibited Activity	51
17.3 Eligibility	51
17.4 Accrual	52
17.5 Accumulation	52
17.6 Use	52
17.7 Integration of Benefits	52

17.8	Catastrophic Leave Program	53
18.	<i>LEAVES OF ABSENCE WITHOUT PAY</i>	53
18.1	Authorization for Leave of Absence Without Pay	53
18.2	Leave of Absence Request in Excess of Three (3) Days	53
18.3	Return from Authorized Leave of Absence Without Pay	53
18.4	Authorized Leave of Absence Without Pay for Job Injury	54
18.5	Status of Employee on Authorized Leave of Absence Without Pay	54
19.	<i>OTHER LEAVES OF ABSENCE</i>	55
19.1	Administrative Leave	55
19.2	Bereavement Leave	55
19.3	Family and Medical Leave (FMLA/CFRA)	55
19.4	Jury Duty	55
19.5	Military Family Leave	56
19.6	Military Leave	56
19.7	Paid Family Leave (PFL)	56
19.8	Pregnancy Disability Leave (PDL)	56
19.9	School Activity Leave	56
19.10	Voting Leave	57
19.11	Witness Leave	57
20.	<i>EMPLOYEE TRAINING AND EDUCATION PROGRAMS</i>	57
21.	<i>WORKPLACE VIOLENCE</i>	57
21.1	Policy	57
21.2	Prohibited Behavior	57
21.3	Workplace Violence Definition	58
21.4	Prevention	58
21.	<i>EMPLOYER-EMPLOYEE RELATIONS POLICY</i>	58
21.1	Statement of Purpose	58

21.2	Definitions	59
21.3	Representation Proceedings	61
21.4	Administration	69
21.5	Impasse Procedures	69
21.6	Miscellaneous Provisions	70
22.	<i>MISCELLANEOUS</i>	71

CITY OF TRACY PERSONNEL RULES

1. PURPOSE

In order to establish a uniform procedure for dealing with personnel matters, the personnel system set forth in these Rules and Regulations (hereinafter "Rules") is hereby adopted. These Rules supersede any prior rules and regulations and may be changed only upon approval of the City Council.

Where an applicable memorandum of understanding between the City and a recognized employee organization contains provisions that are inconsistent with any of these Rules, the language contained in the Memorandum of Understanding shall govern.

The City Council authorizes the City Manager to implement administrative policies that shall be supplemental to these Rules.

Each employee shall be given a copy of these Rules and is responsible for reading and complying with these Rules.

These Rules may be amended from time to time. However, in order to be effective, the amendment must be in writing and approved by resolution of the City Council. Whenever such amendments affect the wages, hours, or other terms or conditions of employment, they shall be subject to the meet and confer process as required by law.

In the event of an emergency, any part or all of these Rules may be suspended by order of the City Manager and such suspension shall remain in effect until the City Manager's order is withdrawn.

1.1 **Personnel Policy**

In accepting employment with the City each employee agrees to be governed by and to comply with ordinances, these Rules, the Administrative Policy and Procedures Manual, the rules, regulations, and directives of the department in which employed, and the memorandum of understanding in effect between the City and the appropriate employee organization.

1.2 **Equal Employment Opportunity**

It is the policy of the City of Tracy to provide equal opportunity in employment for all persons to prohibit discrimination in employment. This policy of equal employment opportunity applies to and must be an integral part of every aspect of personnel policy and practice in the employment, development, advancement, and treatment of employees to the extent permitted by law.

1.2.1 This Equal Employment Opportunity policy applies to all applicants, officers, volunteers, and employees without exception.

1.2.2 The City shall not discriminate against qualified employees or applicants for employment on the basis of actual or perceived race, color, religion, gender, national origin, ancestry, citizenship, age,

marital status, physical disability, mental disability, medical condition, sexual orientation, or any other basis protected by law, or on the basis of a perception that an individual is associated with a person who has, or is perceived to have, any of these characteristics. For purposes of this policy, "race" is inclusive of traits historically associated with race, including, but not limited to, hair texture and protective hairstyles. The City shall afford equal employment opportunity to all qualified applicants or employees with respect to compensation and all terms and conditions of employment, including hiring, training, promotion, transfer, discipline, and termination.

1.2.3 Employees who believe they have experienced denial of equal employment opportunity or discrimination are encouraged to report this experience immediately to their supervisor or the Director of Human Resources. The City shall promptly investigate the report under the Harassment, Discrimination, Retaliation, and Complaints Procedure.

1.3 Powers of the City Manager

1.3.1 The City Manager is the chief administrative officer and the head of the administrative branch of the City Government. Whenever the term "City Manager" is used in these Rules, it shall include the City Manager, or any person designated by them to carry out any function required by these Rules. When any officer or employee other than the City Manager is assigned a duty or responsibility under these Rules, such assignment is subject to the direction and control of the City Manager, and the City Manager shall have the right to perform such duty or responsibility or to assign it to any other officer or employee.

1.3.2 Subject to Section 2.08.060 of the Tracy Municipal Code, the City Manager has the power and authority to:

1.3.2.1 Establish, when not in conflict with these Rules, such other policies, procedures, rules, and regulations necessary for the control and supervision of the affairs of the City;

1.3.2.2 Appoint and remove all Department Heads, officers, and employees of the City, except those officers appointed by the Council;

1.3.2.3 Approve all proposed appointments and removals of subordinate employees by all officers and Department Heads;

1.3.2.4 Transfer, promote, demote, reemploy, reinstate, discipline, layoff, reduce in salary, suspend, or dismiss City employees, except for those officers appointed by the City Council.

1.3.3 The City Manager shall interpret, apply, administer, and enforce the provisions of these Rules, any ordinances or resolutions relating to personnel matters, the employer-employee relations resolution, the

memoranda of understanding, and any other pertinent regulations, directives and policies which relate to the City's personnel system.

- 1.3.4 The City Manager may delegate to the Director of Human Resources any of the powers and duties conferred upon them under these or other City rules, regulations, resolutions, or ordinances. The Director of Human Resources, or their designee, shall be responsible for administration of these Personnel Rules.

1.4 Department Rules and Regulations

Department Heads may develop, implement, and revise as necessary any departmental policies, procedures, rules, and regulations pertaining to unique operational requirements and their effect upon departmental personnel as are needed for the full performance of duties and responsibilities and which are not contrary to these Rules.

1.5 Application of Personnel Rules

The provisions of these Rules shall apply to all offices, positions, and employees of the City, except the following positions and except as otherwise indicated within a specific provision of these Rules:

- 1.5.1 Elected officials;
- 1.5.2 Members of appointed boards, commissions, and committees;
- 1.5.3 Persons engaged under contract to render professional, scientific, technical, or expert services for a definite period of time;
- 1.5.4 Volunteer personnel who receive no regular compensation from the City;
- 1.5.5 Where a particular rule or article expressly states it does not apply to certain employees and/or positions or applies only to certain employees and/or positions.

1.6 Adoption of Personnel Rules

The Personnel Rules shall be established by resolution adopted by the City Council.

1.7 Amendment and Revision of Personnel Rules

Proposed amendments to/or revisions of the Personnel Rules shall be submitted to the City Council in writing by the Director of Human Resources after approval of the City Manager.

1.8 Conflict of Personnel Rules

In the event that one or more provisions of these Rules contradict provisions included in memorandum of understanding currently in effect between the City and a formally recognized employee organization, the terms of the memorandum of understanding shall prevail. If there is a conflict between these Rules and a federal or state law, that law prevails. If there is a conflict between these Rules

and an administrative regulation issued by the City, these Rules prevail.

1.9 Rights of Management

The adoption of these Rules shall not be deemed a waiver or surrender of any management prerogative in relation to the organization or the necessity of any department or position.

1.10 Violation of Personnel Rules

Each employee is responsible to comply with these Rules and any amendments hereto. Violation of the provisions of these Rules shall be grounds for disciplinary action, up to and including dismissal.

2. DEFINITION OF TERMS

All words and terms used in these Rules and in any other resolution, ordinance, or administrative procedures dealing with personnel policies or procedures shall be defined as they are normally and generally defined in the field of personnel administration. For the purpose of convenience, however, the words and terms most commonly used are defined as follows:

2.1 Actual Hours Worked

All hours in which the employee actually performed work and does not include any paid or unpaid leave time, including but not limited to vacation and sick leave.

2.2 Advancement

A salary increase of one or more steps within the limits of the pay range established for a class.

2.3 Allocation

The official assignment of an individual position to its appropriate classification as reflected in the Position Control Roster.

2.4 Applicant

Any person who has completed the application process for employment.

2.5 Appointment

Employment of a person into a position.

2.6 At-Will

The employee serves at the pleasure of the City Manager or as defined in the Municipal Code. The City Manager retains the authority to terminate any such employee at any time with or without cause. An "at will" employee has no right of appeal of discipline or termination.

2.7 Base Salary

The salary range and step established by the master salary schedule, exclusive of any overtime, shift-differential, incentive or other excludable pay an employee may receive.

2.8 **Candidate**
Any person who has been accepted for participation in an examination process.

2.9 **Certification**
The submittal to a Department Head or designee of a listing of eligible candidates from an appropriate employment list, or names of those on a reinstatement or re-employment list.

2.10 **Certified Employee Organization**
An employee organization that has been certified by the City of Tracy as representing the majority of the eligible employees in an appropriately designated employee representation unit and shall be considered the exclusive representative to represent all the employees of that unit.

2.11 **Class or Classification**
A group of positions sufficiently and substantially similar in duties, authority, responsibilities, and minimum qualifications for employment to permit combining them under a single title and the application of common standards of selection and compensation.

2.12 **Classification Series**
Two or more classification levels which have similar duties and responsibilities but are distinguished from each other by degree of difficulty or level of responsibility.

2.13 **Classification Plan**
The title for each classification together with the specifications for each classification as prepared and maintained by the Director of Human Resources.

2.14 **Compensation**
The salary, wage, allowances, and all other forms of valuable consideration earned by or paid to any employee by reason of said service in any position but does not include any allowances authorized and incurred as incidents to employment.

2.15 **Compensatory Time Off (CTO)**
Paid time off from work in lieu of overtime pay.

2.16 **Competitive Service**
All regular positions in City service, except for the following positions, which are within the non-Competitive Service: Elective Offices, the City Manager, Assistant City Manager, City Attorney, Assistant City Attorney, and all Heads of Departments.

2.17 **Competitive Examination**
A competitive examination open for a defined period of time for a particular classification which is designed to be either open or promotional, or both; and which consists of tests of fitness used to assess the relative qualifications of a group of applicants, and as a result of which names of eligible candidates are placed on an employment list.

2.18 **Continuous Competitive Examination**
A competitive examination or a particular class which is designed to be either open or promotional, or both; and the examination consists of the same or comparable tests of fitness which may be administered periodically; and as a result of which names of eligible candidates may be added to an existing employment list for the duration of such list.

2.19 **Continuous Service**
Employment without interruption and includes approved leaves of absence to serve in the armed forces of the United States, in compliance with federal and state military leave laws.

2.20 **Days**
Calendar days unless otherwise noted.

2.21 **Demotion**
The voluntary or involuntary movement of an employee from one class to another class having a lower maximum rate of pay.

2.22 **Department**
An organizational unit with responsibility for carrying out a function under the supervision of a Department Head.

2.23 **Department Head**
The head of an established office or department having supervision of such department and office.

2.24 **Dismissal**
The involuntary separation of an employee from the City service.

2.25 **Domestic Partner**
“Domestic partner” as defined in California Family Code.

2.26 **Elective Office**
All positions held by elected officials.

2.27 **Eligible Candidate**
A person who has earned a place on an employment list established by competitive examination.

2.28 **Employment Date**
For retirement, sick leave, and other benefit purposes, the effective date of an employee’s initial appointment to a full-time position.

2.29 **Employment List**
A list of names of persons who may be considered for employment with the City under specific conditions. Such lists may be designated as either a re-employment, reinstatement, promotion, or open employment list.

2.30 **Employment Status**
The type of employee appointment, such as regular, probationary, or limited

service.

2.31 **Examination**

The selection procedures used to measure the knowledges, skills, and abilities of the persons applying for positions within the Competitive Service.

2.32 **Executive Management**

The group of employees comprised of the City Manager, City Attorney, Assistant City Manager, and all Department Heads.

2.33 **Flexible (Flex) Staffing**

A flexibly staffed classification allows qualifying individuals to flex upwards within the classification series when the required knowledge, skills, and abilities have been achieved and minimum qualifications for the higher level have been satisfied. A flexed employee does not serve a new probationary period for advancing within the series and does not participate in a competitive process.

2.34 **FLSA**

The Fair Labor Standards Act.

2.35 **FLSA Exempt**

All employees who meet one or more of the duties test exemptions from overtime under the FLSA (e.g. executive, administrative, professional) and who are paid on a salary basis. FLSA exempt employees are not eligible for overtime compensation.

2.36 **FLSA Non-Exempt**

Employees who are eligible for FLSA overtime compensation.

2.37 **Grievance**

Defined in Section 13 of these Rules.

2.38 **Incumbent**

A person legally occupying a position in the City Service.

2.39 **Layoff**

The termination of an employee from City service for reasons of economy, efficiency, reorganization, or other non-disciplinary reasons.

2.40 **Limited Service**

Those types of positions which do not provide full-time employment throughout a fiscal year. The kinds of positions assigned to the Limited Service include temporary, part-time, student, and seasonal positions. Appointment to such positions are noncompetitive and incumbents do not acquire status in the class to which assigned by virtue of such employment. Limited service positions are "at will" and may be terminated with or without cause and without right of appeal.

2.41 **Limited Term Position**

A position in the competitive or non-Competitive Service which is created for a limited term.

2.42 **Open Examination**
A competitive examination for a particular class in which applications are invited from all qualified persons, regardless of whether or not they are employed by the City.

2.43 **Overtime Work**
All actual hours worked by a non-exempt employee in excess of forty (40) hours in the employee's designated workweek, except as otherwise designated by an applicable MOU, as otherwise designated for employees on an approved flexible work schedule, or as designated under the FLSA.

2.44 **Part-Time Position**
A type of limited-service position to which a person is employed in a regularly budgeted position who works less than full-time.

2.45 **Pay Range**
A series of base salary steps to which a class may be assigned.

2.46 **Position**
A combination of duties and responsibilities assigned to a single employee and performed on either a full-time or part-time basis. A position may be occupied or vacant.

2.47 **Probationary Appointment**
The initial appointment of an employee into a position that begins a probationary period.

2.48 **Probationary Period**
The final stage of the recruitment, examination, and selection process, where a new or promoted employee is required to demonstrate satisfactory or better performance of the position's duties. During this period, the employee is "at will" and may be dismissed at any time without cause and without right of appeal or hearing.

2.49 **Promotion**
The advancement of an employee from a position in one classification to a position in another classification having a higher maximum salary range. Limited Service Employees hired into a full-time regular position in the competitive service does not qualify as a promotion.

2.50 **Promotional Examination**
A competitive examination of a particular class which is only available to current employees who meet the qualifications for the class or are otherwise permitted to take such an examination.

2.51 **Provisional Appointment**
Appointment of a person possessing the minimum qualifications established for a particular class other than eligibility by examination and who has been appointed to a position in that class in the absence of available eligible candidates.

2.52 **Provisional Employee**
An employee appointed to fill a position vacancy for a limited time period when no valid employment list exists for that position. Provisional employees are “at will,” and their appointment may be terminated at any time with or without cause and without right of appeal.

2.53 **Reallocation**
The permanent reassignment of a classification to another classification.

2.54 **Reclassification**
The reassignment of an incumbent from one classification to another classification.

2.55 **Recognized Employee Organization**
An employee organization that has been formally acknowledged by the City as the employee organization that represents the employees in an appropriate representation unit.

2.56 **Re-Employment**
The reappointment of a former regular employee from a layoff re-employment list.

2.57 **Regular Employee**
The employment status of a person in an authorized full-time position following successful completion of the initial probationary period in an authorized full-time position in the Competitive Service.

2.58 **Regular Position**
A full-time position in the Competitive Service which is established without any limitation as to time.

2.59 **Rehire**
The reappointment of a former employee who does not have re-employment or reinstatement rights at the time of returning to the payroll.

2.60 **Reinstatement**
The probationary appointment of an employee after the employee who resigned in good standing from a permanent regular position or the return of an employee from a non-disciplinary demotion to a position which the employee held not more than one year previously. In either case reinstatement must occur not more than one (1) year from the date of separation. Such reinstatement may be done without further competitive examination.

2.61 **Resignation**
The voluntary separation of an employee from City employment.

2.62 **Safety Sensitive**
A position or duty of a position that the City has designated as “safety sensitive” for purposes of implementing its Drug and Alcohol policy.

2.63 **Salary Basis**
Compensation in a predetermined amount that is not reduced, regardless of the quality or quantity of work actually performed, except as required by the City's principles of public accountability, for partial-day absences or as otherwise set forth in the FLSA.

2.64 **Salary Evaluation Date**
The date on which a probationary or regular employee's performance is evaluated and the date upon which the employee is eligible, on the basis of job performance for a prescribed period, for a merit salary increase within the established salary range.

2.65 **Seniority in City Service**
Seniority in City service is based on the employee's number of continuous years in City measured from the employee's original hire date. Seniority in classification is based on the number of continuous years of service in the present or higher classification.

2.66 **Seasonal Position**
A position of limited-service status which is recurrent and does not provide full-time employment. Seasonal employees are "at will" and may be terminated at any time with or without cause and without right of appeal.

2.67 **Selection Procedure**
The process by which employment decisions are made, including but not limited to application screening, written tests, oral interviews, performance tests, background investigations, assessments of physical or mental condition, and probation periods.

2.68 **Separation**
The voluntary or involuntary termination of employment from City service. Separation may include death, dismissal, layoff, resignation, retirement, or work completion.

2.69 **Service Anniversary Date**
The original date of hire as a full-time employee for purposes of accruing benefits and determining years of service with the City.

2.70 **Step Advancement**
The merit-based increase of an employee's salary to a higher salary level within the established salary range for the employee's classification.

2.71 **Step Advancement Date**
The effective date of an employee's merit-based salary increase.

2.72 **Student Position**
A type of limited-service position to which an employee who is also a student pursuing a course of study may be employed part-time during an academic school year and full-time during school vacations and holidays. Employees holding such positions are "at will" and may be terminated at any time with or without cause and without right of appeal.

2.73 **Suspension**
The temporary separation without pay of an employee from the Competitive Service for disciplinary purposes.

2.74 **Temporary Position**
A type of limited-service position to which a person is appointed on a temporary basis and which is not an authorized regular position or a regular position for a limited period of time, either full-time or part-time. Temporary employment that is limited to not more than 999 hours in any fiscal year. This time period includes all time spent in one or more positions.

2.75 **Termination**
Involuntary separation of an employee from City service.

2.76 **Transfer**
The reassignment of an employee from one position to another position in the same classification or another classification having the same maximum salary range, involving the performance of basically similar duties, and requiring substantially the same minimum qualifications.

2.77 **Vacancy**
An allocated position which is not occupied and for which monies have been appropriated.

2.78 **Y-Rated**
Employee's existing salary is frozen until adjustments to the employee's salary cause it to fall within a new salary range.

3. POSITION CLASSIFICATION

3.1 Classification Plan

The City Council, upon recommendation of the Director of Human Resources in consultation with the City Manager, shall create and adjust classes of positions in the City service. These classes shall be known as the "Classification Plan."

3.1.2 *Implementation of the Classification Plan*

The Director of Human Resources, in consultation with the City Manager and Department Heads, shall recommend a Classification Plan for all classifications in the Competitive Service that includes but is not limited to the following for each classification:

- The classification title;
- A description of typical duties and responsibilities;
- A statement of the desirable training, experience, and other qualifications of applicants for the classification;
- Whether the classification or any of its duties are safety-sensitive.
- Whether the classification is FLSA exempt

The Director of Human Resources shall ensure that all positions within the same classification are substantially similar with respect to duties, authority, decision-making, character of work, and schedules of compensation.

3.1.3 *Interpretation of Class Specifications*

The class specifications are meant to be descriptive and explanatory but not restrictive. They are intended to indicate the kinds of positions allocated to the various classes and should not be construed as limiting the assignment of duties and responsibilities to any position. The use of a particular expression or an illustration as to duties should not be interpreted to exclude others not mentioned that are of a similar level of responsibility. The specification for each class should be considered in its entirety and in relation to other classes in the Classification Plan. Consideration should be given to the general duties, specific tasks, responsibilities, qualifications desired, and relation to other positions, as affording together a picture of the kind of employment the class is designed to embrace.

3.1.4 *Periodic Updates*

From time to time the Director of Human Resources shall review the Classification Plan to ensure that it is accurate and make amendments to reclassify, add positions or classifications, or make other changes as necessary or appropriate.

3.1.5 *Adoption by City Council*

The Classification Plan shall become effective only upon adoption by resolution of the City Council. Upon adoption, the Classification Plan shall take immediate effect unless otherwise specified.

3.1.6 *Amendments*

The classification or position descriptions may be abolished or amended from time to time by City Council action when material changes are made including the title and/or salary. The City Manager has authority to approve non-material classification or position description amendments. In addition, new classification or position descriptions may be added to the City's Classification Plan. If new positions are added to the City services, such positions shall be allocated to an appropriate class by the Director of Human Resources.

3.1.7 *Assignment of Classifications to Bargaining Units*

Assignment or reassignment of classifications to employee units of representation shall be at the sole discretion of the City Manager and in accordance with the Employer-Employee Relations Rule.

3.2 **Positions**

In accordance with these Rules, any position may be assigned, reallocated or transferred to a different class by the Director of Human Resources, in consultation with the City Manager and affected Department Head, whenever there is a need of such action because of a change in duties or responsibilities of

the position. All positions shall be included in the same class if:

- 3.2.1 They are sufficiently similar in respect to duties and responsibilities so that the same descriptive title may be used; and
- 3.2.2 Substantially the same requirements as to education, experience, knowledge, and ability are required of incumbents; and
- 3.2.3 Substantially the same tests of capacities and fitness may be used in choosing qualified appointees; and
- 3.2.4 The same pay range or salary rate applies.

3.3 Emergency or Temporary Positions

Whenever, in the judgment of the Director of Human Resources in consultation with the City Manager, it is necessary for a department to employ a person or persons on an emergency or temporary basis in a type of position for which there is no classification provided in the Classification Plan, then the Director of Human Resources, in consultation with the Department Head(s) and City Manager, may authorize such positions and shall fix the amount of compensation, and may determine the minimum qualifications for such additional employees, and shall limit in advance the period of time the position may be allowed up to a maximum of 999 hours in a fiscal year.

3.4 Classification Review

Review of the classification of a position may occur in the following circumstances:

- One or more new positions are under consideration for possible establishment;
- Due to a change in organization or methods, a major change of the duties or responsibilities of an existing position is made which may require the reallocation of such position;
- A new class is created to which a position may more appropriately be allocated;
- Due to the abolishment or combination of an existing position or class, an amendment to the Classification Plan is required.

The procedure for classification review is as follows in accordance with the Classification Review Policy:

- 3.4.1 The Department Head shall report the significant facts relating to such possible changes in writing to the Director of Human Resources.
- 3.4.2 The Director of Human Resources, upon written request of an employee and their department head, may undertake an inquiry of the classification of any position.

- 3.4.3 Upon either of the above initiations, the Director of Human Resources shall make a study of the assigned duties and responsibilities of any such position and the qualifications required, and of the relationships of such positions to other classes of positions in the Classification Plan.
- 3.4.4 On the basis of such investigation, the Director of Human Resources shall then make a recommendation no changes are necessary; or change the allocation of the position; or reallocate the position to a more appropriate class in the existing Classification Plan; or determine a new class to which the position would be allocated, whichever the Director of Human Resources deems is the appropriate action. Whenever a position is reallocated, the existing position is to be deleted, and a new position created in the class to which the position is to be assigned.

4. **COMPENSATION PLAN**

4.1 Compensation Plan Establishment

The City of Tracy is committed to maintaining fiscal integrity and high standards of accountability to the public in the expenditure of funds provided by taxpayers. The City establishes its compensation system in accordance with the principles of public accountability.

The Director of Human Resources shall prepare a Compensation Plan that includes the following:

- a. The salary ranges for all classifications showing the minimum and maximum rates of pay;
- b. A designation of the position as full-time, part-time or temporary;
- c. A designation of the position as exempt or non-exempt.

These rules do not preclude the creation of separate management pay plans that, if adopted by the Council, must be administered in accordance with the procedures adopted for such plan(s) by the City Council.

On a periodic basis, the Director of Human Resources may survey benchmark classifications. Survey results shall be considered as one of the pieces of information used as a guideline in establishing or modifying compensation for a particular position or classification.

The Director of Human Resources shall also determine whether any modifications are necessary due to recruitment or retention issues, changes to positions or classifications, including changes to exempt or non-exempt status, resulting from their periodic review of the Classification Plan.

The Director of Human Resources shall submit any modifications to the Compensation Plan to the City Manager for recommendation to City Council for adoption.

4.2 Compensation Plan Administration

The authorized pay ranges for the respective classes of positions with such amendments as may be adopted by the City Council by resolution shall be applied as follows:

4.2.1 *Increases Within the Pay Range*

Normally, and as a general rule, upon progress and productivity, employees in the Competitive Service or those occupying an Appointed position shall be considered for a step advancement according to the following general plan:

4.2.1.1 *Steps.* The letters A, B, C, D, E, etc. respectively, denote the various salary steps in the pay range.

4.2.1.2 *Step A.* Step “A” shall typically be paid upon initial employment into a five (5) step pay range. If the employee possesses exceptional training or experience, that employee may start at a step B with the approval of the Department Head. Appointments at any step greater than B require prior authorization from the City Manager.

4.2.1.3 *Step Advances for Regular Positions.* At the completion of the applicable probationary period of employment, employees appointed at Step A are eligible for a step increase. Police Officers appointed at Step A whose probationary period is eighteen (18) months are eligible for a step increase after (twelve) 12 months. If employed at other than Step “A” in a five (5) step pay range for the class, then consideration for advancement to the next salary step will take one year following the date of hire. If no probationary period is served as a result of the step advancement, consideration for advancement to the next salary step will take place one year following the date of advancement.

All step advances will be effective the beginning of the pay period following the evaluation due date unless the evaluation date is on the first day of the pay period. Additional step advances will be on an annual basis thereafter until the attainment of Step E.

All step advances shall be based on satisfactory performance as shown from the evaluation by the employee’s Supervisor. Denial of step increases shall be based on documented performance evaluations. Increases of more than one step for superior performance may be provided upon recommendation by the Department Head and approval of the Director of Human Resources.

4.2.1.3.1 *Step Advances for Limited Service Positions.* Limited Service Employees (LSE) are eligible for consideration

of a step increase at the discretion of the Department Head or their designee after working for one continuous year and hours worked reaches 1040 hours and thereafter every one year and 1040 hours worked until the attainment of Step E. An exception may be made for step advances for LSE assigned to the Aquatics Program after they have worked for one continuous year and thereafter every one year until the attainment of Step E. There is no retroactivity for LSE step increases.

- 4.2.1.4 *Step at Promotion.* When employees are promoted, they shall normally receive the first step in the salary range for their new position. However, if such step results in a salary increase of less than 5 percent, they shall receive a minimum 5 percent increase, provided that in no event shall the new salary be above Step E of the promoted class. The City Manager may authorize an appointment to a position at any higher salary step in the pay range upon the recommendation by the Director of Human Resources in consultation with the Department Head.
- 4.2.1.5 *Special Salary Adjustments.* Notwithstanding anything in these Rules to the contrary, in order to correct gross inequities or to reward outstanding achievement and performance, the City Manager may, upon recommendation of the Department Head and the Director of Human Resources, adjust the salary step of an incumbent of a particular position to any step within the pay range for the class to which the position is allocated. If a special salary step adjustment is authorized, it shall coincide with the beginning date of a pay period.
- 4.2.1.6 *Calculation of Service Anniversary Dates and/or Step Advancement Dates for Regular Positions.* Service Anniversary dates shall be established as of the effective date of employment into a regular full-time position. Step Advancement Dates shall be established as of the effective date of the most recent step advancement, promotion, or reinstatement in the City service, or the effective date of a special salary adjustment as provided in Section 4.2.1.5 of these Rules. Service anniversary dates of those reemployed shall be established as provided by Section 8.2.2 of these Rules. All step advancements shall be effective the first day of the pay period following the step advance date unless that date falls on the first day of a pay period.
- 4.2.1.7 *Applicable Salary Rates Following Pay Range Increases and Decreases.*
 - 4.2.1.7.1 *Same Relative Step.* Where a pay range for a given class is revised upward, the incumbents of positions in classes affected shall have their existing salary adjusted to the same relative step in the new pay range (Step B

to Step B, Step C to Step C, etc.) and their next step advancement date shall not be changed.

4.2.1.7.2 *Retention of Salary and “Y” Rates.* When a pay range is adjusted downward, incumbents may, on approval of the City Manager, be assigned a “Y”-rate designation to hold the employee at the current salary rate, without increases, until such time as the salary range for the new classification is the same or exceeds the amount of the “Y”-rating. Any such “Y” rate shall be indicated by a capital “Y” following the salary each time it appears on personnel records or transactions. Said “Y” rate shall be canceled on vacancy of the position.

4.2.1.7.3 *Pay Range Change on Step Advancement Date.* In the event that a pay range change becomes effective on an employee’s step advancement date, the employee shall first receive any within-range adjustment to which entitled and then receive the corresponding step adjustment.

4.2.1.7.4 *Pay Range Change on Date of Promotion.* In the event that a pay range change becomes effective on the date an employee is promoted to a higher class, the employee shall first receive any corresponding step adjustment to which entitled in the lower class, and then the next higher step promotional adjustment as provided in Section 8.5.1 of these Rules.

4.2.2 *Trainee Salary Range*

At the recommendation of a Department Head, concurrence by the Director of Human Resources, and approval by the City Manager, City of Tracy non-sworn classifications within the competitive service may be underfilled by a special class of Trainee under a training program or on-the-job training assignment. Such training program or on-the-job training assignment will provide expectations and milestones for an employee to reach during the training period in order for said employee to acquire the full range of required skills and abilities within a reasonable and specified period of time. The salary paid such employees shall be ten percent (10%) below the salary range provided herein for employees in the classification for which training is being given. The title of such employees shall be the job title provided herein, with “Trainee” appended.

If an employee transfers into a Trainee class, and the employee’s former salary range falls between the new class’s actual and Trainee (-10%) salary ranges, the Department Head may recommend and seek approval to set the transferred employee’s Trainee salary according to the following criteria:

- 1) The employee’s salary placement must be an amount between the new class’s actual and “Trainee” (-10%) salary ranges; and

- 2) The employee's salary placement cannot exceed the employee's former salary.

4.2.3 *Retirement/Resignation Notification Incentive*

The City may offer a Retirement/Resignation Notification Incentive in any fiscal year in which the City Manager deems such an incentive is necessary to assist with workforce planning or potential workforce reduction efforts. The incentive will be provided to those employees who notify the City during a designated incentive offer period of their retirement/resignation effective no later than the end of that particular fiscal year or earlier date as determined by the City Manager.

Each employee shall receive the same incentive amount during the incentive offer period as designated by the City Manager. The amount of the Retirement/Resignation Notification Incentive per employee shall not exceed amount designated by the City Manager. It will be available only to CalPERS member employees who notify the City of their intent to retire or resign and completely separate their employment with the City of Tracy by the end of the specified fiscal year or earlier date as determined by the City Manager.

Employees must fill out a Retirement/Resignation Notification Incentive Application and submit it to the Human Resources Department by the deadline specified. Once the application is signed and submitted by the employee, the City will deem the application to be an irrevocable letter of intent to retire or resign and payment shall be made to the individual employee.

4.3 **Errors in Compensation**

Each employee shall review each of their paychecks to ensure the employee was paid correctly. If the employee believes an error or irregularity has occurred, the employee must immediately call it to the attention of their supervisor who shall in turn notify the Payroll Division of the Finance Department.. The City shall document all errors in compensation and the affected employees shall sign an acknowledgement for any corrections made.

In the event of any underpayment of which the City becomes aware, the employee shall receive any amount due them on the next regular paycheck or as soon as administratively possible.

In the event an employee receives an overpayment by the City, the employee shall reimburse the City for the total overpayment and the City may obtain reimbursement by payroll deduction(s). Typically, such repayment shall occur over a schedule equal to the amount of time over which the overpayment occurred.

5. **RECRUITMENT, APPLICATIONS AND APPLICANTS**

It is the policy of the City of Tracy to recruit and select the most qualified individuals for positions in the City's service. Recruitment and selection shall be conducted in a manner that will ensure open competition, provide equal employment opportunity, and prohibit

discrimination or favoritism because of any protected classification.

5.1 Recruitment

Positions to be filled in the Competitive Service shall be publicized as deemed advisable and appropriate within the discretion of the Director of Human Resources and in consultation with the affected Department Head(s). The Human Resources Department shall prepare an official bulletin announcing any proposed examination. The notice shall be posted online and other City facilities at the discretion of the Director of Human Resources. The announcements shall be posted for a minimum of five (5) working days or until a sufficient number of qualified applications have been received. The examination announcement shall contain all information of importance for consideration by potential applicants, including whether the examination is to be promotional only, open, both promotional and open, or continuously open.

When the City seeks only promotional candidates, distributions will be limited to internal sources. Additionally, when distribution of a job announcement would detrimentally delay the filling of a position the City, in its sole discretion, may opt to fill the position temporarily from immediately available sources.

5.2 Applications

Official application forms shall be completed online, however, the City's Human Resources Department will have paper applications available for anyone without internet access. Applications shall be provided by the Human Resources Department's webpage. All applications and supplemental questions and/or materials must be submitted on or before the filing deadline stated in the job announcement. If in the best interest of the City, the Director of Human Resources may permit a letter, resume or other indication of interest to be accepted pending receipt of a properly completed application.

When necessary to meet continued requirements for filling positions due to non-availability of applicants for a classification or position or due to an increased vacancy rate or due to increased City needs, the closing date for any selection process may be indefinite and applicants may be tested continuously in such manner and at such times and places as may be provided by the City. Applicants who fail to achieve a passing score in such an open continuous examination may not compete again until the lapse of ninety (90) days between the first and second testing and one hundred and twenty (120) days between the second and third such testing, unless stipulated to the contrary on the job announcement. The City may exclude such applicants from further testing at its discretion.

5.3 Disqualification of Applicants

The Director of Human Resources may disqualify any applicant either before or after examination for any of the following causes:

- a. The applicant did not properly complete the application;
- b. The application indicates on its face that the applicant does not possess the

minimum qualifications for the position;

- c. The applicant is unable to perform the essential functions of the position sought, with or without reasonable accommodations;
- d. The applicant is currently using illegal drugs;
- e. The applicant has been convicted of a crime that may have an adverse impact on the applicant's ability to perform the job for which the applicant is applying;
- f. The applicant is not legally permitted to work within the United States;
- g. The applicant has made false statement of any material fact or practiced or attempted to practice deception or fraud in making application for employment; or
- h. For any material cause which in the judgment of the Director of Human Resources would render the applicant unsuitable for the position, including a prior resignation from City service, termination from City service, or significant disciplinary action.

5.4 Notice of Rejection

The Human Resources Department shall send notice by electronic mail of any rejection to the electronic mail account provided by the applicant on the application. Any disqualified applicant may protest their rejection as provided by Section 6.7 of these Rules.

5.5 Incomplete or Late Applications

Incomplete or improperly completed applications may be returned to the applicant for additional information and/or completion provided the time limit for receiving applications has not expired. Such applications may be resubmitted and accepted by the Director of Human Resources. Acceptance in this case will be based on such applications being initially received on or before the previously announced final date for filing. Applications received after the announced final date for filing may be accepted by the Director of Human Resources. Acceptance in this case will be based on a reasonable explanation being given by the applicant which is satisfactory to the Director of Human Resources. Such acceptance must take place prior to any scheduled examination for the class in question.

6. EXAMINATIONS

6.1 Responsibility

The Director of Human Resources or designee, in consultation with the Department Head or designee, will determine the manner and methods, and by whom examinations shall be given. All examinations and background checks will be job-related and consistent with a business necessity.

Examinations shall be competitive and may consist of written tests, oral tests, performance tests, evaluations of prior training and performance, experience and education, interviews, style assessments, file review, or any combination thereof.

The Director of Human Resources shall be responsible for the selection of examination for classes of positions within the City's service.

6.2 Need for Examinations

The Director of Human Resources or designee shall schedule examinations as necessary. If there is a vacancy or one is anticipated, or if a provisional appointment is made, an examination will be conducted as soon as practicable to establish or supplement an employment list.

6.3 Qualifications Appraisal Board

In examinations where appropriate, the education, experience, skills, personal qualifications, and other pertinent information about the candidate may be evaluated by a Qualifications Appraisal Board. The weight to be given the evaluation of the above shall be determined by the Director of Human Resources. The Qualifications Appraisal Board may be composed of outside subject matter experts, entirely of City employees, or a combination thereof. If a Qualifications Appraisal Board member is a City employee, they shall not be neither the manager/supervisor for the positions being examined, nor be currently the immediate supervisor of a candidate. If possible, at least one of the members of the Qualifications Appraisal Board shall be technically familiar with the character of the work of the class for which the candidates are being examined.

6.4 Rating

In all examinations, the minimum grade or standing for which eligibility may be earned shall be based upon all factors in the examination, including educational requirements, experience, and other qualifying elements as shown in the application of the candidate or other verified information. At the discretion of the Director of Human Resources, failure in one part of the examination may be grounds for declaring the applicant as failing in the entire examination, or as disqualified for subsequent parts of an examination. The Director of Human Resources may also designate any part of an examination as qualifying only, and no numerical weight need be assigned to passing scores in said part.

6.5 Preparation of Employment Lists

Employment lists shall be established and certified by the Director of Human Resources or their designee following all applicable examinations. If the examination was given on both a promotional and open basis, the names of candidates shall be distinguished under the corresponding heading, "Promotional List" or "Open List". The listing of eligible names shall be in alphabetical order and grouped within the following blocks, as determined by the Human Resources Department after review of qualifications and/or testing results.

Block A shall contain the names of those candidates found to be most qualified.

Block B shall contain the names of those candidates found to be well qualified.
Block C shall contain the names of those candidates found to be qualified, but not as fully qualified as those placed in Blocks "A" or "B".

6.6 Notification of Examination Results

Every applicant taking part in the examination process shall be given written notice of the results. Any claim of error in rating or grading must be submitted to the Director of Human Resources no later than five (5) days after the effective date of the employment list, to be considered for correction. Applicants shall be provided timely access to all information reasonably necessary to determine if an error in rating or grading has occurred. However, applicants may be prohibited from inspecting examination papers if review of such materials is prohibited by the consulting agency that prepared the examination. Applicants cannot have access to the rating sheets of the individual raters, but upon request may have access to a composite description of the rating sheets. Corrections of errors in grading shall be made within the discretion of the Director of Human Resources. Applicants have no further right of appeal of examination results.

6.7 Protests/Appeals to Director of Human Resources

6.7.1 *Rejection of Application.* Within five (5) calendar days of the date of the notice of disqualification, an applicant may file an appeal in writing with the Director of Human Resources. Such an appeal shall contain information in sufficient detail to enable the Director of Human Resources to reevaluate the applicant. Within ten (10) calendar days of receipt of the appeal, the Director of Human Resources shall review the issues involved and render a decision in writing to the appellant.

6.7.2 *Protest of Written Test Items.*

6.7.2.1 *Item Protests.* Within five (5) calendar days of the examination date, a candidate may submit a written protest or objection to any item in the examination. Protests should cite authorities or references in support and/or reason for challenge to keyed items in sufficient detail to enable the Director of Human Resources to understand the objection and to complete any research which is necessary to evaluate the soundness of the protest. Protests based purely on personal opinion without cited authority shall not be considered by the Director of Human Resources.

6.7.2.2 *Determination of Item Protests.* Upon the receipt of test or item protests, the Director of Human Resources shall commence to review the basis for the protests, consulting with such authorities as appropriate and make a determination if the items shall stand as keyed, be eliminated from the test, or that the key be modified and the test shall be scored or restored accordingly. In any case, the person filing the protest shall be notified in writing of the Director of Human Resources' decision.

6.7.3 *Disqualification/Final Ratings.* A candidate or eligible may appeal in

writing to the Director of Human Resources within five (5) calendar days after being notified by mail to the last known address of disqualification or final ratings in any examination. Within ten (10) calendar days of the receipt of such an appeal, the Director of Human Resources shall commence to review the issue. When the Director of Human Resources has reached a decision, the appellant shall be notified by mail to the last known electronic mail address of the Director of Human Resources' decision.

6.8 Status of Examinations Being Protested orAppealed

Normally, scoring of written tests will not be completed pending disposition of protests. As the needs of the service may require the City to fill vacancies from employment lists, tests may be scored and other parts of the examination, certification, and appointment process completed prior to receipt of or answer to protests. Appointments so made are not subject to change even if subsequent test rescoreing should alter the established order of the employment lists.

7. ESTABLISHMENT AND THE USE OF EMPLOYMENT LISTS

7.1 Types of Lists

The following types of employment lists shall be established by examinations with the type of employment list to be established determined by the Director of Human Resources.

- 7.1.1. *Promotional Employment List.* If there are less than three (3) applicants on a promotional eligibility list, the Director of Human Resources, in consultation with the Department Head, may declare the list invalid and announce a new recruitment and examination period. In the alternative, the Director of Human Resources may make a temporary appointment until eligible candidates can be certified after appropriate examination.
- 7.1.2. *Open Employment List.* If less than five (5) names of qualified applicants are available for a new appointment, the Director of Human Resources may declare the list invalid and announce a new recruitment and examination period.

7.2 Use of Employment Lists

Employment lists shall be valid and in effect for a period of one (1) year unless declared invalid by the Director of Human Resources after all candidates have been considered. An employment list may be extended upon the recommendation of the Department Head and by action of the Director of Human Resources for additional six-month periods, but in no event shall a list remain in effect for more than two (2) years.

7.3 Eligibility for Promotional Examinations

All candidates for promotional examinations must be current regular employees.

7.4 Employment Lists Resulting from Continuous Examinations

The Director of Human Resources may initiate a continuous examination for a class or add to an existing open or promotional employment list by re-announcing and conducting a continuous examination. Candidates on such an employment list shall be placed in the appropriate block of names as determined by their relative ratings for a period of one (1) year unless the employment list is declared invalid by the Director of Human Resources as provided by section 7.2 of these Rules

7.5 Restoration of Names of Laid-off Employees to Employment Lists

The names of employees who are laid off or demoted for lack of work, or lack of funds, shall be restored to the same employment list from which the original appointment was made, and in the same block of candidates as when the original appointment was made, provided the original employment list is still valid.

7.6 Availability of Candidates

It shall be the responsibility of candidates or those on re-employment or reinstatement lists to notify the Human Resources Department of any change of electronic mail address or other change affecting availability for appointment. The Human Resources Department may circulate employment, reinstatement, or re-employment lists or use other methods to determine the availability of candidates and may indicate the conditions under which appointment may be offered. Candidates or those on reinstatement lists who decline to be considered or indicate unwillingness to accept employment under the offered conditions will be deemed to be not further considered for that position.

7.7 Removal of Names from Employment, Reinstatement or Re-employment Lists

The Director of Human Resources may remove the name of any eligible candidate from an employment, reinstatement, or re-employment list for any of the following reasons:

- 7.7.1 *Disqualification.* As stipulated in Section 5.3 of these Rules.
- 7.7.2 *No Response.* On evidence the eligible candidate cannot be located by the last known electronic mail address, failure to reply within five (5) working days from the date the letter was sent via electronic mail requesting information as to availability for appointment, or failure to notify the Human Resources Department of any change of electronic mail address resulting in the return of letters, will be considered sufficient evidence. On submission of a request therefore, giving acceptable reasons as to why the notice was not returned or change of electronic mail address not filed, the Director of Human Resources may restore the name of an eligible to the appropriate list.
- 7.7.3 *Request of Eligible Candidate.* Upon receipt of a written statement from the eligible candidate requesting their name be removed from the employment, reinstatement, or reemployment list.

7.7.4 *Third-Waiver.* If three offers of regular full-time employment in the class for which the employment, reinstatement, or re-employment list was established have been declined by the eligible candidate.

7.7.5 *Failure to Accept Appointment Offer.* If the person selected has been granted at least two (2) weeks to assume the position and fails to do so, this failure to appear may be cause to remove that person from the employment, reinstatement, or re-employment list.

7.7.6 *Removal from Promotional Employment List Automatic Upon Termination.* If an eligible candidate on a promotional employment list resigns from the City service or is dismissed for cause, the candidate's name shall automatically be dropped from such list. If an open list from which the candidate was originally hired exists and is still valid, the person who resigns from City service may request that their name be placed on the open list.

7.7.7 *Unfit for Duty.* If an eligible candidate is physically or mentally unable to perform the essential functions of the job, with or without reasonable accommodation.

7.7.8 *Any other lawful reasons.*

7.8 Request to Fill Vacancies

Whenever a position in the Competitive Service is to be filled, the Department Head shall notify the Director of Human Resources by electronically submitting a Request to Hire form. The Director of Human Resources shall advise the Department Head as to the availability of persons for employment in the position.

7.9 Employment List Priority

Subject to the provisions of Section 14.6 of these Rules, priority for consideration for appointment to a regular position shall be given to the various employment lists in the following order: re-employment lists, reinstatement lists, promotional lists, and open lists; however, reinstatement lists may be used instead of any employment list except a re-employment list.

7.9.1 *Re-employment Lists.* A re-employment list for any class shall consist of the names of employees who have regular status in that class and who have been issued an Official Notice of Layoff and have been laid-off, or in lieu of layoff, have been demoted, transferred, or resigned from a position in the same class prior to the effective date of their layoff. All names shall be placed on the re-employment list in reverse order of the designated date of layoff. That is, the person who was laid-off, or who demoted, transferred, or resigned in lieu of layoff most recently shall be placed highest on the list. Employees whose positions have been reclassified to a class having a lower maximum salary, but who have not been demoted for cause, shall have their names placed on the re-employment list in order of their service in the class from which their position was reclassified. Names placed on a

re-employment list shall remain on such a list for no more than two (2) years from the date of layoff; demotion, transfer, or resignation in lieu of layoff; or the reclassification of the position to a class having a lower maximum salary.

- 7.9.2 *Reinstatement Lists.* The Department Head may, with the approval of the Director of Human Resources, reinstate any person who has either resigned in good standing from a position in which the former employee had regular status to a position in the same class, or return an employee to a class in which status was held prior to the employee's acceptance of a non-disciplinary demotion, provided that such reinstatement is accomplished within one (1) year of the date of resignation or non-disciplinary demotion. Such reinstatement action may, at the discretion of the Director of Human Resources, take precedence over any employment lists, except a re-employment list. Any person so reinstated shall be subject to a new probationary period of the same length as established for new appointees to a position in the class. The order of names on a reinstatement list for a class shall be in order of their resignation or non-disciplinary demotion, with the most recent being last.
- 7.9.3 *Promotional Lists.* Promotional lists shall consist of the names of employees who have been successful in an examination designated as a promotional examination. Names of all eligible candidates shall be placed in alphabetical order within an appropriate block on the promotional list according to their scores. Names of employees requesting an approved lateral transfer may also be placed on the promotional list.
- 7.9.4 *Open Lists.* Open lists shall consist of the names of persons who have been successful in an examination designated as an open examination. The names of all eligible candidates shall be placed in alphabetical order within an appropriate block on the open list according to their scores.

7.10 Certification of Employment Lists

When requests for certification of employment list(s) are received, certification shall be made to the Department Head by the Human Resources Department in conformance with the following provisions:

- 7.10.1 *Re-employment List Certification.* If a re-employment list exists for the class, the highest name on such a list shall be certified for a vacancy to be filled. If more than one vacancy is to be filled, then one more of the highest names shall be certified for each vacancy. In the event that employees on the re-employment list have the same designated date of layoff, ties shall be broken using the criteria specified in Section 14.2 of the Personnel Rules. The principles governing availability of candidates and removal of names from re-employment lists shall be as provided in Section 7.7 of the Personnel Rules.
- 7.10.2 *Reinstatement List Certification.* If a reinstatement list exists for the class, all names on such a list shall be certified in addition to an appropriate certification from promotional or open employment lists.

7.10.3 *Promotional List Certification.* Subject to the provisions of Section 14.6, if no re-employment list for a class exists, then the names from the promotional list(s) for the class shall be certified.

7.10.4 *Open List Certification.* If no re-employment or promotional list exists for a class, then names from the open list(s) for the class shall be certified. Lists shall be provided to departments according to block. Priority consideration shall be provided to A Block candidates over B Block Candidates and B Block candidates over C Block candidates. The open list(s) shall include all names contained in Blocks “A”, “B”, and “C” for such list(s).

If a vacancy exists in a classification for which there is no existing employment list, an appropriate employment list may be prepared for the classification from one or more existing related employment lists. For this purpose, the employment list may be selected from the classes for which the selection process and qualifications are comparable to or higher than those required for the class for which the vacancy exists.

8. APPOINTMENTS

The City Manager or their designee shall make an appointment by extending a conditional offer of appointment to an applicant. If the applicant accepts the offer of appointment, the appointment shall be deemed completed, subject to successful completion of any required pre-employment examination(s) or assessments. If the applicant does not accept the offer of appointment within the time period designated by the City Manager or their designee, the offer shall expire and the offer of appointment shall be deemed declined by the applicant. However, an offer of an appointment to a City position and acceptance of that appointment does not create a contract of employment between the City and appointee. City employment is not held by contract but rather is governed by these Rules and Council resolutions.

8.1 General Requirements for Appointment

8.1.1 *Pre-Employment Screenings.*

As part of the pre-employment procedure, applicants may be required to supply references and submit to a thorough background check, including Live Scan fingerprinting. Safety employees shall be subject to investigation in accordance with Department of Justice and/or Police Officer Standards and Training (POST) requirements. In the case of employees handling money or other valuables in the course of their duties, a credit check may be done in accordance with applicable law.

All offers for appointment to a position shall be contingent upon the appointee passing appropriate medical and/or psychological examination and testing to determine whether the candidate can perform the essential functions of the job, with or without reasonable accommodation. Such pre-employment screenings may also include screening for illegal drug use in compliance with the City’s Drug and Alcohol Testing Policy. If the examination reveals that the appointee cannot perform the essential functions of the job, with or without reasonable

accommodation, or that the person uses illegal drugs, the person may be disqualified from consideration for employment.

If a candidate is disqualified from appointment to a position for failing to meet the medical and psychological standards for the job class, the candidate may file a written request to review the disqualification. Such request must be submitted to the Director of Human Resources no later than five (5) working days after the date of the notification or disqualification. The candidate may submit medical evidence supporting their claim that they should not have been disqualified. Submittals shall be accepted for a period of fifteen (15) days, commencing with the date of notification of disqualification. In case of a genuine dispute, the City may require the candidate to be examined by a physician or medical evaluator of the City's choice. Any such examination shall be paid for by the City. The City shall make the final determination based on this examination. If the disqualification is upheld, the candidate has no further right of appeal of the City's determination.

8.2 Applicable Pay Upon Employment

Those appointed to a position in the City service shall be paid the designated rate of pay or salary for the class.

- 8.2.1 *Pay for New Employees.* Step "A" shall typically be paid upon initial employment into a five (5) step pay range. If the employee possesses exceptional training or experience, that employee may start at step "B" with the approval of the Department Head. Appointments at any step greater than "B" require prior authorization from the City Manager.
- 8.2.2 *Pay on Re-employment.* Upon the appointment of an employee from a re-employment list as provided by Section 7.9.1 of these Rules, the employee shall receive not more than the salary step in the pay range the person received prior to layoff and the person's step advance date shall be adjusted to credit City service since the most recent salary step advancement, but the employee shall not be credited for the period of separation from City employment.
- 8.2.3 *Pay upon Rehire.* Upon the rehire of a former employee into the same class, as the employee occupied prior to separation, such a person shall receive the same salary step in the pay range for the class as was received prior to separation. If rehired into a related lower class, credit shall be given for prior service in determining the salary step for employment in the lower class. If rehired into a higher class than previously occupied, the Rules regarding pay upon promotion shall apply. The employment date for a person rehired into a position shall be established based upon the date of such rehire.
- 8.2.4 *Pay upon Reinstatement.* Upon the reinstatement of an employee as provided by Section 7.9.2 of these Rules, the employee shall receive not more than the same salary step in the pay range the employee previously received prior to termination or non-disciplinary demotion and new employment and step advance dates for the employee shall be established

based upon the date of such reinstatement.

8.3 Types of Appointments

8.3.1 *Limited-Service Appointments.* Such appointments may, but need not be, made from employment lists. Any person on an employment list who accepts a Limited-Service appointment shall nevertheless retain their place on such employment list. Employees holding limited-service appointments shall be compensated on a straight hourly basis for the actual number of hours worked unless otherwise provided by the Director of Human Resources. The rate of pay shall be determined by the City's compensation plan and shall be within the salary range for the specified position.

Employees in limited services appointments shall work on a schedule determined by the City. These positions may be eliminated and/or replaced with full-time positions as determined by the City. Employees holding limited-service appointments are "at will" and may be terminated at any time with or without cause and without right of appeal.

No limited-service employee shall be eligible for a salary adjustment except as provided in a Council-approved compensation plan.

However, Department Heads may make recommendations to the City Manager salary adjustments at an earlier date if circumstances warrant such adjustment.

If appointed to a regular position, no credit will be given for limited-service hours worked and incumbent will be considered a new employee.

8.3.2 *Provisional Appointments.* All Department Heads and other appointing authorities shall, whenever possible, notify the Director of Human Resources of impending or anticipated vacancies in their departments sufficiently in advance to allow for the establishment of an appropriate employment list. However, when the demands of the service are such that it is not practicable to give such notification and when no employment list exists, and if it is not practicable to delay appointment until a new employment list can be prepared and certified, the Department Head may, with the approval of the Director of Human Resources, make a provisional appointment to a regular position. As soon as practicable after a provisional appointment has been made, the Director of Human Resources shall cause an examination to be prepared, and all positions filled provisionally shall be filled by an appointment from an employment list as soon as feasible.

Persons holding provisional appointments are "at will" and may be terminated from those provisional appointments at any time with or without cause and without right of appeal. However, if such employee has attained permanent status in a different position within City service, then in the event the employee's provisional appointment has been terminated, the employee may revert back to the previously held position.

8.3.3 *Emergency Appointments.* To meet the immediate requirements of an emergency condition, such as major fire, flood, earthquake, or other public calamity that threatens public life or property, the City Manager may employ such persons as may be needed for the duration of the emergency without regard to the personnel ordinance, these Rules, or other rules and regulations affecting appointments. Such employees serve at the will of the City Manager and may be dismissed with or without cause and without any right of appeal.

8.4 Probationary Period

Any person hired into a position in the Competitive Service, except for the positions specified in a Memoranda of Understanding or other Council-approved resolution, shall be placed on probation for a period of six (6) months. The probationary period for all promoted employees shall be six (6) months unless otherwise specified in a Memorandum of Understanding or other Council-approved resolution. With the approval of the Director of Human Resources and upon written notice to the probationer, the probationary period may be extended up to six (6) months for those on a six-month probation period and up to one (1) year for any appointments to a Peace Officer. The probationary period shall be considered a part of the recruitment, examination, and selection process and shall not include the time served under any limited service or provisional appointment, but shall date from the time of appointment to a regular position after certification. Leaves of absence or assignments out of the class totaling more than thirty (30) calendar days, for any reason, shall not be counted toward completion of the probationary period. During the probation period, the employee may be rejected by the Department Head in consultation with the Director of Human Resources at any time without cause and without right of appeal or hearing.

8.5 Promotion of an Employee

Any employee hired into a regular position in a class which has a higher maximum salary than the employee's present position constitutes a promotion. Such an appointment to a position in the Competitive Service shall be made from an employment list established for the class with the higher maximum salary. If no appropriate employment list exists, then a provisional appointment may be made as provided by Section 8.3.2 of these Rules.

8.5.1 *Applicable Pay Following Promotion.* In the case of the promotion of any employee in the City service, such employee shall be entitled to receive the rate of compensation in the entrance step of the pay range for the class to which the employee has been promoted. In cases of promotion where the pay range overlaps, the employee shall be placed at such step in the pay range of the higher class as to provide at least five percent (5%) more base salary than the employee receives in the lower class. Provided, however, that the application of this provision does not exceed the highest salary step in the authorized pay range for the higher class. The City Manager may authorize an appointment to a position at any higher salary step in the pay range upon the recommendation by the Department Head, as outlined in 8.2.1 (Pay for New Employees).

Effective on the date of the promotion, a new salary evaluation date shall be established for purposes of eligibility for consideration for future salary step advances within the pay range of the higher class. In the event the promotion occurs on the employee's salary evaluation date, such employee shall first receive any within-range increase to which the employee is otherwise entitled in the lower class, and then the promotional salary adjustment as provided above.

8.5.2 *Status of Employee Following Promotion.* When a promoted employee (excluding at-will employees) successfully completes the probationary period for a class they then gain regular status in the new class and gives up regular status in the former class. Any employee who does not successfully complete the probationary period in the promoted class may return to the position and status held prior to promotion providing there is a vacancy, unless the reason for rejecting the employee during the probationary period from a position to which promoted would have been sufficient to cause dismissal from the former position as well. If no vacancy exists, the employee will be placed number one on the re-employment list.

8.6 Transfer of an Employee

A Department Head may, in consultation with the Director of Human Resources, at any time and for any reason, transfer an employee from one position to another position in the same or comparable classification with the same or comparable qualifications and without loss of compensation. If such transfer involves a change from one department to another, both Department Heads should be consulted before the action shall be considered effective. An appropriate personnel action form shall be completed and shall include the effective date of the transfer. Whenever possible, an employee being considered for transfer shall be notified within a reasonable period in advance of the effective date of such contemplated transfer and their wishes with respect to this action shall be taken into account to whatever extent practicable, consistent with the interest of efficient operations of the departments concerned.

8.61 *Applicable Pay Rates Following Transfer.* In the case of the transfer of any employee from one position to another in the same class or to another class to which the same pay range is applicable, the employee shall remain at the same salary step and shall retain the salary same evaluation date.

8.62 *Status of Employee Following Transfer.* A transfer of a regular employee from a position in one class in the Competitive Service to a position in another Competitive Service class having related duties and responsibilities and the same maximum salary shall be made only upon written approval of the Director of Human Resources that the employee possesses the qualifications for employment in the new class. In such case, no further competitive examination is required, and the employee shall assume regular status in the class to which assigned. However, an employee currently serving a probationary period shall not be transferred to a position in another class for which an employment list exists, unless

directed by the Director of Human Resources. In such case, the employee shall start a new probationary period effective on the date of the transfer.

8.7 Voluntary Transfers

Regular employees who desire a transfer may submit a request for voluntary transfer online for consideration. A Department Head may approve or deny the transfer request at their sole discretion. If an employee voluntarily transfers to another position in the same or comparable classification and is not successful, the employee may, at the discretion of the Department Head(s), return to their former position if that position has not been filled. The employee's salary evaluation date shall remain the same as it was before the transfer and both departments shall partner to complete the evaluation as needed.

8.8 Reasonable Accommodations for Disabled Employees

The City may initiate a transfer of a disabled employee to another position as a reasonable accommodation for the employee's disability. Such transfers may have priority over any candidates on an existing employment list.

8.9 Demotion of an Employee

An employee may be demoted at their request, as a result of reduction in force, for disciplinary reasons, or for other cause. In all cases, the Department Heads concerned, in consultation with the Director of Human Resources, shall approve or reject the demotion request and notify the employee in writing.

A demoted employee shall be required to serve a probationary period in the lower classification unless the lower classification is in the same class series or the employee completed probation in the lower classification. In the event a voluntarily demoted employee does not pass probation, the employee may, at the discretion of the Department Head(s), return to their former position if that position has not been filled. In the event an employee demoted for any reason other than voluntary does not pass probation, the employee shall be terminated from employment without right of appeal. The effective date of a demotion shall establish a new salary evaluation date.

An employee may request a voluntary demotion to a lower classification in which the employee meets the minimum qualifications. The request shall be completed and submitted online for consideration. A Department Head may approve or deny the demotion request at their sole discretion. If approved, the employee shall sign an acknowledgment of voluntary demotion and reduction of salary and benefits.

If an employee voluntarily demotes to another position in the same or comparable classification, the employee's salary evaluation date shall remain the same as it was prior to the demotion.

8.9.1 *Applicable Pay Following Demotion.* An employee who is demoted to a class in the City service with a lower maximum salary shall be assigned to a salary step in the lower pay range according to the following rules:

- 8.9.2 *Disciplinary Demotion.* If a disciplinary demotion, any designated step in the lower pay range which is at least one (1) step less than the dollar amount received in the pay range for the class from which demoted. A new salary evaluation date shall be established as of the effective date of demotion.
- 8.9.3 *Non-Disciplinary Demotion.* If a non-disciplinary demotion, that salary step in the pay range for the lower class which the employee would have received had the employee's service in the class from which demoted been continuous in said lower class. The effective date of a demotion shall establish a new salary evaluation date.
- 8.9.4 *Status of Employee Following Demotion.* If the demotion involves an employee with regular status in the Competitive Service, then the demoted employee shall assume regular status in the class to which demoted and give up regular status in the class from which demoted only if the findings of the Director of Human Resources are that the employee meets the qualifications of the class to which demoted. If the employee does not have regular status in the higher class or in a class comparable to the class to which the employee is demoted, the employee shall serve a new probationary period in the demoted position.

8.10 Reclassification of an Employee's Position

An employee may be reclassified without a competitive exam if the Director of Human Resources determines the employee has met the minimum qualifications of the new classification and has performed the duties of the reclassified position for a considerable length of time. Reclassification shall not be used for the purpose of avoiding competitive selection processes. The Director of Human Resources may approve or deny a reclassification at their sole discretion.

The employee's salary evaluation date shall not change as a result of the reclassification. When a position is reclassified from one existing class to another existing or new class under Section 3.4. of these Rules, the following shall apply to the incumbent:

- 8.10.1 *Applicable Pay Following Reclassification.* If a position is reclassified to a class having the same maximum salary, the salary and the salary evaluation date of the incumbent shall not change. If a position is reclassified to a class which has a higher maximum salary, the salary shall be adjusted in accordance with Sections 4.2.1.7.4 and 8.5.1 of these Rules. If a position is reclassified to a class with a lower pay range, the salary of the incumbent shall not change. If such salary is greater than the maximum salary of the lower class, the incumbent will be assigned a "Y" rate designation as provided in Section 4.2.1.7.2 of these Rules.
- 8.10.2 *Status of Incumbents in Reclassified Positions.* Whenever reclassification occurs, an employee occupying the position may be retained in the position after it has been reclassified without further competitive examination, provided that the Director of Human Resources in consultation with the Department Head, finds that:

- 8.10.2.1 The reclassification results from an official recognition of a change in duties and responsibilities which has already occurred.
- 8.10.2.2 The addition of duties and responsibilities (justifying allocation to a different classification) was not the result of planned management action.
- 8.10.2.3 The performance of the duties and responsibilities of the incumbent has been satisfactory.
- 8.10.2.4 The incumbent possesses the knowledge, skills, and abilities of the qualifications of the different class.
- 8.10.2.5 The incumbent has regular status in the class to which the position was formerly allocated.

8.10.3 *Retention of Status.* No person having regular status, who, in addition to regular duties, is given additional or new duties by a Department Head shall lose regular status in the class to which the employee held prior to the assignment of such additional or new duties.

9. OUTSIDE EMPLOYMENT AND USE OF CITY PROPERTY

9.1 Prohibited Activity

Full-time employees are expected to devote full time to assigned duties as a City employee. An employee shall not engage in any employment, activity, or enterprise which is inconsistent, incompatible, or in conflict with City job duties, functions, or responsibilities, nor shall an employee engage in any outside activity which will directly or indirectly contribute to the lessening of effectiveness as a City employee. No employee shall engage in any type of activity relating to an employee organization during such time an employee is on duty, except as expressly provided in these Employer-Employee Relations Rules, Memorandum of Understanding, or by law.

9.2 Outside Employment

Employees may not engage in any employment or activities that create a conflict of interest, is unethical, or otherwise interferes with their City employment.

A City employee shall not perform any work, service, or consultation for compensation outside of City employment where any part of their efforts will be subject to approval by any officer, employee, board, or commission of the City of Tracy unless approved in the manner prescribed by these Rules.

Employees occupying competitive services positions, who hold or wish to hold jobs outside their normal City employment must make a request to engage in outside employment and submit the request to the Director of Human Resources or their designee. Department Heads who wish to engage in outside employment shall submit such requests to the City Manager. Outside employment shall not be

permitted if it conflicts in any manner with the employee's duties and responsibilities with the City or is prohibited by law.

In making a determination as to whether an activity creates a conflict or ethical question, the Director of Human Resources shall consider, among other pertinent factors, whether the activity involves:

- a. Receipt or acceptance by the employee of any money or other consideration from anyone other than the City for the performance of an act that the employee would be required or expected to render in the regular course of City employment;
- b. The performance of an act or work which may later be directly or indirectly subject to the control, inspection, review, audit, or enforcement by such employee or other City employees;
- c. Conditions or factors which might, directly or indirectly, lessen the efficiency of the employee in regular City employment or conditions in which there is a substantial danger of injury or illness to the employee;
- d. The use for private gain or advantage of City time, facilities, equipment and supplies, prestige, influence, or information obtained through one's City office or employment. No City-owned facilities, equipment or supplies, including autos, trucks, instruments, tools, supplies, machines, badges, identification cards, or other items which are the property of the City shall be used by an employee for personal or non-City business reasons except upon prior written approval of the City Manager;
- e. The solicitation of future employment with a business or individual doing business with the City over which the employee has some control or influence in the course of performing official duties.

9.3 Authorization of Outside Employment

Notice of authorization of outside employment shall be in writing to the employee involved, with a copy placed in the employee's personnel file. Denial of authorization of outside employment determination may be subject to the Grievance Procedure as set forth in Section 13 of these Rules. An outside employment authorization is valid only up to one (1) year. Should the employee continue the outside employment, activity, or enterprise for a longer duration, they must make another request following the process in accordance with the Outside Employment Policy and California Government Code Section 1126.

9.4 Violations and Penalties

Any outside employment authorization may be revoked or suspended during the year it is granted under the circumstances listed below.

- (a) The employee's work performance declines; or
- (b) An employee's conduct or outside employment conflicts with the

conditions of the outside work authorization or is incompatible with the employee's work for the City.

Any violation of these provisions regarding outside employment shall constitute grounds for disciplinary action up to and including termination.

10. PERFORMANCE EVALUATIONS

10.1 Frequency

Department Heads or their designees shall make a report of performance of each employee after completion of a probationary period and annually thereafter. Unless changed in accordance with these Rules, these evaluation dates shall constitute the employee's salary evaluation date for purposes of eligibility for a merit salary increase. The employee shall continue to receive annual performance evaluations on said date even after the employee has reached the top of the applicable salary range. In addition, a performance evaluation may be prepared at any other time at the discretion of the employee's supervisor.

The employee shall receive a copy of the performance evaluation and shall have an opportunity to discuss said evaluation with their supervisor. The employee may also submit written comments or rebuttal to the evaluation which shall be part of the complete document to be placed in the employee's personnel file.

10.2 Personnel Files

The City shall maintain an official personnel file for each of its employees. Personnel files are maintained by the Human Resources Department and contain such personnel records as may be deemed necessary for the administration of labor and employment relations in the City and are property of the City.

Personnel files shall be made available to employees for inspection in accordance with the Personnel Records Policy

The City may preclude inspection of certain information in accordance with the law, such as background and other pre-employment information and materials relating to confidential investigations.

The City shall maintain separate files for injury reports, confidential medical records, grievances, discrimination complaints, and other matters in accordance with applicable laws.

11. DISCIPLINARY ACTION

11.1 Authority to Discipline

Employees who hold non-probationary appointments, and are not at will, shall not be disciplined without good cause. At-will and probationary employees are subject to dismissal without cause. For purposes of this section, disciplinary action shall be defined to include one or more of the following: oral reprimands, written reprimands, suspensions, demotions, reductions in pay, and dismissal. Oral and

written reprimands may be initiated at the supervisor/division manager level. Disciplinary action more serious than a written reprimand must be initiated at the Department Head level in consultation with the Director of Human Resources. The Director of Human Resources shall be notified of any contemplated disciplinary action prior to the time it is taken, provided that in emergency situations or other instances when prior notification is not practicable, the Director of Human Resources may be notified as soon as possible subsequent to the time the action is taken.

11.2 Grounds for Disciplinary Action

Good cause for disciplinary action exists not only when there has been an improper act or omission by an employee in the employee's official capacity, but when any conduct by an employee brings discredit to the City, affects the employee's ability to perform his or her duties, causes other employees not to be able to perform their duties, or involves any improper use of the employee's position for personal advantage or the advantage of others. Good cause may include non-disciplinary reasons such as, the employee's unwillingness or inability, due to mental or physical disability, to perform the duties of the position for an indefinite period. The type of disciplinary action shall depend on the seriousness of the offense and the relevant employment history of the employee. Causes for disciplinary action against an employee may include, but shall not be limited to the following:

- 11.2.1 Misstatements or omissions of fact in completion of the employment application or to secure appointment to a position with the City;
- 11.2.2 Furnishing knowingly false information in the course of the employee's duties and responsibilities;
- 11.2.3 Inefficiency, incompetence, carelessness, or negligence in the performance of duties;
- 11.2.4 Violation of safety rules;
- 11.2.5 Violation of any of the provisions of these personnel rules and regulations, department rules and regulations, City policies, ordinances, or resolutions;
- 11.2.6 Inattention to duty;
- 11.2.7 Tardiness or overstaying lunch periods;
- 11.2.8 Being under the influence of an intoxicating beverage or non-prescription drug or prescription drugs not authorized by the employee's physician, while on duty or on City property;
- 11.2.9 Disobedience to proper authority, refusal or failure to perform assigned work, to comply with a lawful order, or to accept a reasonable and proper assignment from an authorized supervisor;
- 11.2.10 Any violation of the City's Discrimination or Harassment Policies;

- 11.2.11 Unauthorized soliciting on City property;
- 11.2.12 Unauthorized absence without leave; failure to report after leave of absence has expired or after a requested leave of absence has been disapproved, revoked, or canceled; or any other unauthorized absence from work;
- 11.2.13 Conviction of a felony, or a misdemeanor involving moral turpitude, or a violation of a federal, state, or local law which negatively impacts the employee's ability to perform their job or brings discredit to the City. (For purposes of this section, a misdemeanor conviction does not include a conviction based on a plea of nolo contendere);
- 11.2.14 Discourteous or offensive treatment of the public or other employees;
- 11.2.15 Falsifying any City document or record;
- 11.2.16 Misuse of City property; improper or unauthorized use of City equipment or supplies; damage to or negligence in the care and handling of City property;
- 11.2.17 Fighting, assault, and/or battery;
- 11.2.18 Working overtime without authorization;
- 11.2.19 Theft or sabotage of City property;
- 11.2.20 Sleeping on the job, except as specifically authorized for twenty-four (24) hour duty personnel;
- 11.2.21 Accepting bribes or kickbacks;
- 11.2.22 Gambling on the job;
- 11.2.23 Engaging in outside employment which conflicts with an employee's responsibilities;
- 11.2.24 Intimidation or interference with the rights of any employee;
- 11.2.25 Outside work or any other activity or conduct which creates a conflict of interest with City work, which causes discredit to the City, negatively impacts the effective performance of City functions or is not compatible with good public service or interests of the City service;
- 11.2.26 Abusive or intemperate language toward or in the presence of others in the workplace;
- 11.2.27 Failure to obtain and/or maintain minimum qualifications for a position, including licenses or certificates;

11.2.28 Any other conduct of equal gravity to the reasons enumerated above as determined by the City.

11.3 Types of Discipline

Any authorized supervisory employee may propose disciplinary action for cause against an employee under their supervision in accordance with the procedures outlined in these Rules. In general, the City shall adhere to the principles of progressive discipline.

- 11.3.1 *Oral Reprimand.* Verbally notifies the employee that their performance or behavior must be improved. Oral reprimands are generally given by supervisors when counseling has failed to produce the desired changes. The reprimand defines the areas in which improvement is required, sets up goals leading to this improvement, and informs the employee that failure to improve will result in more serious action. Although the supervisor makes a note of the content of the reprimand or sends a confirming memo to the employee, no record is placed in the employee's permanent personnel file unless subsequent action is necessary. Oral reprimands are not subject to the disciplinary appeal procedure set forth in these Rules (except as provided by law for sworn police and fire personnel).
- 11.3.2 *Written Reprimand.* Official notification to the employee that there is cause for dissatisfaction with the employee's services and that further disciplinary measures may be taken if said cause is not corrected. Written reprimands should be given in consultation with the Director of Human Resources. Written reprimands shall be made a part of the employee's official personnel record and may be considered as pertinent evidence or information in any hearing. Written reprimands are not subject to the disciplinary appeal procedure set forth in these Rules (except as provided by law for sworn police and fire personnel).
- 11.3.3 *Suspension Without Pay.* Shall be a temporary separation from City service. Certain suspensions are subject to the disciplinary appeal procedure set forth in these Rules.
- 11.3.4 *Reduction in Step within Range as a Disciplinary Measure.* Is the withdrawal of step advancements granted for merit, efficiency, and length of service. Reduction in pay shall become effective the first day of the pay period on or after the effective date of the disciplinary action. Reduction may be made on permanent or temporary basis. Certain reductions of pay are subject to the disciplinary appeal procedure set forth in these Rules.
- 11.3.5 *Demotion Without Consent.* Shall be a reduction in classification to a classification having a lower maximum salary with reduction in salary as provided in Section 8.9.2 of these Rules. Demotion without consent may be made to the classification having the lowest maximum salary in the classification series or a classification series comparable to that within which the employee's position is located. Demotion may be made on a permanent or temporary basis. Demotions are subject to the disciplinary appeal procedure set forth in these Rules.

11.3.6 *Dismissal.* The termination of an employee from the City service. Dismissals, other than for probationary and at-will employees, are subject to the disciplinary appeal procedure set forth in these Rules.

11.4 Procedures for Disciplinary Action

In the absence of a process in a Memoranda of Understanding, employees shall be governed by the following provisions:

Written Notice/Pre-Discipline Meeting/Final Action

The City shall issue a written notice of discipline, describing the intended discipline, the basis for the discipline, and attaching any documents upon which the discipline is based. The City shall provide the employee an opportunity to respond to the disciplinary action, either orally or in writing, within 10 calendar days of such written notice of discipline. If the employee chooses to respond orally, the Director of Human Resources shall designate a City official who shall convene a meeting to hear the employee's response. If the employee chooses to respond in writing, the written response shall be logged in the employee's personnel file. No further appeal shall be permitted. In the case of a written reprimand, the employee may respond by submitting a written rebuttal to be logged in the employee's personnel file, but no oral response or appeal is permitted.

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

For discipline that is greater in severity than a suspension of five (5) working days, (or the equivalent reduction in pay) the Director of Human Resources shall designate a City official who is disinterested in the matter who shall convene a meeting to review the employee's response before imposing discipline. The employee shall be entitled to a representative of their choice; provided, however, that the inability of a particular representative to attend the meeting shall not be cause for requiring a continuance of the meeting. At the meeting, the employee shall be provided the opportunity to respond to the charges and to present any new information for consideration by the City.

At some reasonable time, but no longer than thirty (30) calendar days, after the employee has been provided an opportunity to respond to the charges, the City shall issue a final notice of discipline. The notice shall notify the employee of their right of appeal.

12. DISCIPLINARY APPEAL PROCESS

12.1 Employee's Right to Representation During Appeal Process

At any step in the disciplinary appeal procedure, the employee concerned may choose to represent themselves or may be represented by that certified employee organization which has been recognized by the City for that representation unit to which the employee's classification is assigned, or by legal counsel. The employee concerned shall be personally present at all stages of the disciplinary appeal process unless that employee specifically waives the right in writing.

12.2 Appeal Process (*for discipline greater than 5-day suspension or reduction in pay*)

For discipline that is greater in severity than a suspension of five (5) working days (or equivalent reduction in pay), employees shall have the right to appeal from the final notice of discipline. The notice of appeal must be received within seven (7) calendar days from the date of the final notice of discipline, or the right to proceed to the next appeal level under these Rules shall be forfeited and the discipline shall become final.

12.2.1 *Hearing Officer Selection.* The appeal shall be heard by an independent hearing officer. The hearing officer shall be selected from among a list of names not to exceed ten (10) names provided by the California State Mediation and Conciliation Service, or from a similar body mutually agreed to between the parties. After a toss of a coin to decide which party shall strike first, the representative of the City and the employee (or the employee's representative) shall alternately strike one name from the list until one name remains and such person shall act as the hearing officer. This procedure shall be followed until there is an available arbitrator.

12.2.2 *Costs.* The costs of the hearing officer shall be borne by the City unless the employee's union has brought the appeal on the employee's behalf, in which case the costs of the hearing officer will be shared equally by the City and the union. Either party may request that the hearing be transcribed, and the requesting party shall bear the expense of the transcript and court reporter's fees. If the transcript is jointly requested by both parties, both parties will share equally in the expense of the transcript and court reporter's fees.

12.2.3 *Hearing Officer Authority.* The hearing officer shall have the authority to convene the hearing, receive evidence through testimony and documents, and make findings of fact and conclusions about the discipline. Within sixty days (60) of the close of the hearing, the hearing officer shall serve a recommended decision on the City Manager and the employee. The hearing officer's decision must contain detailed findings of facts relating to the disciplinary charges. The decision may include a recommendation regarding outcome, but the final decision regarding discipline rests with the City Manager. After consideration of the hearing officer's recommended decision, the City Manager shall issue a final decision in writing. The City Manager's decision may be reviewed by administrative writ of mandamus within the time frames established by California law.

12.2.4 *Waiver of Steps or Time Limits.* Notwithstanding any provision in this section, any time limit or stage of procedure specified in this section may be waived upon consent of all parties involved.

13. GRIEVANCE PROCEDURE FOR NON-DISCIPLINARY MATTERS

In the absence of an applicable Memorandum of Understanding, this grievance procedure shall apply. This procedure is intended to ensure that every reasonable effort will be made to resolve problems as near as possible to the point of origin.

13.1 Definition of “Grievance”

Subject to the exclusions listed in this Rule, a grievance is defined as any dispute involving the interpretation, application, or alleged violation of 1) the specific express terms of a current Memorandum of Understanding (MOU), between the City and a recognized employee organization, or 2) a specific express term of these Rules.

13.2 Eligibility to File a Grievance

Only full-time employees in regular non-probationary appointments who are adversely affected by an act or omission of the City are eligible to file a grievance.

13.3 Exclusion from the Grievance Procedure

The following matters are excluded from the definition of a “grievance”:

- 13.3.1 Requests for changes in wages, hours, or working conditions;
- 13.3.2 The content of employee evaluations or performance reviews, except those that result in a loss of benefits to the employee;
- 13.3.3 Challenges to reclassification, layoff, transfer, or denial of reinstatement;
- 13.3.4 Challenges to examinations or appointment to positions;
- 13.3.5 Challenges to this grievance procedure.
- 13.3.6 Disciplinary actions.

13.4 Group Grievances

In the event more than one employee is directly involved with an issue, they may, at any step in the grievance procedure, name one of their number to carry the grievance through the procedure as a group grievance and be represented by that employee organization which has been recognized by the City for that representation unit to which their classification(s) is/are assigned. In a group grievance, that named employee directly concerned shall be personally present at all stages.

13.5 Procedure

It is the City's intent to deal with and settle complaints and grievances informally and at the nearest practical organizational level and as promptly and fairly as possible. Whenever feasible, complaints and grievances will be handled during the regularly scheduled working hours of the parties involved.

The grievance procedure shall consist of the following steps:

13.5.1 *Informal Grievance Procedure*

A grievance must be filed within thirty (30) calendar days of the act(s) or omission(s) giving rise to the grievance. Failure to file the grievance within this time period shall result in denial of the grievance as null and void. Within thirty (30) working days of the act(s) or omission(s) giving rise to the grievance, the grievant must discuss the grievance with their immediate supervisor, who shall investigate and attempt to resolve the matter. The supervisor shall give the grievant an oral or written reply within ten (10) working days after the discussion. If the grievant is not satisfied with the reply, they may proceed to the Formal Grievance Procedure.

13.5.2 *Formal Grievance Procedure*

13.5.2.1 *Level 1 – Review*

Any grievance not resolved by the Informal Grievance Procedure, may be submitted in writing by the grievant to their supervisor along with a copy to the Director of Human Resources, no later than ten (10) working days after the date of the supervisor's written reply. A grievance may be submitted directly to the Director of Human Resources or, if the grievance started at a level above the supervisor or Department Head, the grievance may be submitted at the higher level. The written grievance must contain the following information:

1. Name of grievant and job title;
2. Department/Division in which grievant works;
3. The specific act or omission that gave rise to the alleged violation, misinterpretation, or misapplication and the date or dates of the alleged act or omission;
4. The specific provision(s) of the Memorandum of Understanding, City Policy, or Personnel Rules alleged to have been violated, misinterpreted, or misapplied;
5. A list of the documents, witnesses, or other evidence that support the grievance;
6. Desired solution or remedy;

7. Name of the grievant's representative, if any;
8. Signature of the grievant or representative and date signed.

Within ten (10) working days thereafter, the supervisor shall schedule a meeting with the grievant to work at resolving the grievance. The supervisor shall give the grievant a written reply within ten (10) working days after the meeting and shall file a copy with the Director of Human Resources. If the grievant is not satisfied with the response, they may proceed to Level 2.

13.5.2.2 Level 2 – Department Head Review

Any grievance not resolved at Level 1 may be submitted to the Department Head no later than ten (10) working days after the date of the supervisor's written reply. The grievant shall provide the Department Head with a copy of the Level 1 response. Within ten (10) working days thereafter, the Department Head shall schedule a meeting with the grievant to work at resolving the grievance. The Department Head shall give the grievant a written reply within ten (10) working days after the meeting and shall file a copy with the Director of Human Resources. If the grievant is not satisfied with the response, they may proceed to Level 3.

13.5.2.3 Level 3 – City Manager Review

Any grievance not resolved at Level 2 may be submitted to the City Manager no later than ten (10) working days after the date of the Department Head's written reply. The grievant shall provide the City Manager with a copy of the Level 1 and Level 2 responses. Within ten (10) working days after receipt of the grievance and the Level 1 and Level 2 responses, the City Manager or their designee, at their discretion, may conduct an informal hearing involving the parties to the dispute. The City Manager's decision shall be final and binding.

13.6 Representation

The grievant is entitled to representation of their choice at any point in the grievance procedure. If the representative is a fellow employee, that employee shall receive time off from their work assignment for the time of the grievance meeting or hearing plus reasonable travel time. The grievant must inform the Director of Human Resources whether they will be represented at any meeting regarding the grievance, along with the identity of the representative, at least forty-eight (48) hours prior to the grievance meeting.

13.7 Waiver of Steps or Time Limits

Notwithstanding any provision in this section, any time limit or level of procedure specified in this section may be waived upon consent of all parties involved.

13.8 Waiver of Grievance

Failure by the grievant to appeal their grievance to the next level within the specified time limits of this rule shall constitute a waiver of the right to pursue the grievance further unless the City has granted an extension of time to a definite date. Failure by the City to respond to the grievance within any of the specified timelines shall entitle the grievant to appeal to the next level of review.

Additionally, failure on the part of an employee or their representative to appear for any scheduled meeting without notification may, in the City's discretion, result in the City's denial of the grievance.

13.9 No Interruption of Work

During the determination of a grievance herein, the employees involved in pursuing the grievance are required to continue their normal work schedule, unless the Director of Human Resources directs otherwise.

13.10 No Retaliation

Employees shall not be penalized or retaliated against in any way for using the grievance procedures or testifying as a witness in a grievance proceeding in accordance with the Harassment, Discrimination, and Retaliation Prevention Policy

Taking any retaliatory adverse employment action against an employee who has or is believed to have disclosed information to any government or law enforcement agency, including to the City, if the employee has reasonable cause to believe that the information discloses a violation of federal or state law, or a violation or noncompliance with a local, state, or federal rule or regulation is prohibited in accordance with the Whistleblower Policy.

14. LAYOFF, DISPLACEMENT AND REEMPLOYMENT

14.1 Notice

Should the City Manager determine that reductions in force are necessary due to lack of work, reorganization, or for financial reasons, layoffs may be directed. In the event of layoffs, the City shall provide affected employees with as much notice as possible.

14.2 Layoff Order Determination

In determining the order of layoffs, the following rules shall be followed:

No regular employee shall be laid off while there are temporary employees serving in the same or comparable class or position in the City service unless that employee has been offered the temporary work. Layoffs shall be made in accordance with California Government code §45100 and the criteria set forth below:

- (a) Layoffs shall be by job classification, according to reverse order of seniority, as defined by total City service.

- (b) The employee to be laid off may displace the least senior employee in a lateral or lower classification in which they previously held regular status, provided the displaced employee has less total City service. Total City service means as a regular full-time employee and does not include any part-time or limited service employment.
- (c) An employee may demote or transfer to a vacant position in a classification for which they possess the necessary skills, as determined by the minimum qualifications and job specifications for the position.
- (d) The name of each laid-off employee shall be entered, in order of seniority, on a Reemployment List for twenty-four (24) months.
- (e) A former employee appointed from a Reemployment List shall have restored all rights accrued prior to being laid off, such as sick leave, vacation credits, and credit for years of service. However, such recalled employees shall not be eligible for benefits for which they received compensation at the time of, or subsequent to, the date they were laid off.

14.3 Bumping

“Bumping” means the displacement of an employee from their position by an employee in a higher classification who formerly held the same position and has received notice of layoff.

The laid-off employee must be able to perform the essential job functions of the former position and possess the minimum qualifications of the position as specified by the current job classification specification.

The City shall notify laid-off employees in writing of the position and classification into which they may bump, if any. Following such notification, the employee must notify the Director of Human Resources in writing of their intent to exercise the bumping rights within seven (7) calendar days of the date of the written notice. Failure to provide such notification shall be deemed a waiver of bumping rights by the employee.

Where there is more than one employee in a position available for bumping, the determination of which employee will be bumped, if any, will be based on seniority.

Any displaced employee shall be considered as laid off for the same reason as the person who displaced them and shall in the same manner be eligible to displace another employee based on the criteria specified above.

14.4 Layoff List Preparation Procedure

When a Competitive Service position within a classification is eliminated, the following general procedure shall be followed:

14.4.1 Limited Service employees will be released before an employee in the

same classification with probationary or regular status.

- 14.4.2 The Director of Human Resources shall prepare a layoff list of all those Competitive Service employees (including those who are on Leave of Absence) and vacancies within the classification in which a reduction in the number of positions is to occur.

14.5 Separations

All employees who separate from City service, that is, whose employment with the City terminates through separation for cause, layoff, resignation, or retirement must:

- 14.5.1 Return all City property to the Director of Human Resources or the immediate supervisor prior to receiving the final paycheck.
- 14.5.2 Clear any existing financial obligations with the City.
- 14.5.3 If applicable, file a Form 700 with the City Clerk.

In addition, employees who resign or retire shall adhere to the following procedures before they will be deemed to have separated in good standing:

- 14.5.4 Submit a written notification stating the intent to resign or retire and the proposed effective date to their immediate supervisor.
- 14.5.4 Provide a minimum notice of two weeks. The City encourages employees who become aware of their pending separation from the City to let the Director of Human Resources know as far in advance as possible.

14.6 Reemployment from Lay-off

Employees who were laid off may be reinstated within twenty-four (24) months to their former position, if vacant, or to a vacant position in the same classification, without being subject to the application requirement.

15. WORK WEEK AND ATTENDANCE

Department Heads shall assign daily hours of work (or shifts) for employees within departments, as required to meet operational requirements or the employees' applicable Memorandum of Understanding. The Department Head may change an employee's work period, week, or hours at any time to meet the requirements of the City. Changes shall be made in accordance with applicable Memorandum of Understanding.

Any foreseeable absence or deviation from regular working hours desired by an employee shall be cleared in advance through the employee's supervisor, and such absences shall be noted on the employee's time sheet.

15.1 Work Week

Unless otherwise designated by the Department Head, the work week for City

employees on a 5/8 schedule (eight hours a day for five days) shall be from Sunday through the following Saturday; for City employees on a 9/80 schedule (nine hours Monday through Thursday, eight hours alternate Friday, and alternate Fridays closed) shall be Friday halfway through the workday through the following Friday halfway through the work day. These designated work weeks may be changed only as a result of major changes in operations, payroll procedures or as otherwise necessary in order to deliver services as efficiently and economically as possible. The work week for a 4/10 schedule and a 12-hour schedule, if applicable, will be designated by the Department Head.

15.2 Attendance

Employees are expected to report to work as scheduled, on time, and prepared to start work. Employees are also expected to remain at work for their entire work schedule, except when required to leave on authorized City business or some other authorized leave. All departments shall keep daily attendance records of employees, which shall be reported on the employee's timesheet.

Employees who anticipate an absence from all or a portion of their regular work schedule and wish to request a form of accrued leave time or unpaid leave time should follow the procedures provided in these Rules or Memoranda of Understanding for the particular type of leave that they are requesting.

Employees who are unexpectedly unable to report for work as scheduled on any particular day must call their immediate supervisor no later than their scheduled time to begin work for that day, or as otherwise required by the Department. If the employee's immediate supervisor is not available, then the employee must notify the Department Head or their designee. Employees shall inform their supervisor of the expected duration of any late arrival or absence. Employees who call later than their scheduled time to begin work for their assigned shift shall be deemed to have an unauthorized tardy or absence in violation of this attendance policy. Abuse or misrepresentation of any form of accrued or paid or unpaid leave time will be grounds for discipline.

Failure on the part of an employee, who is absent without notification or authorization, to return to duty within twenty-four (24) hours after a notice to return to duty has been delivered to their last known telephone number and/or address will constitute an automatic resignation effective as of the last day an employee worked. If, within ten (10) days of said notice, the employee can show good cause for the failure to return to duty, the Director of Human Resources, in their discretion may, with approval of the City Manager, reverse the resignation. In the event that an employee's absence is deemed an "automatic resignation" in accordance with this Rule, the employee shall have the same right to appeal afforded to employees who are terminated for cause under these Rules. However, an employee's absence without notification or authorization for twenty-four (24) hours or more shall be deemed just cause for termination.

15.3 Meals and Rest Periods

Employees shall receive a thirty (30) to sixty (60) minute meal period that shall not be compensated, with the exception of safety personnel such as sworn police

and fire personnel. During the meal period, the employee shall be 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 unless the employee obtains express prior approval from their supervisor.

Employees shall have a ten (10) minute rest period for each half of their shift, as scheduled by the supervisor. The rest period may be interrupted or cancelled if necessary to complete work and shall be compensated time. The rest periods shall not be combined or used to shorten the workday.

15.4 Timekeeping

All employees must sign and accurately record all hours worked and any leave taken on their timesheets. Employees must immediately report any errors on a timesheet that has already been submitted to their supervisor.

16. VACATION AND HOLIDAYS

16.1 Vacation Accrual

Unless otherwise specified in a Memorandum of Understanding or Council-approved resolution, each full-time employee shall accrue vacation at the following rate pro-rated per pay period for continuous service performed in pay status as follows:

Miscellaneous Employees

0 through 5 years of service:	96 hours per year of vacation
6 through 10 years of service:	136 hours per year of vacation
11 through 15 years of service:	176 hours per year of vacation
16 or more years of service:	192 hours per year of vacation

Sworn Police Employees

0 through 5 years of service:	96 hours per year (4 hours/pay period)
6 through 10 years of service:	144 hours per year (6 hours/pay period)
11 through 15 years of service:	160 hours per year (6.67 hours/pay period)
16 or more years of service:	8 additional hours per year up to a maximum of twenty-eight (28) days or two hundred and twenty-four (224) hours maximum annual accrual.

16.2 Use of Vacation

After completion of six (6) months of continuous service, an employee may take vacation leave at any time, subject to approval by the employee's Department Head or their designee. Approvals shall be based upon workload, staffing coverage, seniority, timing of the request, and any other work-related factors appropriate for consideration by the Department Head. Vacation shall be taken in increments of one-quarter (.25) hour or more. The Department Head, with concurrence of the Director of Human Resources, may authorize an employee to take vacation leave prior to completion of six (6) months of continuous service.

16.3 Effect of Sick Leave On Vacation Leave

In the event an employee becomes ill during a vacation period, such time shall not be charged as vacation leave if the following conditions are met:

- 16.3.1 *Employee Sick Leave Requirements.* The employee complies with the same notice requirements as required when the employee is not on leave, including notice to the employee's supervisor no later than the start of the employee's regular work shift. If the employee becomes ill after the start of the work shift, then the employee must promptly provide notice on the same day the illness begins. Sick leave shall only be granted for those days on which notice is given; and
- 16.3.2 *Return to work requirements.* The employee, upon return to work, submits a doctor's certificate for each day the employee was absent from work.

16.4 Compensation for City Work During Vacation Prohibited

No person shall be permitted to work for compensation for the City in any capacity, except compensation for mandated court appearance, call back, or special duty assignments, during paid vacation time. Exceptions may be made for Reserve Firefighters.

16.5 Vacation Pay-Out Upon Termination

A regular or probationary employee whose employment with the City terminates shall be paid for that part of their vacation accumulation that remains unused at the time of termination. Payment for unused vacation shall be made at the rate of pay in effect for such employees at time of termination.

Unless otherwise provided by State Law, when termination is caused by the death of the employee, said pay for unused vacation shall be paid to the beneficiary the employee has designated. Such designation shall be in writing, signed by the employee, and filed with the Human Resources Department. In the event an employee has not designated a beneficiary, the payment shall be made to the estate of the employee.

16.6 Holidays

- 16.6.1 *Authorized Holidays.* Every full-time probationary and regular employee shall be entitled to the following paid holidays each calendar year and such other days as may be designated by action of the City Council:

- a. January 1 (New Year's Day)
- b. The third Monday in January (Martin Luther King Day)
- c. The third Monday in February (Presidents' Day)
- d. The last Monday in May (Memorial Day)
- e. June 19 (Juneteenth)
- f. July 4 (Independence Day)
- g. The first Monday in September (Labor Day)

- h. November 11 (Veteran's Day)
- i. Thanksgiving Day
- j. The Friday after Thanksgiving Day
- k. December 24 (Christmas Eve)
- l. December 25 (Christmas Day)

16.6.2 *Holidays Falling During Vacation.* When a day designated and observed by the City as a holiday occurs on a day on which an employee is taking vacation, such employee shall not be charged as using vacation for that day. The employee's compensation for that day shall be holiday pay and they shall not be paid or charged for vacation, except for the additional hour(s) for those employees on a 9/80, 4/10, or other schedule.

16.6.3 *Employee absent from work immediately preceding a holiday.* Employees who are absent from work on the workday immediately preceding a holiday due to unpaid leave of any form shall not receive reimbursement for the missed holiday.

17. SICK LEAVE

Sick leave shall be requested only in cases of actual personal sickness or disability, medical or dental treatment, as authorized in Section 17.6, or for other purposes as provided by law. The employee requesting sick leave shall notify their supervisor or Department Head prior to the start of the employee's regular work shift. Sick leave with pay shall not be allowed unless the employee has met and complied with the provisions of these Rules and Regulations, City policy, Department policy and their Department Head has approved such payment. Accrued and unused sick leave shall not be paid out when the employee separates from City employment.

17.1 Certification

The Department Head may request, in their discretion, that the employee produce a certificate issued by a licensed physician or other satisfactory proof of illness before sick leave is granted in accordance with the City's Sick Leave Policy. The Department Head with concurrence from the Director of Human Resources may also direct an employee to attend a physical examination by a City-retained licensed physician, at City expense, to ascertain whether the employee is fit to perform the duties of their position.

17.2 Prohibited Activity

Any employee who is absent from work on a leave as provided in Section 17 or who is absent after requesting such leave shall not engage in work or other activities at any time which would be in conflict with the inability to report for work and to perform the duties assigned.

17.3 Eligibility

Regular and probationary employees shall be eligible to accrue sick leave upon commencement of City employment. Limited service or provisional employees are provided sick leave in accordance with the City's Sick Leave Policy for

Limited Service Employees.

17.4 Accrual

Regular and probationary employees sick leave shall be accrued at the rate of eight (8) hours per calendar month pro-rated per pay period for each calendar month that an employee has worked regularly scheduled hours and/or has been on an authorized paid leave unless specified otherwise in an MOU.

17.5 Accumulation

Accrued sick leave may be accumulated without limit for regular and probationary employees unless otherwise specified in an MOU.

17.6 Use

- 17.6.1 *Sick Leave.* Sick leave may be requested and used as approved by the Department Head or Director of Human Resources. Pay for approved sick leave shall be authorized until the employee's accumulated sick leave hours have been exhausted and at such time the employee shall receive no further pay for sick leave. An employee shall be granted time off chargeable to sick leave for reasons defined in the City's Sick Leave Policy.
- 17.6.2 *Use of Sick Leave for Family Member.* Family Sick Leave is authorization to use up to one-half of an employee's annual sick leave accrual in a calendar year to care for a member of an employee's immediate family as defined in the City's Sick Leave Policy, unless otherwise outlined in the applicable Memorandum of Understanding. Additional family sick leave usage for may be defined in an MOU and/or special circumstances may be granted on a case-by-case basis at the discretion of the Department Head with the concurrence of the Director of Human Resources.
- 17.6.3 *Use of Sick Leave toward Retirement.* An employee may not use sick leave to extend a retirement (either disability or service retirement) or separation date, unless specifically provided for in an applicable Memorandum of Understanding, or as required by law.

17.7 Integration of Benefits

If an employee is on sick leave and is receiving State Disability Insurance (SDI) or temporary total Disability (TTD) payments (including Workers' Compensation payments), the employee may continue to receive full pay from the City by requesting that the maximum weekly disability benefits be supplemented by the use of accrued sick leave benefits. To exercise this option, the employee shall code their timecard to their accrued leave balances, then tender their SDI/STD payments or TTD payments to the City. The City shall then convert the amount of disability payments to the equivalent amount of leave hours and deposit the leave hours into the employee's appropriate leave bank.

Part-time and temporary employees are covered by and shall receive the benefits

provided by the Workers' Compensation Insurance Plan of the City and may be eligible to receive SDI payments but shall not be eligible to supplement their weekly disability benefits with the use of accrued leave benefits. Limited Service employee benefits are outlined in the Limited Service Compensation and Benefits Plan in effect at the time.

17.8 Catastrophic Leave Program

An employee may be eligible to receive donations of paid vacation or CTO leave to be included in the employee's sick leave balance if they or an immediate family member has suffered a catastrophic illness or injury which prevents the employee from being able to work. Catastrophic illness or injury is defined as a critical medical condition that is considered to be terminal, a long-term major physical impairment or disability. (The definition of immediate family member and the usage of sick leave shall be in accordance with the respective MOU.) This program will be administered in accordance with the City's Catastrophic Leave Policy and Procedure.

18. LEAVES OF ABSENCE WITHOUT PAY

18.1 Authorization for Leave of Absence Without Pay

At the sole discretion of the City, an employee may be granted a leave of absence without pay. An employee's request for leave of absence without pay may be granted by the Department Head for a period of up to three (3) working days. The Department Head must notify the Director of Human Resources of any such requests as soon as reasonably possible.

Upon recommendation of the Department Head and the Director of Human Resources, requests for leaves of absence without pay may be granted by the City Manager for a period of up to one year.

The City may fill the position with a temporary employee during the term of the leave of absence or undertake any other appropriate measures to address workload needs.

18.2 Leave of Absence Request in Excess of Three (3) Days

Employees requesting a leave of absence without pay must submit the request in writing to their Department Head, and the request should state the reason for the request and the anticipated beginning and ending dates of the leave. The Department Head shall submit the request along with their recommendation to the Director of Human Resources. The Director of Human Resources shall evaluate the request and make a recommendation to the City Manager. The City Manager shall make a decision and transmit in writing the decision to the employee. The decision of the City Manager shall be final and is not subject to grievance or appeal.

18.3 Return from Authorized Leave of Absence Without Pay

When an employee intends to return from an authorized leave of absence without

pay, the employee shall contact the Department Head as soon as possible but not less than three (3) working days prior to the planned day of return. The Department Head shall promptly notify the Director of Human Resources of the employee's intention. Upon an employee's notification that they intend to return after a leave of absence without pay, the City shall make reasonable effort to do so. Failure of an employee to abide by this notification procedure or to report for work promptly at the date of leave expiration shall be grounds for discipline up to and including termination.

Employees returning from leave because of illness or disability must first submit to the Director of Human Resources a release to work from a physician that satisfactorily certifies the employee can perform the essential functions of the position to which they desire to return, with or without accommodation. Further, the employee may be subject to an examination by a City retained licensed physician, at City expense, to ascertain whether the employee is fit to perform the duties of their position.

18.4 Authorized Leave of Absence Without Pay for Job Injury

The City Manager may grant a leave of absence without pay for a period of time to any employee who is disabled by job injury or illness. Such leave may be terminated by the City Manager when it is determined that the employee is disabled for an extended period of time and unable to perform the duties of their position.

18.5 Status of Employee on Authorized Leave of Absence Without Pay

18.5.1 *Break in Service.* Authorized leave of absence without pay shall not be construed as a break in service and rights accrued at the time the leave is granted shall be retained by the employee. However, vacation credits, sick leave credits, holidays, health benefits, retirement benefits, increases in salary, and other similar benefits shall not accrue to a person granted such leave during the period of absence unless otherwise expressly provided for in a Council-approved action. Employees in such status may be required to pay for all fringe benefits, such as health plan premiums, during the period of their leave without pay.

18.5.2 *Employee Return to Work.* An employee returning after an authorized leave of absence without pay shall retain the same status and shall be placed at the same salary step in the pay range currently in effect for the class as the employee received when the authorized leave of absence without pay commenced. Time spent on such leave without pay shall not count toward service within the pay range and the employee's salary anniversary date shall be set forward a period of time equal to the employee's total absence as adjusted to the beginning of the closest pay period.

18.5.3 *Return from Authorized Leave of Absence without Pay for Military Duty.* Notwithstanding provisions of Section 18.5, 19.5 & 19.6 of these Rules, the applicable sections of the Federal and State military leave laws shall apply in determining benefits for those employees returning from an

authorized leave of absence without pay for military duty.

19. OTHER LEAVES OF ABSENCE

19.1 Administrative Leave

The City, in its discretion, may place an employee on administrative leave with or without pay. Employees on such leave shall be available and are subject to the City's instructions during their normal working hours.

19.2 Bereavement Leave

The City shall grant leaves of absence with pay when a member of the employee's or employee's spouse or domestic partner's immediate family dies. "Immediate family" is defined in the City's Bereavement Leave Policy. The City, in its discretion, may require some proof that a death in the family has occurred. In the case of death within the immediate family of an employee, such employee shall be entitled to remain absent from duty with pay for up to five (5) workdays within three months of the death for each such bereavement.

In the event of the death of a relative, not a member of the immediate family, absence from duty shall be allowed not to exceed one (1) day. Employee's accruals other than sick leave shall be used for absence from duty.

19.3 Family and Medical Leave (FMLA/CFRA)

In accordance with federal and state laws and regulations, the City shall provide family and medical leave, which is unpaid leave, to eligible employees. "Family and Medical Leave" under this Rule refers to leave pursuant to the Family and Medical Leave Act of 1993 ("FMLA") and the California Family Rights Act ("CFRA"). Employees should consult the Human Resources Department and the City's FMLA/CFRA policy.

19.4 Jury Duty

Regular employees, probationary employees, and limited services employees who have worked at least 1000 hours in a fiscal year and/or are enrolled in the PERS Retirement System who are required to report for jury duty shall be granted leave for such purpose, upon presentation of the jury notice to the Department Head. Said employees shall receive full pay for the time served on a jury, provided the employee remits to the City all fees as soon as received by the employee for such duties. Compensation for mileage or subsistence allowances shall not be considered as a fee and shall be retained by the employee. If an employee is required to report to jury duty within 2 ½ hours of the scheduled start of the workday, the employee is not required to report to work at the start of the workday but shall report directly to jury duty. If an employee is released from jury duty with more than one-half of their workday remaining, the employee is required to report to work to complete the regularly scheduled workday.

19.5 Military Family Leave

In accordance with the City's Family and Medical Leave Policy, eligible employees may be entitled to use FMLA and/or CFRA leave.

19.6 Military Leave

- 19.3.1 *Military Leave With Pay.* Shall be granted in accordance Federal and State law and in accordance with the City's Military Leave Policy. An employee entitled to military leave shall give their Department Head an opportunity, within the limits of military regulations, to determine when such leave shall be taken. Prior to taking such leave, an employee shall present a copy of their military orders to the Department Head. The Department Head shall promptly advise the Director of Human Resources of such military orders. The employee's work schedule may be temporarily changed by the Department Head to accommodate the leave and department workloads, in accordance with applicable law. Benefits shall continue to accrue to the employee to the extent required by law. Employees on military leave shall be granted promotional opportunities and reinstatement after return from military leave in accordance with applicable law. The City offers employees on military leave the option to continue health benefits.
- 19.3.2 *Leave Accrual.* As required by law, the City will continue leave accruals during paid military leave and make contributions under retirement plans.

19.7 Military Spouse Leave

In accordance with California Military & Veterans Code section 395.10, eligible spouses and domestic partners of active members of the military are entitled to up to ten (10) days of unpaid leave when their spouse or domestic partner, who is in active military service, is on qualified leave.

19.7 Paid Family Leave (PFL)

Employees who are covered by State Disability Insurance (SDI) are eligible for Paid Family Leave (PFL) benefits while taking care of family member(s). These benefits are paid by the State Employment Development Department.

19.8 Pregnancy Disability Leave (PDL)

Any employee who is disabled because of pregnancy, childbirth, or a related medical condition may be entitled to pregnancy disability leave (PDL). The rules for PDL are contained in the City's FMLA/CFRA Policy.

19.9 School Activity Leave

Employees who are parents, guardians or grandparents of a child in kindergarten through grade 12 may take up to forty (40) hours per year, not to exceed eight (8) hours per month, to participate in the child's school activities. The employee shall use accrued vacation or compensatory time for this leave. Prior notice of the need

for this leave shall be given to the supervisor.

19.10 Voting Leave

Time off with pay to vote in any general, direct primary or presidential primary election shall be granted as provided by state law in accordance with the City's Voting Time Off Policy. Employees shall give their supervisors prior notice of the need to take such time off.

19.11 Witness Leave

An employee who is subpoenaed to appear in court in a matter regarding an event or transaction which they perceived or investigated in the course of their employment with the City shall be allowed to do so without loss of compensation, unless it is the employee's own lawsuit.

An employee subpoenaed to appear in court in a matter unrelated to their official capacity, or who is appearing in court in a matter initiated by the employee, shall be permitted time off without pay, or if the employee chooses, to use accrued vacation for this purpose.

The employee may be required to present the subpoena to their Department Head.

20. EMPLOYEE TRAINING AND EDUCATION PROGRAMS

Employees are encouraged (but not required) to further their education by taking accredited courses which satisfy any of the following criteria: are related to the employee's present position with the City; related to the employee's potential development with the City; part of a program leading to a degree related to the employee's present position or potential for development; or required to obtain a high school diploma.

An employee who participates in an educational program may be reimbursed for courses taken on the employee's own time and at their expense in accordance with the City's Tuition Reimbursement Policy and Procedure or applicable Memorandum of Understanding.

21. WORKPLACE VIOLENCE

21.1 Policy

In accordance with the City's Violence in the Workplace Policy and Procedure, it is the City's policy to promote a safe environment for its employees. The City is committed to working with its employees to maintain a work environment free from violence, threats of violence, harassment, intimidation, and other disruptive behavior. Acts such as these will not be tolerated, and all reports of incidents will be taken seriously and will be handled appropriately. The policy covers not only employees of the City but individuals from outside the agency threatening or perpetrating violence against City employees.

21.2 Prohibited Behavior

Employees who make threats, exhibit threatening behavior, engage in violent acts

against the life, health, well-being, family or property of others while at work may be removed from the premises, may be subject to disciplinary action, up to and including termination, and may be subject to criminal penalties, or all of these actions.

In addition, employees are prohibited from possessing firearms, weapons, or other dangerous devices in the workplace or at the work site unless expressly authorized by the nature of their work. This prohibition includes any simulated or toy weapons. Employees are prohibited from utilizing work tools and equipment as weapons.

21.3 Workplace Violence Definition

Violence involves the exertion of force or aggression with the intent of causing injury or abuse. The examples listed below are for purposes of illustration. An employee who believes they have been injured or abused by another employee or member of the public while conducting city business should follow the City's reporting procedure, even if the act does not appear to fall into one of the identified examples of violent acts and threats contained in the policy. Specific examples of workplace violence can be found in the Violence in the Workplace Policy and Procedure.

21.4 Prevention

The City of Tracy's Workplace Violence Prevention Plan (WVPP) addresses the hazards known to be associated with the four types of workplace violence as defined by the Labor Code. The WVPP includes procedures and rules which are intended to reduce workplace violence hazards.

21. EMPLOYER-EMPLOYEE RELATIONS POLICY

21.1 Statement of Purpose

The purpose of this Policy is to implement Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500 *et seq.*) captioned "Local Public Employee Organizations", also known as the "Meyers-Milias-Brown Act" [herein "MMBA"] by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. Nothing contained herein, however, shall be deemed to supersede the provisions of state law or any City ordinances, resolutions, or which provide for other methods of administering employer-employee relations. This Policy is intended, instead, to strengthen the methods of administering employer-employee relations through the establishment of uniform and orderly methods of communication between employees, employee organizations, and the City.

It is the purpose of this Policy to provide procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly and significantly affect and primarily involve the wages, hours, and other terms and conditions of employment of employees in appropriate units and that are not preempted by federal or state law, or the Municipal Code. The City shall not be

required to meet and confer over the merit, necessity, or organization of any service or activity provided by law or executive order.

Nothing contained in this Policy shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy. Unless specifically in conflict with any Memorandum of Understanding, the City retains all management rights, which include but are not limited to:

- The sole and exclusive right to determine the City's mission, including that of its constituent departments, commissions, and boards;
- The sole and exclusive right to direct the affairs, of, manage, and maintain the efficiency of the City, to set standards of service;
- And to control the organization and operation of the City.

The City also has the sole and exclusive right to take any actions which the City deems desirable to conduct its affairs, including, but not limited to:

- Determining the procedures and standards of selection for employment;
- Directing its workforce (including scheduling and assigning work and overtime);
- Hiring;
- Firing;
- Discharges;
- Promotions;
- Demotions;
- Transfers;
- Taking disciplinary action;
- Determining the methods, means, and personnel by which City operations are to be conducted;
- Relieving employees from duty because of budgetary considerations, lack of work, or other lawful reasons;
- Subcontracting;
- Maintaining discipline and efficiency of employees;
- Determining the content of job classifications;
- Taking all necessary actions to carry out its mission in emergencies;
- And exercising complete control and discretion over its organization and the technology of performing its work consistent with the provisions of this Policy and the MMBA.

The foregoing is meant to be descriptive of the City's rights and is not exhaustive.

21.2 Definitions

As used in this Policy, the following terms shall have the meanings indicated as follows:

21.2.1 “Appropriate unit” means a unit of employee classes or positions, established pursuant to Section 21.3.7 of this Policy.

- 21.2.2 “City” means the City of Tracy, including as appropriate the City Council or any other duly authorized City representative as herein defined.
- 21.2.3 “Confidential Employee” means an employee who, in the course of their duties, has access to confidential information relating to the City’s administration of employer-employee relations.
- 21.2.4 “Consult in good faith” or “Consultation in good faith” means to meet and discuss issues with all affected recognized employee organizations, in good faith, for the purpose of presenting and obtaining views or advising of proposed actions in an effort to reach consensus; as distinguished from meeting and conferring in good faith regarding matters within the required scope of representation (as defined in California Government Code sections 3504 and 3507) this does not necessarily involve an endeavor to reach a binding agreement, and is not subject to the impasse resolution procedures set forth in Section 21.5 of this Policy.
- 21.2.5 “Day” means calendar day unless expressly stated otherwise.
- 21.2.6 “Employee Relations Officer” means the City Manager or their duly authorized representative.
- 21.2.7 “Exclusively Recognized Employee Organization” means an employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate representation unit determined pursuant to Section 21.3 of this Policy, having the exclusive right to meet and confer in good faith concerning matters within the scope of representation pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees. Exclusive recognition status may only be challenged pursuant to the procedures set forth in Section 21.3.6 of this Policy.
- 21.2.8 “Impasse” means that the representatives of the City and a recognized employee organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and/or concerning matters over which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.
- 21.2.9 “Management employee” means an employee having responsibility for formulating, administering, or managing the implementation of City policies and programs.
- 21.2.10 “Proof of employee support” means (1) an authorization card recently signed and personally dated by an employee, provided that the card has not been subsequently revoked in writing by the employee; (2) a verified authorization petition or petitions recently signed and personally dated by the employee; or (3) an employee dues deduction authorization, suing the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee

organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The works “recently signed” shall mean within ninety (90) days prior to the filing of such proof of support.

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

Terms not defined herein which are defined in the MMBA shall have the meanings set forth in the MMBA.

21.3 Representation Proceedings

21.3.1 Filing of Recognition Petition by Employee Organization.

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

- a. Name and address of the employee organization.
- b. Names and titles of its officers, and mailing addresses.
- c. Names and telephone numbers of employee organization representatives who are authorized to speak on behalf of the organization in any communication with the City.
- d. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the City.
- e. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national, or international organization, and if so the name and address of each such other organization.
- f. Certified copies of the employee organization’s constitution and bylaws.
- g. A designation of those persons, not exceeding two in number, and their addresses and/or email addresses, to whom notice sent by regular United States mail and/or email will be deemed sufficient notice on the employee organization for any purpose.
- h. A statement that the employee organization has no restriction on membership based on race, color, religion, creed, sex, national

origin, age, marital status, sexual orientation, mental or physical disability, medical condition, military or veteran status, gender identity or expression, genetic information, or any other legally-protected classification.

- i. The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- j. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the employee in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed-upon disinterested third party.
- k. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.
- l. A statement by the duly authorized officer(s) of the employee organization executing the petition declaring under penalty of perjury that the petition, including the proof of employee support and all accompanying documentation, are true, correct, and complete.

21.3.2 *City Response to the Recognition Petition.*

Upon receipt of a recognition petition, the Employee Relations Officer shall determine whether:

- a. The petition complies with the requirements for filing as set forth in Section 21.3.1 of this Policy; and
- b. The proposed representation unit is an appropriate unit in accordance with Section 21.3.7 of this Policy.

If the Employee Relations Officer makes an affirmative determination on both the foregoing matters, they shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit, and shall take no action on said request for thirty (30) days thereafter.

If the Employee Relations Officer does not make an affirmative determination of either or both of the foregoing matters, they shall offer to consult thereon with such petitioning employee organization and, if such, determination thereafter remains unchanged, shall inform that organization in writing of the reasons therefor.

The petitioning employee organization may appeal such determination in accordance with Section 21.3.10 of this Policy.

21.3.3 *Challenging Petition; Open Period for Filing.*

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty percent (30%) and otherwise in the same form and manner as set forth in Section 21.3.1 of this Policy.

For purposes of this section, an “overlapping unit” is one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged.

If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard.

Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 21.3.7 of this Policy and shall provide written notice of their determination.

If the petitioning employee organizations do not agree with the decision rendered by the Employee Relations Officer, the petitioning employee organizations shall have fifteen (15) days from the date when notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 21.3.10 of this Policy.

21.3.4 *Granting Recognition Without an Election.*

If the Petition is in order, and the proof of support shows that a majority of the employees in the unit deemed to be appropriate have designated the petitioning employee organization to represent them, and if no other employee organization filed a challenging petition, the petitioning employee organization and the Employee Relations Officer shall formally acknowledge the petitioning employee organization as the exclusively recognized employee organization for the designated unit.

21.3.5 *Election Procedure.*

Where recognition is not granted pursuant to Section 21.3.4 of this Policy, then, upon determination of an appropriate unit in accordance with Sections 21.3.2 and 21.3.7 of this Policy, the Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned employee organization(s), in accordance with such party’s rules and procedures subject to the provisions of this Policy. All employee organizations who have duly submitted petitions which have been determined to be in

conformance with Section 21.3 of this Policy shall be included on the ballot. The choice of “no organization” shall also be included on the ballot, thereby allowing employees the choice of representing themselves individually in their employment relations with the City.

Employees entitled to vote in such election shall be those persons employed in regular positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election.

An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election. Nothing in this provision shall be read as prohibiting an “instant runoff” or “ranked choice” election where there are three or more choices on the ballot.

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

In the event that the parties are unable to agree on a party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service (“CSMCS”). In the event that CSMCS declined to conduct the election for any reason, the parties agree that the election shall be conducted by a neutral arbitrator selected from a list of seven (7) names to be provided by CSMCS or, if that body for any reason fails to provide such a list, by the American Arbitration Association. The incumbent recognized employee organization shall first strike one name, the petitioning organization shall then strike one name, and further strikes shall alternate accordingly until one name remains; the arbitrator whose name remains shall be the Election Monitor.

If, once the Election Monitor is appointed the parties cannot agree as to the time, place, and manner of the election, the Election Monitor shall be authorized to unilaterally determine such issues and to carry out the election accordingly, consistent with the procedures set forth in this Policy.

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

21.3.6 *Decertification of Exclusively Recognized Employee Organizations.*
A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the

employees in an established appropriate unit may be filed with the Employee Relations Officer only during the month of March of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. A decertification petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete:

- a. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- b. The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.
- c. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
- d. Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent exclusively recognized employee organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed disinterested third party within the time limits specified in the first paragraph of this section.

An employee organization may, in satisfaction of the decertification petition requirements hereunder, file a petition under this section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30%) percent, that includes the allegation and information required under this Section 21.3.6, and otherwise conforms to the requirements of Section 21.3.1 of this Policy.

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Section 22.3. If their determination is in the negative, they shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 21.3.10 of this Policy. If the determination of the Employee Relations Officer is in the affirmative, or their negative determination is reversed on appeal, the Employee Relations Officer shall give written notice of such Decertification or Recognition Petition to the incumbent exclusively recognized employee organization and to unit employees.

The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about thirty (30) days after such notice to determine the wishes of unit employees as to the question of decertification, and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 21.3.5 of this Policy.

During the “open period” specified in the first paragraph of this Section, the Employee Relations Officer may on their own motion, when they have reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all unit employees that they will arrange for an election to determine that issue. In such event, any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this section and Section 21.3.1, which the Employee Relations Officer shall act on in accordance with this section.

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

21.3.7 *Policy and Standards for Determination of Appropriate Units.*

The Employee Relations Officer shall maintain a list of all current bargaining units in the City and shall have the management discretion to form and define reasonable bargaining units based on the procedures specified in this Policy. The policy objectives used in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the City and its compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives required that the appropriate unit shall be the broadest feasible grouping of positions that share the identifiable community of interest.

In considering whether classifications share an identifiable community of interest, the following factors shall be considered:

- a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- b. History of representation in the City and similar employment; except that no unit shall be deemed appropriate solely on the basis of the extent to which employees in the proposed unit have organized.
- c. Consistency with the organizational patterns of the City.
- d. Effect of differing legally mandated impasse resolution procedures, if any.

- e. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
- f. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

Notwithstanding the foregoing provisions of this section, managerial, supervisory and confidential responsibilities, as defined in Section 22.2 of this Policy, are determining factors in establishing appropriate units hereunder, and therefore such managerial, supervisory and confidential employees may only be included in units that do not include non-managerial, non-supervisory and non-confidential employees. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees.

Peace officers have the right to be represented in separate units composed solely of such peace officers.

Also, under MMBA, professional employees have the right to be represented separately from non-professional employees.

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

21.3.8 *Procedure for Modification of Established Appropriate Units.*

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in the first paragraph of Section 21.3.6 of this Policy. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Section 21.3.1, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 21.3.7. The Employee Relations Officer shall process such petitions consistent with any other recognition petition under the provisions of this Policy.

When new classifications are adopted, existing classifications abolished, or when a classification is no longer compatible with the existing bargaining unit in light of the factors set forth in Section 21.3.7 of this Policy, the Employee Relations Officer may by his own motion at any time propose that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(2), at which time all affected employee organizations shall be heard.

Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 21.3.7 and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Section 21.3.10 of this Policy. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the exclusively recognized employee organization for such new appropriate unit or units pursuant to Section 21.3.1.

21.3.9 *Procedure for Processing Severance Requests.*

An employee organization may file a request to become the exclusively recognized employee organization of a unit alleged to be appropriate, that consists of a group of employees who are already a part of a larger, previously established unit represented by another employee organization. The timing, form, and processing of such request shall follow the procedures for a modification request under Section 21.3.8.

21.3.10 *Appeals.*

An employee organization aggrieved by a determination of the Employee Relations Officer that a recognition petition (Section 21.3.1), challenging petition (Section 21.3.3), decertification petition (Section 21.3.6), unit modification petition (Section 21.3.8), or severance request (Section 21.3.9) has not been filed in compliance with the applicable provisions of this Policy, or aggrieved by the Employee Relations Officer's determination of an appropriate bargaining unit (Section 21.3.7), may within ten (10) days of notice of the Employee Relations Officer's appeal such determination to the City Council for a final decision.

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

Any decision of the City Council on the use of such procedure, and/or any decision of the City Council determining the substance of the dispute shall be final and binding.

21.3.11 *Abandonment of Unit or Good Faith Doubt of Majority Representation.*

In the event a bargaining unit appears to have been abandoned by its exclusively recognized employee organization, or in the event that the Employee Relations Officer has a good faith doubt that the exclusively recognized employee organization represents a majority of the members of the unit, the Employee Relations Officer shall serve notice to the affected employee organization(s) stating the evidence leading them to the belief of abandonment or doubt of majority representation status. Such affected employee organization shall have twenty (20) days to present written evidence and argument to the contrary.

If, after the twenty-day period expires and after consideration of any written evidence and argument submitted by the employee organization, the Employee Relations Officer still believes the unit has been abandoned or still has a good faith doubt of majority representation, the Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) day after notice thereof to determine the wishes of unit members. The question before the eligible voting employees shall be "Do you wish to continue to be represented by [name of employee organization] in your formal bargaining relationship with the City?" If the answer by a majority of valid votes cast is in the affirmative, there shall be no change in representation status. If the answer by a majority of valid votes cast is in the negative, then the organization's representational status as bargaining representative for the unit in question shall be terminated.

Except as specifically provided above, the details of such election shall be handled in accordance with applicable provisions in Section 21.3.4 of this Policy.

22.4 Administration

21.4.1 *Submission of Current Information by Recognized Employee Organizations.*

Any changes in the information filed with the City by an exclusively recognize employee organization under items (a) through (h) of its Recognition Petition under Section 21.3.1 of this Policy shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

21.4.2 *Employee Organization Activities – Use of City Resources.*

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

21.4.3 *Administrative Rules and Procedures.*

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

21.5 Impasse Procedures

21.5.1 *Initiation of Impasse Procedures.*

If the meet and confer between the City and an exclusively recognized employee organization has reached impasse as defined in Section 21.2 of this Policy, either party may initiate the impasse procedures by filing with

the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such meeting shall be:

- a. To identify and specify in writing the issue or issues that remain in dispute;
- b. To review the position of the parties in a final effort to reach agreement on a Memorandum or Understanding; and
- c. If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

21.5.2 *Impasse Procedures.*

Impasse procedures are as follows:

- a. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.
- b. Otherwise, the parties can utilize any other impasse procedures provided in accordance with the MMBA.
- c. After any applicable mediation and fact-finding procedures have been exhausted, including any statutory waiting period that may apply under the MMBA, the City Council may hold a public hearing regarding the impasse and take such action regarding the impasse as it in its discretion deems appropriate as in the public interest, including implementation of the City's last, best and final offer. Any legislative action by the City Council on the impasse shall be final and binding.

21.5.3 *Costs of Impasse Procedures.*

The costs for the services a mediator, a factfinding panel chairperson, and any other mutually incurred costs of any impasse procedures shall be equally divided between the City and the exclusively recognized employee organization. Any separately incurred services or costs, including but not limited to costs for a fact-finding panel member selected by each party, shall be borne solely by the party incurring the cost.

21.6 *Miscellaneous Provisions*

21.6.1 *Construction.*

This Policy shall be administered and construed as follows:

- a. Nothing in this Policy shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers, and authority granted by federal or state law.
- b. This Policy shall be interpreted so as to carry out its purpose as set forth in Section 21.1.

- c. Nothing in this Policy shall be construed as a waiver of any rights unless expressly and specifically stated.

21.6.3 *Severability.*

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

22. MISCELLANEOUS

These rules and regulations shall only become effective when they are adopted by the City Council. Upon adoption, they shall supersede any and all City-wide and/or departmental personnel management policies, rules, regulations, and procedures previously adopted, except those adopted by order of a department manager which are not in conflict with these Rules.

Any and all provisions contained in a Memorandum of Understanding (MOU) in effect at the time of adoption of these Rules, and which may be in conflict with the provisions of these Rules, shall remain in effect and supersede these Rules until such time as the conflicting provisions of the MOU may be modified, through the meet and confer process, to conform to these Rules. No existing MOU shall be modified, and no new MOU shall be entered into, which would establish provisions that would be in conflict with these Rules unless expressly identified by the City Manager and recommended to the City Council for review and approval.

These Rules do not create a “contract” of employment between the City and any employee. Public employment is statutory, not contractual.

If any part of these Rules is determined to be unconstitutional or illegal, such part shall be severed from these rules, and the remaining Rules shall be given full force and effect. The City shall comply with changes in state and federal law and shall amend these Rules as necessary for consistency. The term “City” as used in these rules refers to the City of Tracy. Responsibilities and rights of the City under these rules are exercised by the City Manager and may be delegated by the Manager in their discretion.