

Honorable Chair and Members
of the Employee Relations and Public Safety
City Hall
Torrance, California

Members of the Committee:

SUBJECT: Consider proposed updates to Chapter 4 (Civil Service and Personnel) of Division 1 (Administration) of the Torrance Municipal Code

RECOMMENDATION

Recommendation of the City Manager that the Employee Relations and Public Safety Committee consider updates to Chapter 4 (Civil Service and Personnel) of Division 1 (Administration) of the Torrance Municipal Code.

BACKGROUND

The Civil Service Section of the Torrance Municipal Code (TMC) has not had any substantial revisions since September of 2000. At that time, the "old" Civil Service Rule Book was incorporated into the Torrance Municipal Code. While the revision in 2000 was significant, there are still portions of the code that remain inconsistent or confusing, and changes in case law and legislation have caused portions of the code to become outdated. In addition, the current recruitment environment has necessitated a review of certain practices in certification and promotion that will enable the City of Torrance to attract, retain and promote the most meritorious and qualified candidates.

Prior to the Committee's review of these proposed changes, the Chief Labor Negotiator distributed this information to the employee groups for their consideration and comment. To complete the update to the Municipal Code, comments from employee groups, as well as comments and direction received at this evening's meeting will be analyzed and incorporated into a revised document. The revised document will then be submitted to the Civil Service Commission for their review and comment to the City Council. The revisions to the Torrance Municipal Code will be incorporated on passage of an ordinance, requiring a super majority (at least 5 members of the Council voting for approval).

ANALYSIS

The proposed changes to the Civil Service Section of the TMC can be classified into three major areas:

- Clarification of timeframes and correction of errors.
- Update language to reflect current City organizational structure and changes in California Government Code and other State and Federal laws.

- Implement changes to promotional examination, reinstatement and certification processes.

The remainder of this analysis will focus on each of these areas and present the rationale for updating the existing language. All proposed changes to Chapter 4 of the TMC are included in Attachment A.

CLARIFICATION OF TIMEFRAMES AND CORRECTION OF ERRORS

Throughout Chapter 4, there are numerous timeframes that are used to determine timeliness for the receipt of appeals and protests. In recent years, there has been some disagreement between the City and appellants as to the nature of how “days” are defined. To avoid any contention of how timeframes are processed, Staff is recommending that any reference to “days” is amended to read “calendar days.” In addition, Staff is also recommending that a new section is added entitled “Closures and Appeal Periods.” This new section will allow any appeal period that ends on a closed Friday, a weekend, or a holiday, to be extended to the next day that the Civil Service Division is open for regular business. These changes to the TMC do not reflect a new practice in how timeframes are administered; instead, these language revisions are intended to clarify how timeframes are calculated and to avoid any misunderstanding.

In addition to the clarification of “days” Staff is also recommending the correction of two errors that occurred during the 2000 revision of Chapter 4. In Section 14.20.1, entitled “Regular Appointment Following Probationary Period,” the reference to “Section 14.5.3” should be amended to read “Section 14.4.3,” as Section 14.4.3 defines the period of probation and Section 14.5.3 prohibits successive temporary appointments. Section 14.17.4 entitled “Objections and Substitutions” should also be amended so that the reference to “Section 14.16.8” is amended to read “Section 14.17.7 (a). The TMC does not contain a Section 14.16.8 and this error is the result of a scrivener’s error during the 2000 revision.

UPDATE OF LANGUAGE TO REFLECT CURRENT CITY ORGANIZATIONAL STRUCTURE AND CHANGES IN STATE AND FEDERAL LAW

There are several sections of the TMC that are dated in terms of practice, City organization, and also have become obsolete as a result of changes in State and Federal laws. For example, Section 14.4.2 entitled “Department Heads Appointed by the City Manager” does not reflect the current classifications that were the result of re-organization and right sizing efforts. Similarly, Staff is recommending that all references to “Civil Service Administrator” be revised to “Civil Service Manager.” Notable updates to the TMC to ensure compliance with Federal and State law include the following:

- Article 8 of Chapter 4 should be revised to delete references to the Employee Relations Committee relating to the determination of unfair labor practices as jurisdiction of “unfairs” was transferred to the Public Employee Relations Board (PERB) in 2001.
- Section 14.40.1 “Leave Without Pay,” should be revised to reference compliance with the Family Medical Leave Act (FMLA) and the California Family Rights Act (CFRA).

- Section 14.47.2 "Department Heads, Peace Officers, Firefighters" should be revised to reference compliance with the Firefighters Procedural Bill of Rights (FBOR).
- Section 14.17.7(a) should be revised to comply with the Americans with Disabilities Act (ADA)
- Section 14.1.29 "Type of Examinations" should be updated to delete the reference to "open and promotional examinations."¹

Staff is also recommending that Section 14.1.7 entitled "Reports to the Civil Service Commission" is updated to provide increased privacy protections for applicants and employees and also to reduce the frequency of the reporting from monthly to annually.

IMPLEMENTATION OF CHANGES TO PROMOTIONAL EXAMINATION, REINSTATEMENT AND CERTIFICATION PROCESSES.

The City Manager is also recommending the following changes to TMC code sections:

- Reinstatement (Section 14.23.1, 14.23.2);
- Eligibility for promotional examinations (14.12.8);
- Selection from promotional lists for the Police and Fire Departments (Section 14.3.2); and
- Certification of eligibles on hiring requisitions (Section 14.17.2).

In reviewing the language of the TMC, it was noted that an inconsistency exists between sections 14.23.1 and 14.23.2 which govern how separating employees can be re-hired into their former civil service positions. Section 14.23.1 "Reinstatement to Eligible List" allows a separated employee to be placed on "the bottom of the open eligible list for any classification in which he previously had permanent status," provided the employee was not discharged for cause. Section 14.23.2 "Inactive Status" allows for a Memorandum of Understanding (MOU) to provide for a "specific program of inactive status." In all of the MOUs between the City and employee groups, the language qualifies "a past employee to be certified as a name in addition to the five (5) open or three (3) promotional eligibles for a vacant position in the classification from which he was terminated," subject to the approval of the employee's department head, the City Manager, and the Civil Service Commission. Because a MOU has no jurisdiction concerning the powers and duties of the Civil Service Commission, Staff is recommending that Section 14.23.1, entitled "Reinstatement of Eligibility List" be revised to reflect the actual practice of inactive status i.e. an employee of good standing will be able to be certified on a requisition for a vacant position in the classification. Staff has recommended language to define good standing as receiving a "standard" evaluation and no disciplinary suspension within the twelve month period prior to their separation.

¹ Based on *Lucchesi v. City of San Jose* (104 Cal.App.3d 323 (1980)), our City Attorney advised the Civil Service Commission in February of 2007 against the administration of "open and promotional" exams. Instead, the basis should be either, "open" or "promotional."

Civil Service Staff has also had several issues with the existing language governing promotional exams and is recommending that Section 14.12.8 "Eligibility for Promotional Examinations" be updated to include a requirement for "good standing" which mirrors the proposed standard for reinstatement above. In addition, Staff is recommending that employees who are already incumbents in the classification being tested for should be ineligible to take a promotional exam. Staff is also recommending that Section 14.3.2 be amended to remove the requirement that no eligible on a promotional list for safety positions lower than the rank of Chief shall be passed over more than twice. This language conflicts with the rule of five that is used for Division Heads (Captains/Deputy Fire Chief) and it can also require the appointing authority to promote an eligible that may have had disciplinary issues since the promulgation of the eligible list.

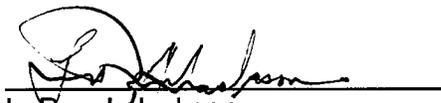
Finally, in view of the rapidly changing recruiting environment, Staff is recommending that the rules for certification (Section 14.17.2) for open recruitments are revised so that the ranks rather than individual scores are the basis of certification. By certifying based on ranks, the hiring authority is likely to have a larger pool of qualified candidates, allowing a greater opportunity to select the most qualified candidate in terms of both merit and organizational fit.

Respectfully submitted,

LeRoy J. Jackson
CITY MANAGER


By Laura J. LeHnes
Civil Service Manager

CONCUR:


LeRoy J. Jackson
City Manager

Attachment A - Annotated version of the proposed updates to Chapter 4 (Civil Service and Personnel) of Division 1 (Administration) of the Torrance Municipal Code.

**Attachment A – Annotated Proposed changes to the Torrance Municipal Code, Chapter 4
– Civil Service and Personnel of Division 1 - Administration**

Proposed Changes to the Torrance Municipal Code, Chapter 4 – Civil Service and Personnel of Division 1 - Administration

SECTION 14.1.4 CLASSIFIED SERVICE APPLICABLE TO APPOINTIVE OFFICERS AND REGULAR EMPLOYEES; QUALIFICATIONS GENERALLY

(Amended by O-2537; O-2980; O-3465U)

The provisions of this Chapter shall apply to employees who are regularly and continuously employed in the service of the City, unless the City Council by ~~ordinance~~ **resolution** designates the position as at-will, non-classified, or non-civil service. The term employee shall mean an appointive officer or any person holding a position in the classified service. No elective officer shall be qualified to a Civil Service position while serving as such officer under this Chapter.

SECTION 14.1.6. EXECUTIVE OFFICER.

(Amended by O-2462)

a) Appointment of Executive Officer:

- 1) The Civil Service Commission shall appoint an Executive Officer of the Civil Service Commission in accordance with the rules of the City for appointment of members of the classified service. The Executive Officer shall be a member of the classified service.
- 2) The appointment shall be subject to appeal to the City Council by any member of the City Council within fourteen (14) **calendar** days after the date of appointment. In the event of such appeal, the Council may veto the appointment.
- 3) Notwithstanding the above provisions of this Section, the person who holds the appointment to the temporary position of Executive Officer on the date this Section becomes effective shall be conclusively deemed to have been appointed on such date to the permanent position of Executive Officer.

b) Duties of Executive Officer: The Executive Officer, subject to the direction and approval of the Civil Service Commission, shall:

- 1) Be the Secretary and Advisor to the Civil Service Commission;

2) Be the official upon or with whom all notices, requests for hearings, complaints, and various official documents shall be served or filed;

3) Perform such duties as are from time to time set forth in the class specification for the position.

c) Removal of Executive Officer: The Executive Officer may be suspended without pay or discharged or otherwise disciplined in accordance with Civil Service Rules and Regulations by a majority vote of the Civil Service Commission on charges brought by any member of said Commission. The Executive Officer shall have the same right of review of any other Civil Service employee of the City except that the Civil Service Commission shall appoint a Hearing Officer to conduct the hearing thereon and the Hearing Officer shall make the findings of fact, conclusions of law, and a recommendation directly to the City Council.

SECTION 14.1.7 REPORTS TO THE CIVIL SERVICE COMMISSION

(Amended by O-2463)

The City Manager or his designee shall report ~~monthly~~ **annually** or as required by Civil Service Rules and Regulations to the Civil Service Commission as follows:

- a) All appointments, whether emergency, temporary, permanent or promotional
- b) All lateral transfers
- c) ~~All refusals of appointment, together with reasons therefore, or neglect to accept appointment by a person who has been certified~~
- d) ~~All suspensions or reinstatements~~
- e) ~~All separations for the City and their cause, if known~~
- f) ~~All other matters required by Civil Service Rules and Regulations~~

SECTION 14.1.9. AMENDMENT OF THE RULES.

(Added by O-326; Amended by O-3486)

The Civil Service Commission shall, with the advice and consent of the City Council, formulate rules and regulations which, when approved by the City Council, shall govern in all matters pertaining to the Civil Service system. Any subsequent amendments to such rules and regulations may be adopted by the City Council only following a public hearing before the Civil Service Commission. The Civil Service Commission shall hold such hearing only after at least five (5)

calendar days prior public notice. All rules and regulations adopted shall be consistent with the provisions of this Article.

SECTION 14.1.19 CLOSURES AND APPEAL PERIODS

For the purposes of calculating timeframes for appeal periods, when the last day of the appeal period falls on closed day for Civil Service staff, including weekends, holidays, and dark Fridays, the appeal period shall be extended to include the next business day.

SECTION 14.1.29 TYPE OF EXAMINATIONS

(Added by O-1751; Amended by O-1783; O-3457)

The Civil Service Board shall determine in advance of every examination whether such examination shall be a promotional examination or an open examination ~~or an open and promotional examination~~; provided, however, that an examination for a department head shall be either a promotional examination or an open examination and such determination shall be by the City Council after recommendation by the Board. Such determination shall be recorded in the minutes of the Board and the City Council, as the case may be.

Applicants to take a promotional examination for a department head position must be actually in the City employ at the time of the examination and have completed six (6) months of actual service in either a permanent civil service position or a non-civil service position.

SECTION 14.3.2 PROMOTIONS TO BE MADE FROM ELIGIBLE LIST; METHOD OF CHOOSING; NO PERSON ELIGIBLE TO BE PASSED OVER MORE THAN TWICE IN PREFERENCE TO ANOTHER APPOINTMENT

(Amended by O-796; O-3529)

Promotions in the Fire Department and in the Police Department shall be made only from the eligible list. All officers or members below the rank of Chief shall be chosen or promoted by the Chief of the Department whenever a list of eligibles shall be furnished by the Civil Service Commission. ~~In making such an appointment, for all positions other than division heads, the appointing officer must select from one of the three highest names on the list of eligibles and no person appearing on said list may be passed over more than twice in preference to some other appointment.~~

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14.4.2 DEPARTMENT HEADS APPOINTED BY THE CITY MANAGER

(Amended by O-2464; O-2621; O-3111; O-3224)

- a) ~~Building and Safety Director~~ **Community Development Director**
- b) ~~City Engineer~~ **Public Works Director**
- c) ~~City Librarian~~ **Community Services Director**
- d) ~~Director of Transportation~~ **Transit Director**
- e) ~~Fleet Services Director~~ **General Services Director**
- f) Fire Chief
- g) ~~Information Systems Director~~ **Communications and Information Technology Director**
- h) ~~Park and Recreation Director~~
- i) ~~Personnel Manager~~
- j) ~~Planning Director~~
- g) Police Chief
- k) ~~Street Maintenance Superintendent~~
- l) ~~Water System Superintendent~~

14.5.12 PRISONERS; LABORING ON PUBLIC WORKS

(Added by O-558)

Every person confined in the City jail under a judgment rendered in a criminal action, in a court of competent jurisdiction, ~~shall~~ **may** be required to perform labor on the public works, ways and equipment of the City under the direction of the Chief of Police.

14.7.2 APPOINTMENT OF CHIEF OR FIRE MARSHALL IN CHARGE OF BUREAU

The Chief or Fire Marshall in charge of the Bureau of fire Prevention shall be appointed by the Fire Chief Engineer. His appointment shall continue during good behavior and satisfactory service.

SECTION 14.8.7 - POWERS AND DUTIES OF EMPLOYEE RELATIONS COMMITTEE

(Amended by O-2652)

The Employee Relations Committee of the Civil Service Commission shall have the following duties and powers:

- a) To determine in disputed cases, or otherwise to approved appropriate representation units
- ~~b) To investigate charges of unfair employee relations practices of the Article, and upon proper notice, to take such action as the Committee deems necessary to effectuate the polices of this Article, included, but not limited to, the issuance of cease and desist orders.~~
- b) To consider and decide issues relating to rights, privileges, and duties of a recognized employee organization in the event of a merger, amalgamation or transfer of jurisdiction between two or three recognized employee organizations.
- c) Assignment of new classifications: Each newly established classification shall be proposed to the Employee Relations Committee for assignment to an appropriate representation unit by the City Manager or his designee, after appropriate prior notification and consultation with registered and recognized employee organizations. If a registered or recognized employee organization challenges the assignment, the Employee Relations Committee shall hold a public hearing to consider and decide the issue of assignment to an appropriate representation unit in the manner prescribed by 14.8.11. If there is not challenge, the classification shall be assigned to an appropriate unit by the Employee Relations Committee.
- d) To take such other action, upon proper notice, as the Committee deems necessary to effectuate the policies of the Article.

~~SECTION 14.8.25 UNFAIR EMPLOYEE RELATIONS PRACTICES~~

- a) ~~It shall be an unfair employee relations practice for the City:~~

 - 1) ~~To interfere with, restrain, or coerce employees in the exercise of the rights recognized or granted in this Article:~~
 - 2) ~~To dominate or interfere with the formation of any employee organization or contribute financial support to it, provided that the City may permit the use of City facilities, make payroll dues deductions, and permit employees who are officers or representatives of employee organizations to confer with City officials during working hours without loss of time or pay, subject to applicable regulations;~~
 - 3) ~~To refuse to meet and confer in good faith with representatives of recognized employee organizations on matters within the scope of representation.~~

- b) ~~It shall be unfair employee relations practice for employee organizations or their representatives of members:~~

 - 1) ~~To interfere with, restrain or coerce employees in the exercise of the rights recognized or granted in this Article;~~
 - 2) ~~To refuse to meet and confer in good faith with City officials on matters within the scope of representation when the employee organization involved has been certified as a recognized employee organization.~~

- e) ~~With respect to the impasse procedures set forth in Sec. 14.8.24 of this Article, it shall be an unfair employee relations practice for the City or a recognized employee organization to fail or refuse to cooperate with any mediators or fact finders involved.~~
- d) ~~Charges of violations of this Section or of this Article, or of applicable rules or regulations may be initiated by a management representative, or by a representative any employ organization. Such charges shall be filed in writing with the Employee Relations Committee. Each charge so filed shall be processed in accordance with the rules and regulations of the Employee Regulations Committee.~~
- e) ~~If the Committee's decision is that the City has engaged in an unfair employee relations practice or has otherwise violated this Article or any rule or regulation issued thereunder, the Committee shall direct the City to take appropriate corrective action. If compliance with the Committee's decision is not obtained within the time specified by the committee, is shall so notify the other party, which may then resort to its legal remedies.~~
- f) ~~If the decision is that an employee organization or its representatives or members have engaged in an unfair employee relations practice, or have otherwise violated this Article or any rule or regulation issued thereunder, the Committee shall direct the offending party to take appropriate corrective action. If compliance with the Committee's decision is not obtained within the time specified by the Committee, it shall so notify the City Manager~~

~~who may then take appropriate action, subject, however, to appeal to the Committee by the affected party.~~

SECTION 14.12.8 ELIGIBILITY FOR PROMOTIONAL EXAMINATIONS

No person shall be eligible to take either said promotional examination unless actually in the City employee at the time of the examination or on a leave of absence and the employee has completed six (6) months of actual service after permanent appointment. **Any employee who has received a less than standard evaluation, or has had a disciplinary suspension, within twelve month time frame prior to the close of the application period shall not be eligible to take a promotional examination. In addition, an employee that is already an incumbent in the classification that is being tested for shall not be eligible to compete in said promotional examination.**

SECTION 14.12.11. INSPECTION OF EXAMINATION PAPERS.

The examination papers written by an applicant shall be open to inspection by the applicant or an agent authorized by the applicant for a period of thirty (30) **calendar** days after the date of promulgation of the eligible list, and the applicant shall be informed of the separate ratings if requested.

Examination papers of applicants are not subject to inspection by the public nor by other applicants, and the references and oral rating sheets shall be deemed confidential and shall not be open to inspection by the applicant nor by the public.

SECTION 14.12.12. APPEALS.

An applicant may, within ten (10) **calendar** days of the promulgation of an eligible list by the ~~Civil Service Commission~~ **Civil Service Manager** appeal in writing from any part of the examination but no appeal shall be considered unless the appellant states specific reasons for appealing. All appeals and all correspondence relating thereto shall be referred to the Civil Service Commission for consideration.

In considering an appeal, the Commission may permit the appellant to be heard and after

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consideration of the entire matter the Commission shall make its decision and determine the final rating of the applicant, which determination shall be final for all purposes.

SECTION 14.17.2. CERTIFICATION.

(Amended by O-3334; O-3350; O-3405; O-3411; O-3463; O-3511)

- a) Upon receipt of a requisition for certification of names to fill a vacancy, except when filling a vacancy in a department head or division head position, the Civil Service ~~Commission~~ **Manager** shall certify to the appointing authority the names of the three (3) highest ranking eligibles on the promotion eligible list (or a lesser number if the list contains less than three names) for the class from which the appointment is to be made. **Whenever a vacancy is to be filled from a promotional list for a department head or division head position, the Civil Service Manager shall certify the five (5) highest ranking eligibles on the promotional list (or a lesser number if the list contains less than five (5) names) for the class from which the appointment is to be made. The Civil Service Manager will certify one (1) additional name for each additional vacancy to be filled from that same requisition.**
- b) Whenever certification is made from an open eligible list, ~~or certification is made to fill a department head or division head position,~~ the Civil Service ~~Commission~~ **Manager** shall certify to the appointing authority the names of the five (5) highest ranking eligibles and the names of all eligibles who, on the basis of whole scores, are tied with the fifth highest eligible certified **shall certify the five highest ranks and all of the eligibles with the same final score shall be placed on the same rank. Scores are to be rounded to the nearest whole number for all eligibles. The Civil Service Manager will certify one (1) additional rank for each additional vacancy to be filled from that same requisition.**
- c) Upon receipt of a requisition for certification of names to fill one (1) or more vacancies in the position of Police Officer or Firefighter, the Civil Service Commission shall certify to the appointing authority a minimum of five (5) names for the first vacancy. The Civil Service ~~Commission~~ **Manager** shall certify to the appointing authority one (1) additional name for each additional vacancy to be filled from that same requisition.

Certification shall be made on the basis of ~~ranks~~ **bands** and all names within a ~~rank~~ **band** shall be certified together. The first shall ~~rank~~ **band** consist of all eligibles whose whole scores are equal to or greater than ninety (90). Should certification of the first ~~rank~~ **band** result in less than the required minimum, then the second and/or third ~~ranks~~ **bands** shall also be certified until the requisite number names are available. The second ~~rank~~ **band** shall consist of all eligibles with whole scores equal to or greater than eighty (80), but less

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than ninety (90); and the third rank **band** shall consist of all eligibles with whole scores equal to or greater than seventy (70) but less than eighty (80).

~~Should less than five (5) names be available for certification for appointment to the position of Police Officer or Firefighter, the appointing authority may make an appointment from such list or may make a temporary appointment until at least five (5) names are furnished.~~

SECTION 14.17.4. OBJECTIONS AND SUBSTITUTIONS.

(Added by O-3486)

In case objection is made by the appointing officer to any of the persons certified for reasons stated in ~~SECTION 14.16.8~~ **SECTION 14.17.7 (a)** hereof, the Civil Service Commission may investigate the charges and, if the objection is sustained, shall remove the name of such person from the eligible list and substitute the next highest name.

SECTION 14.17.7. DISQUALIFICATION OF APPLICANTS OR REMOVAL OF NAMES FROM ELIGIBLE LISTS.

(Added by O-3486)

a) The Civil Service ~~Administrator~~ **Manager** may refuse to have an applicant examined, or after examination to certify an eligible, or may remove an eligible from the eligible list:

- 1) Who is found to lack any of the published preliminary requirements established by the Civil Service Commission for the examination for the position or employment for which he applies;
- 2) Who, **if after attempts by the City to provide a reasonable accommodation**, is physically or mentally so disabled as to be rendered unfit for the performance of the **essential** duties of the position to which he seeks appointment;
- ~~3) Who is addicted to the use of intoxicating liquors or use of drugs;~~
- 3) Who has been found guilty of any felony or a misdemeanor involving moral turpitude;
- 4) Who has been dismissed, or has resigned in lieu of dismissal, from a position in either public or private employment for cause;
- 5) Who has made a false statement of any material fact, or who practices or has attempted to practice any deception or fraud in his application, in his declarations or in securing his eligibility or appointment;
- 6) Who has been certified three (3) times for permanent employment and has not been offered an appointment;

7) Who is judged to have demonstrated unsuitability for City employment through past behavior which adversely affects work performance such as, but not limited to, theft from prior employers, poor attendance record, history of disciplinary problems, or poor driving record;

b) In determining disqualifications under this Section the Civil Service ~~Administrator~~ Manager shall consider:

1) Evidence of rehabilitation; and,

2) The relationship of the disqualifying cause to the class of work for which the person has applied.

Decisions of the Civil Service ~~Administrator~~ Manager shall be in writing and may, within fifteen (15) calendar days of the date of written notice, be appealed to the Civil Service Commission for final determination. The burden of proof of good character in all cases shall be upon the applicant.

SECTION 14.20.1 REGULAR APPOINTMENT FOLLOWING PROBATIONARY PERIOD

a) Except as provided in Section ~~14.5.3~~, 14.4.3, all original and promotional appointments shall be tentative and subject to a probationary period of six (6) months (longer periods of probation may be established for specified by a Memorandum of Understanding between the City and the appropriate recognized employee organization). The initial appointment to employment as a firefighter shall not be deemed complete until a period of probation of one (1) year has elapsed. Promotions to higher rank shall not be deemed complete until a period of probation of one (1) year has elapsed.

b) Permanent employee shall mean an employee who has successfully completed a probationary period and has been retained as hereinafter provided. Where specifically provided for by MOU between Management and the appropriate employee organization, this definition shall include employee appointed to fill positions on a less than full-time basis.

SECTION 14.23.1 REINSTATEMENT TO ~~ELIGIBLE LIST~~

a) Any person who has held a permanent position in the classified service and has completed his probationary period, and who has subsequently separated from his employment with the City ~~without fault or delinquency, may at the request of the appointing authority and with the consent of the Civil Service Commission,~~ may be certified on an eligible list for reinstatement in classification in which he or she held at the time of separation. ~~reinstated~~ within one (1) year

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from the date of such separation. to the bottom of the open eligible list for any classification in which he previously had permanent status. **However, any employee who has received a less than standard evaluation, or has had a disciplinary suspension, within twelve month time frame prior separation shall not be eligible for reinstatement.**

b) Reinstatements to eligible lists for Police and Fire Safety classes shall be limited to the entrance level classes.

14.23.2 INACTIVE STATUS

~~A Memorandum of Understanding between Management and a recognized employee organization may provide for a specific program of inactive status which will allow a recently terminated employee to be added to an open eligible list certification for a subsequent vacancy.~~

SECTION 14.40.1. LEAVE WITHOUT PAY.

a) A leave of absence without pay not to exceed five (5) working days (3 shifts in the Fire Department) may be granted to any employee by the department head.

b) A leave of absence without pay for more than five (5) working days, but not to exceed ~~sixty (60) days~~ eight (8) months may be granted to any employee by the City Manager.

~~e) A leave of absence without pay for more than sixty (60) days may be granted to any employee by the Civil Service Commission after review of the request by the City Manager.~~

(c) As required by State and Federal Law, the City will provide family leave for eligible employees.

d) A leave of absence without pay may be granted to any employee by the Civil Service Commission for the purpose of accepting a temporary appointment to a State, County, Federal or local agency.

SECTION 14.47.2 DEPARTMENT HEADS, PEACE OFFICERS, FIREFIGHTERS

- a) Nothing in this Article shall be deemed to supersede any provisions of the City Charter regarding the City Manager's disciplinary powers over department heads.
- b) Nothing in this Article shall be construed to limit any of the rights granted to a peace officer by the Public Safety Officers Procedural Bill of Rights Act.
- c) **Nothing in this Article shall be construed to limit any of the rights granted to a firefighter by the Firefighters Procedural Bill of Rights Act.**

SECTION 14.47.3. SUSPENSION FOR FELONY CHARGE.

- a) In the event that an employee is charged by information or indictment with a felony, he may be suspended without pay by his department head with the approval of the City Manager until the case has been finally decided by the Court.
- b) In making such determination, the department head and City Manager shall consider the following factors:
 - 1) The relationship between the nature of the felony charged and the duties of the accused employee;
 - 2) The relative effect of retention or suspension on the other employees of the City and the effect on the public;
 - 3) The criminal record of the employee, if obtainable, and his non-criminal record while an employee of the City.
- c) If the employee is suspended, the department head and City Manager shall specify to the employee which factor(s), set forth in subsection b), were relied upon in making their decision. The employee shall have the right to appeal the decision of the department head and City Manager to the Civil Service Commission within five (5) **calendar** days after suspension.

SECTION 14.47.4. RELIEF FROM DUTY PENDING INVESTIGATION.

In the event that an employee is accused of a crime, misconduct, incompetency, inefficiency or failure to observe the rules and regulations of his department or of the City, the department head, with the approval of the City Manager, may relieve such accused person of duty with pay or reassign such accused person to other duty within the department pending investigation of such accusation for a period not to exceed ninety (90) **calendar** days.

SECTION 14.47.8. REQUEST FOR REVIEW.

(Amended by O-3100)

Any employee who has been suspended, demoted or discharged, may, within ten (10) **calendar**

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days following the date of service of written notice of the imposition of discipline as provided by this Code, file a written request with the Civil Service Commission for a review of such suspension, demotion or discharge.

SECTION 14.47.9. REVIEW BY COMMISSION.

(Amended by O-3260)

- a) Upon a written request filed by an employee who has been disciplined under this Article, the Civil Service Commission shall set a date for and hold a hearing, at which time it shall hear evidence for and against the requesting party. Hearings shall be open to the public unless requested to be closed by the employee.
- b) Such hearing shall be initiated within fifteen (15) **calendar** days after receipt by the Commission of the accused employee's request for review; provided, however, that such period may be extended by the Commission with the consent of all affected parties.
- c) The Commission may make or cause to be made such investigation of the matter in question as it deems necessary.
- d) Hearings may be informally conducted, and the rules of evidence need not apply.

SECTION 14.47.12. DECISION OF COMMISSION.

(Amended by O-3100)

- a) The Civil Service Commission shall render its decision in writing along with any findings of fact and conclusions of law, within fifteen (15) **calendar** days after the matter has been submitted, and shall certify such decision within three (3) **calendar** days thereafter to the City Manager.
- b) The Civil Service Commission in making its decision may uphold or reverse in whole or in part the action of the department head in suspending, demoting or discharging the employee; provided, however, that in no case may the Civil Service Commission increase any penalty imposed by the department head. The Commission may reduce a discharge to a suspension not to exceed sixty (60) **calendar** days.
- c) Such decision may contain whatever orders are deemed appropriate by the Commission, and the entire decision shall be binding upon all parties, subject to a right of appeal to the City Council by the appealing employee.

SECTION 14.47.13. APPEAL TO CITY COUNCIL.

Upon written appeal to the City Council filed with the City Clerk within ten (10) **calendar** days of the decision of the Civil Service Commission, a hearing shall be conducted pursuant to the provisions of Section 14.47.14. before the City Council at the earliest reasonable time as is consistent with the City Council's agenda. The appealing and responding parties may be present at the Council hearing and may present written and oral arguments in their favor, and answer any questions from the members of the City Council.

SECTION 14.47.14. RECORD ON APPEAL.

a) The City Council may uphold or reverse in whole or in part the decision of the Civil Service Commission; provided, however, that in no case may the City Council increase any penalty imposed by the Commission. The City Council may reduce a dismissal to a suspension of not to exceed sixty (60) **calendar** days.

b) The City Council's deliberations shall be limited to a review of the record on appeal. The record on appeal shall consist only of the following:

- 1) The written charges, if any, against the employee and his answer, if any;
- 2) The transcript of the hearing, or any part thereof (if all interested parties so stipulate, the partial transcript shall be sufficient);
- 3) All other minutes of the Commission and the hearing officer, if any, relating to the matter;
- 4) Any exhibits admitted into evidence at the hearing;
- 5) Any memoranda of law submitted to the officer or to the Commission;
- 6) The decision of the Commission, including its findings of fact and conclusions of law and recommendations, if any;
- 7) The written exceptions of the parties.

c) In all cases, the City Council shall be bound by the findings of fact of the Civil Service Commission, unless in the opinion of the Council there is no substantial evidence to support the Commission's decisions. In the event that there is no substantial evidence to support the Commission's decision, the case shall be returned to the Commission for additional proceedings.

d) Any decision of the City Council to reverse or modify a decision of the Commission shall not be effective unless made by a majority vote of the entire membership of the Council.