

## **ARTICLE VII**

### **PERSONNEL ACTIONS AND APPEAL**

#### **SPECIFIC CHARGES**

**Sec. 75.** Prior to suspending, dismissing or demoting a permanent classified employee for disciplinary reasons, the appointing authority or his/her designated representative shall afford the employee an opportunity to respond to the allegations that caused the disciplinary action to be considered. Should the employee fail to provide sufficient reasons to cause a reconsideration of the contemplated discipline, a written letter of charges, which shall set forth the acts or omissions with which the employee is charged, shall be served upon the employee by, or on behalf of, the appointing authority. The letter of charges shall state the rule(s) and/or regulation(s) the employee is alleged to have violated. Service of the letter of charges may be accomplished by either personally delivering a copy to the employee or by mailing a copy certified United States mail with a return receipt. The letter of charges shall inform the employee of his or her right to appeal the disciplinary action to the Civil Service Commission and shall advise the employee that a written notice of appeal must be filed with the Commission: (1) no later than 10 days after the date the letter of charges was personally delivered; or (2) no later than 10 days after the date of delivery recorded on the certified mail return receipt; or (3) no later than 25 days after the date of mailing if the certified mail return receipt is not returned and the letter of charges was mailed to the employee's address on file.

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#### **EMPLOYEE APPEAL OF DISCIPLINE IMPOSITION**

**Sec. 76.** With the exception of summary suspensions under Section 87, any permanent employee who is suspended, dismissed, or demoted for disciplinary reasons or pursuant to Section 40, shall be entitled to an appeal under Section 1103 of the City Charter and/or these rules. If an employee desires to appeal, he/she must file a written notice of appeal and request for a hearing: (1) no later than 10 days after the date the letter of charges was personally delivered; or (2) no later than 10 days after the date of delivery recorded on the certified mail return receipt; or (3) no later than 25 days after the date of mailing if the certified mail return receipt is not returned and the letter of charges was mailed to the employee's address on file. The Commission may, for good cause, grant an additional five days in which to file an appeal. In the absence of a timely appeal, the order of suspension, dismissal or demotion shall be final without any action of the Commission.

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## **OBJECTION TO UNCERTAINTY OR AMBIGUITY OF DISCIPLINARY CHARGES**

**Sec. 77.** The employee may object to the letter of charges on the grounds of ambiguity or uncertainty, when filing an appeal and request for a hearing. If the objections are overruled by the Commission, the Executive Director shall inform the employee of the Commission's decision in writing. If the objections are sustained by the Commission, the Executive Director shall inform the disciplining authority, in writing, within three days of the Commission's decision. Within the following 10 days, the disciplining authority must then either file amended charges or withdraw the original charges. Should the disciplining authority amend the charges, then Section 75 shall apply to the amended charges. An employee who, without good cause, does not file a statement of objection to the letter of charges shall thereafter be deemed to have waived his/her rights to object to the letter of charges on the grounds of ambiguity or uncertainty.

## **REQUEST FOR CONTINUANCE**

**Sec. 78.** Except for good cause, no request for continuance or postponement of a hearing to another date and time shall be granted unless it is in writing and received by the Commission at least 10 days before the scheduled hearing date. Good cause for a continuance may include pending criminal charges but only when the employee is being disciplined for the same acts that are the basis for the pending criminal charge(s). Either the employee or his/her designated representative may request a continuance. Where there is a request for a continuance by either an employee or his/her designated representative, such continuance may be granted upon the condition that the employee waive any benefit, accumulation of seniority, or any other employee benefits that shall accrue to the employee for the period between the hearing date set and the new hearing date granted by the Commission.

Should the hearing be postponed because of the employee's involvement in criminal proceedings, which arose from the same acts for which the employee is being disciplined, the employee shall notify the Commission of the court's conclusion and/or disposition within five days of the court's issuance of such conclusion and/or disposition. Should the employee fail to comply with this notification procedure, he/she shall be deemed to have abandoned the appeal. After receiving the proper notice and after giving the employee a minimum of 10 days advance notice, in writing, of its intent to proceed, the Commission shall proceed pursuant to Section 79 of these rules. The Commission may waive application of this rule if the employee is involved in any criminal proceedings.

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## **ESTABLISHING TIME AND CONDUCT OF CIVIL SERVICE COMMISSION HEARINGS**

**Sec. 79.** After acceptance of the employee's notice of appeal of a suspension, demotion, or dismissal and request for a hearing, the Commission shall set the date, time, and place for a hearing of the charges. Section 82 of these rules shall apply to all such hearings. At the appeal hearing, the employee shall have an opportunity to present evidence in his/her own defense, and shall have the right to be represented. All hearings shall be public, and need not be conducted according to technical rules of evidence. The proceedings of the hearing shall be recorded. Any party requesting transcripts of the proceedings shall pay all expenses incurred for that service.

### **HEARING OFFICERS/ADMINISTRATIVE LAW JUDGES**

**Sec. 80.** The Commission, at its discretion, may delegate an appeal to be heard by a hearing officer/administrative law judge. Appeals for disability retirement for safety personnel shall be conducted only by an Administrative Law Judge, including those disability retirement appeals heard by the Civil Service Commission. When so delegated, the hearing officer/administrative law judge shall be vested with the same powers resting in the Commission with respect to the scheduling and conduct of hearings, except that the decision of the hearing officer/administrative law judge shall not be binding, but shall be considered a recommendation to the Commission. The recommendation of the hearing officer/administrative law judge shall be presented to the Commission in a written report, in a format specified by the Commission. The Commission shall have the power to adopt, modify, or reject the recommendation of the hearing officer/administrative law judge. The Commission shall also have the power to order all or part of a hearing to be reheard by the same or another hearing officer/administrative law judge, or the Commission may hear the appeal itself anew. Notice of the Commission's consideration of the Hearing Officer's Report/Administrative Law Judge Report shall be sent to the concerned parties and either party may request the Commission to consider final arguments in the matter; however, neither party shall be required to do so as a requirement of exhausting its administrative remedies.

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### **FAILURE OF EMPLOYEE TO APPEAR AT SCHEDULED HEARING**

**Sec. 81.** If an employee is granted a hearing and, without good cause, fails to appear, the Commission shall dismiss the appeal and sustain the administrative discipline.

## **COMMISSION AUTHORITY CIVIL SERVICE HEARINGS AND INVESTIGATIONS**

**Sec. 82.** In any investigation or hearing, the Commission shall have the power to issue subpoenas and/or subpoenas duces tecum and compel the attendance of witnesses and production by the witnesses of pertinent documents. Subpoenas and subpoenas duces tecum shall be issued and served in accordance with appropriate sections of the Code of Civil Procedure. Each party to a hearing shall be responsible for the service of the subpoenas as provided in the California Government Code. The Commission shall also be empowered to administer oaths to witnesses and it may punish as a contempt the disobedience or failure to comply with the provisions of these Rules. At least 72 hours before the time set for hearing, the respective parties shall furnish to the Commission the names of all witnesses who are to be called to testify in each party's case in chief and, in the absence of good cause, only those witnesses whose names are furnished to the Commission will be permitted to testify.

## **ORDERS OF THE COMMISSION AFTER HEARINGS ARE CONCLUDED**

**Sec. 83.** After a hearing, the Commission may, at its discretion, either sustain, reduce, or deny the charges. If the charges are denied the Commission shall order the employee reinstated to the classification, grade, or salary step held prior to the imposition of the discipline. If the charges are sustained or reduced, the Commission at its discretion, shall either set the period of suspension or demotion or order the employee permanently removed from City service. The decision of the Commission shall be final on the date it is made. Thereafter, any petition for judicial review of the Commission's decision must be filed within 90 days of the effective date of the Commission's decision pursuant to the provisions of the Code of Civil Procedure. Upon expiration of the prescribed period of suspension or reduction in classification, the employee shall be restored to his/her former classification, grade, or step.

## **CAUSES FOR SUSPENSION, DEMOTION, RELEASE OR DISCHARGE**

**Sec. 84.** At the discretion of the Commission, the following may be declared to constitute grounds for suspension, demotion, release or discharge (separation) of an employee from the classified service of the City:

- (1) Violation of any provision of the Charter of the City, the Rules and Regulations of the Commission, or any written departmental or citywide policy, procedure, rule, regulation, or directive.
- (2) Fraud in securing appointment.

- (3) Inefficiency – Failure by an employee, usually over a period of time, to meet a level of productivity set by other employees in the same or similar position or a failure to produce an intended result with a minimum of waste, expense or unnecessary effort.
- (4) Inexcusable Neglect of Duty – Intentional or grossly negligent failure to exercise due diligence in the performance of a known official duty.
- (5) Insubordination – Refusal to respond, without justification, to a lawful order given by a superior or an employee, who is not a superior, but who has been empowered to give such orders.
- (6) Dishonesty – Intentional misrepresentation of known facts, or omission of facts, which the employee has a duty to disclose.
- (7) Unauthorized consumption or possession of and/or being under the unauthorized influence of any alcoholic beverage, narcotic, harmful or addictive drug which has not been prescribed by a licensed physician, while on duty or on standby duty.
- (8) Unlawful sale or distribution of a narcotic or dangerous drug.
- (9) Inexcusable or excessive absence from the City and/or violation of any sick leave provisions of the City.
- (10) Discourteous, disruptive, or harassing conduct toward the public or other employees.
- (11) Destruction, misuse, misappropriation, unauthorized use of or unauthorized possession of City property
- (12) Brutality or cruelty to an inmate or prisoner of a City institution, or to a person in custody.
- (13) On duty fighting, malicious mischief, discourteous, disruptive or harassing conduct toward the public or other employees, or destruction of property other than City property.
- (14) Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction. Notwithstanding any further appellate proceedings, a conviction shall be deemed complete upon the date the court imposed judgment and sentence.
- (15) Other failure of good behavior either during or outside of duty hours, which is of such a nature that it causes discredit to the appointing authority or the person's employment.

- (16) Unlawful retaliation against any other City employee or member of the public, who in good faith reports, discloses, divulges, or otherwise brings to the attention of any prosecuting agency, or any other appropriate authority, any facts or information relative to actual or suspected violation of any law of this City, County, State or the United States, occurring on the job, or directly related thereto.
  
- (17) Failure to maintain necessary licenses or certification required to meet the minimum qualifications for the position.

## **DISMISSED EMPLOYEE NOT ELIGIBLE FOR REEMPLOYMENT**

**Sec. 85.** Any employee who has been dismissed from City service for disciplinary reasons shall have his/her name removed from all eligible and priority lists by the Executive Director, and shall neither be eligible to participate in any Civil Service examination, nor be reappointed to any classified position unless, after review, the Commission authorizes his/her eligibility.

## **DURATION OF EMPLOYEE SUSPENSION OR DEMOTION**

**Sec. 86.** The duration of an employee's suspension shall be designated by his/her department head and stated in the written charges presented to the employee with the exception of summary suspensions under Section 87. However, an employee's suspension shall not exceed six calendar months without the approval of both the appointing authority and the Commission.

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## **SUMMARY SUSPENSION**

**Sec. 87.** Pending an investigation by the appointing authority of accusations against an employee involving misappropriation of City property and/or City funds, drug addiction, brutality or cruelty to a person in custody, acts which would constitute a felony, or a misdemeanor involving moral turpitude, or substantiated, job-related, extraordinary conduct requiring immediate removal of the employee from the workplace; the appointing authority may impose a summary suspension for a period not to exceed 30 days. Any summary suspension may be terminated by the appointing authority by giving 48 hours notice in writing to the employee. The summary suspension period shall be used by the appointing authority to expeditiously complete an administrative investigation of the incident and/or circumstances, which caused the disciplinary action to be taken. If the appointing authority does not file charges against the employee on or before the expiration date of the summary suspension then the summary suspension shall be with pay. However, if charges are filed against the employee on or before the summary suspension is terminated, the effective date of the discipline may be made retroactive to any date on or after the date the employee was summarily suspended. Time served or salary lost under a summary suspension may be considered in any final penalty assessed against the employee.

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## **DEMOTION AFTER ACQUIRING STATUS IN A CLASSIFICATION**

**Sec. 88.** If a permanent employee is promoted to a new classification, acquires permanent status in that classification, and is subsequently demoted to his/her former classification and grade because of incapability or for disciplinary reasons, he/ she shall not be re-certified for promotion to the classification from which he/she was demoted during the life of the eligible list from which the appointment was made. Pursuant to Section 1103 of the City Charter and these rules and regulations, any employee may, as a disciplinary measure, be demoted to any classification in job families recognized by the Commission. Such reassignments may occur even though the employee never held status in the classification specialty.

## **PERMANENT EMPLOYEE REDUCTION OR DISCHARGE DURING PROBATION**

**Sec. 89.** If a permanent employee is successful in either a promotional or open-competitive examination and is subsequently appointed to another classification and during the probationary period is found to be incapable or inefficient, the appointing authority/designee may, terminate the appointment. Should such a termination occur, the employee shall be reinstated to the classification in which he/she held status prior to being promoted. If, in the opinion of the department head and the Commission, the employee is still regarded as competent for some other position in the same promotional or open classification, his/her name may be returned to the eligible list established for the open or promotional classification, should such a request be made by the terminated employee. Should any employee be displaced by the above reference reinstatement, his/her name shall be placed on a priority list for the subject classification.

## **NEW EMPLOYEE DISCHARGE DURING PROBATIONARY TERM**

**Sec. 90.** An employee may be terminated at will any time during their probationary period. If, in the opinion of the department head and the Commission, the person is still regarded as capable of performing in some other position in the same classification, his/her name may be returned to the eligible list established for the classification.

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## **CLASSIFIED EMPLOYEES APPOINTED AND/OR DISMISSED FROM UNCLASSIFIED SERVICE**

**Sec. 91.** If an employee in the classified service is appointed to a position in the unclassified service and is subsequently dismissed or laid off, he/she shall, dependent upon seniority in the classified service, either be restored to his/her prior classified classification, or placed on a priority list for the classified classifications in which he/she holds status. However, if the employee's dismissal from the unclassified service was for a violation of Federal or State law, Charter Provisions, City Ordinances, duly authorized and adopted written departmental rules and regulations, or City Administrative

Directives, dismissal shall accomplish a separation from both the classified and unclassified service of the City and the employee shall have no right of appeal to the Commission.

- (1) Prior to accepting employment in the unclassified service of the City, all permanent, classified employees shall sign an acknowledgment and waiver that states the employee recognizes the new position is unclassified, that acceptance of the position will result in a waiver of all rights to appeal a dismissal to the Commission, and that this is done voluntarily.

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### **REDUCTION IN FORCE**

**Sec. 92.** For reasons of economy or due to a lack of work or funds, an appointing authority may reorganize or eliminate any department, bureau, or division, or may abolish any position under its direct jurisdiction, and/or reduce the number of, or the hours worked by City employees. When any such action causes a layoff of employees, the selection of those to be laid off shall be made under the following:

- (1) To decrease the work force in any department, the appointing authority shall specify to the Commission the number and classification of employees to be laid off, together with the department, bureau, and division in which the layoff is to be made. The Commission shall then determine, under these rules, the particular employees to be laid off, and advise the appointing authority of its finding.
- (2) For purposes of this Article, the term "layoff" shall include removal from City employment, reassignment to a former classification, reduction from full-time to part-time status or permanent assignment to another classification in order to avoid layoff. The term "seniority" shall refer to length of service in a particular classification regardless of grade designation.

### **ORDER OF LAYOFFS**

**Sec. 93.** Layoffs in each classification shall be made in the following order: first, provisional employees; second, probationary employees; and third, permanent employees who have completed their probationary periods.

- (1) When one or more probationary or permanent employees must be laid off, those who are laid off shall be those with the lowest seniority, under these rules, from all the departments, bureaus, and divisions of the City. However, the Commission may, upon the recommendation of the appointing authority, order the layoff to be effective City-wide or confined to one or more departments, bureaus, or divisions if, in its judgment, the best interests of the City will be served.

- (2) If an employee who is laid off in a department in which a reduction in force is made has greater seniority in the classification affected by layoff than an employee in that same classification in another department, the employee in the latter department with the lowest seniority in the classification shall be laid off and the employee with the greater seniority shall be transferred to fill the position made vacant by the layoff.
- (3) Where the layoff is limited to provisional employees, the appointing authority may determine which of the employees within the particular classification shall be laid off.
- (4) In the event two or more permanent employees have the same seniority, the person who placed lowest on the eligible list seniority shall be laid off first.
- (5) In the event two or more employees occupy the same placement on the eligible list, the person to be laid off shall be determined by the order in which their applications were filed.
- (6) Employees hired through "selective certification" shall be laid off only upon an approved order of layoff specifying the reduction of "selective certification" employees.

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## **REDUCTION IN FORCE SEASONAL AND RECURRENT EMPLOYEES**

**Sec. 94.** The provisions of this Article shall apply to and govern classified "seasonal and/or recurrent" positions of City employment provided, however, that should layoffs occur in classifications, which encompass classified "seasonal and/or recurrent" positions of employment, then the incumbents occupying such positions shall be laid off prior to applying the provisions of Section 93. Upon the reemployment of employees affected by the layoff, all employees laid off from permanent positions of employment within the subject classification shall be reappointed before the reappointment of employees laid off from "seasonal and/or recurrent" positions.

## **SENIORITY IN LAYOFFS**

**Sec. 95.** Seniority in layoffs shall be calculated by adding together the following periods of service:

- (1) All time served by an employee after permanent appointment to the current classification from which he/she is being laid off.

- (2) Time spent in all former classifications from which the employee was sequentially laid off, and reverted consecutively, until either a classification is reached in which he/she has the greater seniority, or his/her name is placed on a priority list.
- (3) All time in the above classifications during which the employee was absent with pay or was on approved long-term military leave under these rules.

### **NOTICE OF LAYOFF**

**Sec. 96.** Notice of any layoff, under these rules, shall be made by giving a letter to the employees to be laid off a minimum of three days prior to the effective date of the layoff. The letter shall inform the employees of the appointing authority's decision to reduce the work force. If any employee affected by the layoff cannot be located within twenty-four (24) hours after the effective date of layoff, the letter containing the layoff notice shall be mailed to that employee's last known address as shown on the employee's records on file in the Commission's office.

### **PLACEMENT OF NAMES ON PRIORITY LISTS**

**Sec. 97.** On the date layoffs become effective, the Executive Director shall order the names of laid off permanent and/or probationary employees to be placed on the priority lists established for all classifications from which they were laid off.

### **REVERSION TO FORMER STATUS**

**Sec. 98.** When a reduction in the work force results in the layoff of an employee who had acquired permanent status in a former classification, the employee shall, dependent upon seniority in his/her former classification, be reinstated to that former classification. If the employee's seniority is not sufficient to displace any employee in his/ her former classification, he/she shall be placed on the priority list for that classification. However, the employee must have continuous service with the City and may not have been permanently removed from his/her former classification for cause.

### **OBJECTION TO AND APPEAL OF LAYOFF**

**Sec. 99.** Any laid off probationary or permanent employee may object to his/her layoff on grounds that the seniority calculation was incorrect or that the layoff action was the result of an improper or illegal employment practice. The employee may do so by filing an appeal within ten days after being either personally served with a notice of layoff by

the appointing authority, or after receiving a certified or first-class letter informing him/her of the pending layoff. The Commission shall determine the method of its review and may conduct its own investigation, call witnesses, review documents, and/or proceed in the same manner it would for a hearing under these rules. After either a review or hearing, the Commission shall make a final determination. If the employee who is laid off fails to make a timely protest and/or objection to his/her layoff, the layoff shall be effective as of the date specified in the notice of layoff. However, the Commission may correct an error in seniority calculations at any time and may make appropriate adjustments in an order of layoff or a priority list ranking due to the correction.

### **OUT OF ORDER LAYOFF**

**Sec. 100.** After receiving either a written request from an employee and the subsequent consent of the appropriate appointing authority, or after being furnished with good cause, the Commission may approve an employee's layoff either ahead of or in place of some other employee with lower seniority. However, the Commission shall not grant approval of an out-of-order layoff, if it is determined that good cause has not been shown, or that the employee requesting an out-of order layoff was either doing so under duress, or was making the request to avoid disciplinary action.

### **RESIGNATION**

**Sec. 101.** Any employee who desires to terminate his/her employment with the City must convey one of the following to the appointing authority:

- (1) a signed letter of resignation.
- (2) verbal notification of resignation not withdrawn within three scheduled working days.

Pending acceptance of 1 or 2 above by the appointing authority and subsequent filing with the Commission, the resignation shall become effective. Notwithstanding 1 or 2 above, an employee's absence without authorization for three or more consecutive workdays, wherein the employee fails to show up for work, call in, and/or provide documentation of a disability or legitimate absence, shall be deemed an abandonment of his/her position and an automatic resignation from City service.

### **RESIGNED EMPLOYEE SEVERES ALL RIGHTS**

**Sec. 102.** Any employee in the classified service who resigns his/her position shall have severed all previously accrued Civil Service seniority and status, and his/her name shall not be restored to any promotional eligible list without re-examination.

## **CONSENT TO ABSENCE**

**Sec. 103.** If an appointing authority or department head approves an employee's request for leave of absence from City service, the approval shall be in writing, shall state the name of the employee, the position held, and the period the employee is to be absent from City service. A copy of the approval shall be forwarded to the Commission.

## **RETURN FROM LEAVE OF ABSENCE**

**Sec. 104.** Upon return from an authorized leave of absence, an employee shall be returned to the classification, position, grade and step, which he/she held when the leave was granted. With the consent of the appointing authority, the employee may return to work at any time during the authorized leave period.