

# SAN MATEO CONSOLIDATED FIRE DEPARTMENT

## Personnel Rules and Regulations

# TABLE OF CONTENTS

<b>SECTION 1 - GENERAL PROVISIONS.....</b>	<b>1</b>
1.01    The Competitive Service .....	1
1.02    Personnel Administration .....	1
1.03    Purpose of the Personnel Rules .....	2
1.04    No Contract Formed .....	3
1.05    Amendments or Revisions to the Personnel Rules .....	3
1.06    Severability .....	3
1.07    Employee Responsibility .....	3
<b>SECTION 2 - DEFINITIONS.....</b>	<b>4</b>
<b>SECTION 3 - PERSONNEL RECORDS .....</b>	<b>8</b>
3.01    Personnel File .....	8
3.02    References and Release of Information in Personnel Files .....	8
3.03    Access to Personnel File.....	8
3.04    Changes in Personal Information.....	9
3.05    Medical Information .....	9
3.06    Recruitment Records .....	9
3.07    Payroll Records.....	9
3.08    Destruction of Records .....	9
<b>SECTION 4 - APPLICATIONS AND EXAMINATIONS .....</b>	<b>11</b>
4.01    Announcements .....	11
4.02    Applications.....	11
4.03    Character of Examinations .....	11
4.04    Promotional Examinations .....	11
4.05    Conduct of Examinations .....	11
4.06    Disqualification .....	12
4.07    Shared Recruitment and Examinations.....	12
4.08    Notification of Examination Results and Review of Examination Records...	13
<b>SECTION 5 - EMPLOYMENT LISTS .....</b>	<b>14</b>
5.01    Establishment of Employment Lists.....	14
5.02    Request for Employment List.....	14
5.03    Order of Certification .....	14
5.04    Duration of Employment Lists .....	14

5.05	Removal of Names From Employment Lists .....	15
5.06	No Guarantee of Employment .....	15
<b>SECTION 6 - APPOINTMENTS .....</b>		<b>16</b>
6.01	Interview and Selection .....	16
6.02	Background Investigation.....	16
6.03	Documentation of Authorization to Work in the United States.....	16
6.04	At-Will Employment .....	16
6.05	Types of Appointments .....	17
<b>SECTION 7 - MEDICAL STANDARDS.....</b>		<b>19</b>
7.01	Post-Offer, Pre-Employment Medical Examination.....	19
7.02	Fitness for Duty Examinations .....	19
7.03	Standards for All Medical Examinations.....	19
<b>SECTION 8 - PROBATIONARY PERIOD.....</b>		<b>21</b>
8.01	Nature, Purpose and Duration .....	21
8.02	Extension of Probationary Period.....	21
8.03	Recommendation for Permanent Status.....	21
8.04	Rejection of Probationary Employee.....	22
8.05	Promotional Probationary Period .....	22
8.06	Promotional Period Following Reemployment .....	22
<b>SECTION 9 - PERFORMANCE EVALUATIONS .....</b>		<b>23</b>
9.01	Purpose and Policy .....	23
9.02	Timing of Evaluations .....	23
9.03	Performance Evaluation Process .....	23
<b>SECTION 10 - TRANSFERS AND VOLUNTARY DEMOTIONS .....</b>		<b>25</b>
10.01	Transfers .....	25
10.02	Voluntary Demotions.....	25
<b>SECTION 11 - RESIGNATIONS, JOB ABANDONMENT AND REINSTATEMENTS .....</b>		<b>26</b>
11.01	Resignation .....	26
11.02	Failure to Report to Work (Job Abandonment).....	26
11.03	Reinstatement .....	26
<b>SECTION 12 - MEDICAL SEPARATIONS.....</b>		<b>28</b>
12.01	Medical Separation Procedures .....	28
12.02	Right to Use Accrued Leaves .....	28
12.03	Rehire of Employee Retired or Separated for Disability .....	28

<b>SECTION 13 - CALPERS DISABILITY RETIREMENT APPLICATION.....</b>	<b>29</b>
<b>BY SAFETY MEMBERS.....</b>	<b>29</b>
13.01    Initial Determination.....	29
13.02    Appealing an Initial Determination .....	29
13.03    Hearing on Appeal.....	29
<b>SECTION 14 DISCIPLINARY ACTION .....</b>	<b>31</b>
14.01    Disciplinary Action.....	31
14.02    Types of Disciplinary Action.....	31
14.03    Causes for Discipline.....	31
14.04    Reprimands .....	32
14.05    Disciplinary Action Other Than a Reprimand.....	32
14.06    Appeal of a Disciplinary Action.....	33
14.07    Firefighters' Procedural Bill of Rights .....	34
<b>SECTION 15 - LAYOFFS AND REDUCTIONS IN FORCE.....</b>	<b>35</b>
15.01    Layoff Policy .....	35
15.02    Notification.....	35
15.03    Order of Layoff.....	35
15.04    Employee Options .....	35
15.05    Reinstatement List .....	36
15.06    Reinstatement .....	36
15.07    Layoff of At-Will Employees.....	37
<b>SECTION 16 - CLASSIFICATION PLAN.....</b>	<b>38</b>
16.01    Purpose of the Plan .....	38
16.02    Administration of Classification Plan.....	38
16.03    Class Specifications.....	38
16.04    Interpretation of Class Specifications.....	39
16.05    Reclassifications .....	40
<b>SECTION 17 - COMPENSATION .....</b>	<b>41</b>
17.01    Salary Plan .....	41
17.02    Salary Upon Initial Appointment .....	41
17.03    Advancement through the Salary Plan .....	41
17.04    Salary Upon Promotion .....	41
17.05    Salary Upon Transfer.....	42
17.06    Salary Upon Demotion .....	42

17.07	Salary Upon Reclassification.....	42
17.08	Salary Upon Reinstatement or Reemployment.....	42
17.09	Timing of Salary Adjustments.....	42
17.10	Conversion Factors.....	43
<b>SECTION 18 - HOURS OF WORK AND OVERTIME.....</b>		<b>44</b>
18.01	Work Week or Work Period Defined.....	44
18.02	Overtime Policy.....	44
18.03	Overtime Defined.....	44
18.04	Attendance Records.....	45
<b>SECTION 19 - EQUAL EMPLOYMENT OPPORTUNITY AND REASONABLE ACCOMMODATIONS.....</b>		<b>46</b>
19.01	Equal Employment Opportunity.....	46
19.02	Reasonable Accommodations.....	46
<b>SECTION 20 - HARASSMENT, DISCRIMINATION AND RETALIATION.....</b>		<b>47</b>
<b>PREVENTION.....</b>		<b>47</b>
20.01	General Policy.....	47
20.02	Definitions.....	47
20.03	Reporting Procedures.....	48
20.04	Investigation Procedures.....	48
20.05	Violations of this Rule.....	49
<b>SECTION 21 - LEAVES OF ABSENCES.....</b>		<b>50</b>
21.01	General.....	50
21.02	Family Medical Leave.....	50
21.03	Pregnancy Disability Leave or Accommodation.....	50
21.04	Military Leave.....	50
21.05	Sick Leave.....	50
21.06	Jury or Witness Duty.....	51
21.07	Unpaid Personal Leave.....	52
21.08	Other Leaves.....	53
<b>SECTION 22 - EMPLOYEE ETHICAL STANDARDS.....</b>		<b>54</b>
22.01	General Policy.....	54
22.02	Expectations.....	54
22.03	Gifts on Behalf of the Department.....	55
22.04	Use of Public Property.....	55
22.05	Political Activities.....	55

22.06	Outside Employment .....	55
22.07	Procedures .....	57
<b>SECTION 23 - ANTI-NEPOTISM POLICY .....</b>		<b>58</b>
23.01	Policy .....	58
23.02	Definitions .....	58
23.03	Employees Who Are Spouses and Registered Domestic Partners .....	59
23.04	Employees Who Are Immediate Family Members .....	59
23.05	Employees Who Are in Personal Relationships .....	60
23.06	Policy Exceptions .....	60
23.07	Appeals .....	60
23.08	Immediate Family Members of Elected Officials .....	61
<b>SECTION 24 - STANDARDS OF CONDUCT .....</b>		<b>62</b>
24.01	Drug and Alcohol Free Workplace.....	62
24.02	Tobacco Prohibited.....	62
24.03	Mandated Reporting .....	62
24.04	Anti-Fraternization .....	62
24.05	Department Computers, Telephones and Electronic Media.....	63
24.06	Workplace Violence .....	63
24.07	Use of Department Property and Vehicles .....	63
24.08	Other Conduct.....	63
<b>SECTION 25 - SAFETY .....</b>		<b>64</b>
25.01	General Statement.....	64
25.02	Employee Responsibilities .....	64
25.03	Incident Reporting .....	64
<b>SECTION 26 - GRIEVANCES.....</b>		<b>65</b>
26.01	Grievance Definition .....	65
26.02	Grievance Procedure.....	65
26.03	General Conditions of Grievances.....	67

## **SECTION 1 - GENERAL PROVISIONS**

### **1.01 The Competitive Service**

In order to establish an equitable and uniform procedure for dealing with personnel matters; to attract to Department's service the best and most competent persons available; to assure that appointments and promotions of employees will be based on merit and fitness; and to provide a reasonable degree of security for qualified employees, the Department adopts a personnel system as provided by these rules.

All positions of employment in the service of the Department except for those specifically excluded by these rules shall be included in the competitive service. The competitive service shall include all offices, positions and employments in the service of the Department except:

- (a) The Fire Chief and his/her Assistant/Deputy Chiefs;
- (b) Elective officers;
- (c) Members of appointive boards, commissions, and committees;
- (d) All department heads;
- (e) Persons engaged under contract to supply expert, professional, technical or any other services;
- (f) Volunteer personnel, such as volunteer firefighters;
- (g) General Counsel;
- (h) Emergency employees who are hired to meet the immediate requirements of an emergency condition, such as extraordinary fire, flood, or earthquake which threatens life or property;
- (i) Employees, other than those listed elsewhere in this section, who are not regularly employed in permanent positions (e.g., limited-term or temporary employees);
- (j) Any position excluded from the competitive service by the Board of Directors.

All employees who are not in the regular or competitive service are considered to be at-will employees who serve at the pleasure of the appointing authority and may be removed from service at any time, with or without cause, and, unless provided by law, without any right of appeal.

Unless otherwise specifically provided, these Personnel Rules shall apply to all positions of the Department.

### **1.02 Personnel Administration**

The Fire Chief is the Personnel Officer. The Fire Chief shall administer the Department's personnel system and may delegate any of the responsibilities and authorities to another designee. The Fire Chief or designee shall:

- (a) Interpret and administer all provisions of these Rules and Regulations and all related Board actions, resolutions, policies and procedures concerning personnel matters of the Department.
- (b) Prepare and recommend to the Board personnel rules and regulations, including revisions and amendments thereto.
- (c) Prepare or cause to be prepared a position classification plan, including classification specifications, a compensation plan, and recommended revisions of the plans.
- (d) Manage and implement the recruitment and selection process for employee selection.
- (e) Manage the Department's compensation policy.
- (f) Provide for the publishing or posting of notices of tests for positions in the classified service; the receipt and evaluation of applications thereof; the conducting and grading of tests; the certification of a list of persons eligible for appointments to the appropriate position in the competitive service; and the performance of any other duty that may be required to administer the personnel system.

The Personnel Officer shall issue such additional administrative policies and procedures as he/she deems necessary to effect these Rules and Regulations. Such additional administrative policies and procedures shall be in writing and shall be made available to employees and employee organizations.

Departmental rules and regulations, if not in conflict with these rules or applicable laws, ordinances, resolutions or relevant Memoranda of Understanding, shall become effective upon the Personnel Officer's approval. Employees and recognized employee organizations shall be informed of and have an opportunity to discuss proposed policies and procedures that are within the scope of representation, within a reasonable time prior to the proposed effective date, unless an emergency or urgent situation requires enactment without prior notice. In that event, organizations shall still be informed and may meet within a reasonable time thereafter.

### **1.03 Purpose of the Personnel Rules**

The objectives of these Rules are to facilitate efficient and economical services to the public and to provide for a fair and equitable system of personnel management in the municipal government. To this extent, the following Rules and Regulations reflect the principles and standards of the Department's personnel system and describe other terms and conditions of employment.

These Rules set forth in detail those procedures which ensure similar treatment for those who compete for original employment and promotion, and define the obligations, rights, privileges, benefits, and prohibitions which are placed upon all employees in the regular service of the Department.



At the same time, within the limits of administrative feasibility, latitude shall be given to the Fire Chief, or his/her designee, in the interpretation of these Rules and Regulations. In the event of a conflict between these rules and a Memorandum of Understanding that is in effect, the Memorandum of Understanding shall prevail.

**1.04 No Contract Formed**

These Rules do not create any contract of employment express or implied, or any rights in the nature of a contract.

**1.05 Amendments or Revisions to the Personnel Rules**

The Department's Personnel Officer shall prepare and present proposed amendments or revisions to these Rules to the Board for their consideration. Except in cases of emergency, reasonable advance written notice shall be given to employees and affected recognized employee organizations when proposed changes and amendments directly relating to matters within the scope of representation as defined by the Meyers-Milias-Brown Act, Government Code Sec. 3500, *et seq.*, are being considered for presentation to the Board for adoption. Such affected employee organizations shall have an opportunity to meet and confer. In emergency situations, organizations shall still be informed and may meet within a reasonable time thereafter. At the time of the Board's consideration, any interested party may appear and be heard. All proposed amendments or revisions shall become effective only upon approval by resolution of the Board.

**1.06 Severability**

If any provision of these rules, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of these rules, 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.

**1.07 Employee Responsibility**

Each employee is responsible for reading and complying with these Rules.

## **SECTION 2 - DEFINITIONS**

The following definitions apply throughout these Rules unless the context clearly requires another meaning.

- (1) “APPOINTING AUTHORITY” shall mean the Fire Chief for all positions with the Department, except that the appointing authority for the position of Fire Chief shall be the Board of Directors.
- (2) “APPOINTMENT” shall mean the offer to and acceptance by a person to a position of employment with the Department.
- (3) “BANDING” shall mean a scoring method used to group test scores in a specific range. Candidates whose scores fall within the same range are grouped together and are considered to have the same score.
- (4) “BASE PAY” shall mean the monthly pay range and salary established by the Department salary plan for each classification.
- (5) “BOARD” used alone shall mean the Board of Directors for the Department.
- (6) “BREAK IN SERVICE” shall refer to the period of time when an employee was separated from employment with the Department before the individual was re-hired by the Department.
- (7) “CLASS” or “CLASSIFICATION” shall refer to a position or group of positions that are sufficiently similar in duties, responsibilities, authority and qualifications that the same descriptive title and rate of pay can be applied.
- (8) “CLASS SPECIFICATION” shall refer to a written description of duties, responsibilities and desirable knowledge, skills and qualifications for employment in a classification.
- (9) “COMPENSATION” shall refer to the salary, wage, allowances and all other forms of valuable consideration paid to any employee by reason of service in any position.
- (10) “COMPETITIVE SERVICE” means all positions of employment in the service of the Department, except those specifically excluded by Section 1.01 of these Rules.
- (11) “CONTINUOUS EXAMINATION” refers to an open competitive examination which is administered periodically and as a result of which names are placed on an employment eligibility list.
- (12) “CONTINUOUS SERVICE” shall mean service in the employment of the Department in any classification since original regular appointment, excluding any time

prior to a break in service. Time spent in a temporary or limited term position shall not be considered as part of an employee's continuous service. An employee's length of continuous service shall be adjusted by the entire period of any authorized unpaid leave of absence except military leave, and by the employee's full-time equivalency.

(13) "DAY" shall mean a calendar day unless otherwise stated.

(14) "DEMOTION" shall mean the movement of an employee from a position in one class to a position in another class having a lower maximum salary. A demotion may be voluntary or involuntary.

(15) "DEPARTMENT" shall mean the San Mateo Consolidated Fire Department.

(16) "DISMISSAL" shall mean the termination of employment of an employee for cause.

(17) "DOMESTIC PARTNER" or "REGISTERED DOMESTIC PARTNER" shall have the same meaning as defined in California Family Code section 297.

(18) "ELIGIBLE" shall mean any applicant who receives a final passing rating and whose name appears on the employment list.

(19) "EMPLOYEE" means any person in the employ of the Department who is engaged on a full or part-time or per diem basis in the service of the Department.

(20) "EMPLOYMENT LIST" means a list of qualified persons who are eligible for potential employment with the Department.

(21) "EXAMINATION" refers to the process of recruitment for employment with the Department, including the testing, selection and evaluation process used to measure the relative fitness of persons applying for positions with the Department.

(22) "EXEMPT POSITION" means a position exempted from the competitive service.

(23) "FULL-TIME EMPLOYEE" means an employee who works at least forty (40) hours per week or the minimum number of hours determined by the Board to constitute full-time employment for a position or classification.

(24) "MINIMUM QUALIFICATIONS" shall mean the qualifications of education and experience, and other qualifications to be measured by written tests, practical tests, and qualifications appraisal interviews, or a combination of such as prescribed for a given class in the Department's classification plan.

(25) "PART-TIME MERIT EMPLOYEE" refers to an employee who works less than full-time.

- (26) “PERMANENT EMPLOYEE” shall mean an employee who has permanent status in the competitive service.
- (27) “PERMANENT STATUS” shall mean the status of an employee who is lawfully retained in a position after completion of any applicable probationary period provided in these Rules.
- (28) “PERSONNEL OFFICER” shall mean the Fire Chief or his/her designee.
- (29) “POSITION” shall mean a group of current duties and responsibilities assigned or delegated by competent authority and requiring the employment of one person on either a part-time or full-time basis. A position may be occupied or vacant.
- (30) “PROBATIONARY PERIOD” shall refer to a working testing period that is considered an integral part of the examination, recruiting, testing and selection process during which an employee is required to demonstrate fitness for the position to which the employee is appointed by actual performance of the duties of the position.
- (31) “PROBATIONER” shall mean an employee who has not completed the probationary period associated with his/her position.
- (32) “PROMOTION” shall mean the movement of an employee from a position in one class to an existing vacant position in another class which has a higher maximum rate of pay.
- (33) “RECLASSIFICATION” refers to the change in the assignment of a position from an existing class to a new class, resulting in a change in the classification plan. The change in assignment may be done by raising the position to a higher class, reducing the position to a lower class, or by moving the position to another class at the same level as measured by the change in the kind, difficulty and responsibility of the work performed.
- (34) “REEMPLOYMENT” refers to the reappointment, without examination, of a former employee who was laid off or demoted in lieu of being laid off and whose name appears on a reinstatement list.
- (35) “REEMPLOYMENT LIST” shall mean a list of persons in a particular class who have probationary or permanent status, and who have been legally laid off.
- (36) “REINSTATEMENT” refers to the reappointment, without examination, of a former employee of the Department who resigned in good standing to the last class the employee previously held. To be eligible for reinstatement, the individual must have completed any probationary period associated with the position held.
- (37) “RESIGNATION” shall mean the termination of employment of an employee made at the request of the employee.

- (38) “SALARY ADVANCEMENT” shall mean an increase in salary within the salary range prescribed for the class by the Department salary plan.
- (39) “SALARY RANGE” refers to the minimum, maximum and intermediate salary steps that are assigned to a class and the positions within a class.
- (40) “SENIORITY” refers to the employee’s most recent length of continuous service with the Department in a regular position, adjusted for any periods during which the employee was on unpaid status as provided by these Rules.
- (41) “SEPARATION” refers to any termination of employment including but not limited to death, dismissal, lay-off, resignation, or retirement.
- (42) “SUSPENSION” refers to the temporary loss of pay and loss of work of an employee for disciplinary purposes.
- (43) “TRANSFER” refers to either: (a) the movement of an employee from a position in one class to a position in the same class, but on another shift or to another station; or (b) the movement of an employee from one position to a position in another class with the same salary range and with the same minimum qualifications.
- (44) “WAIVER” shall mean the relinquishing of any right for consideration to appointment and assignment to a particular position.
- (45) “WEEK” refers to a period of seven consecutive calendar days.

## **SECTION 3 - PERSONNEL RECORDS**

### **3.01 Personnel File**

A personnel file shall be established and maintained in the Personnel Division for each employee. An employee's personnel file will contain only material that is necessary and relevant to the administration of the Department's personnel program. Personnel files are the property of the Department, and access to the information they contain is restricted.

In accordance with the Firefighter Procedural Bill of Rights Act, an employee will be given notice of any adverse comment to be placed in a firefighter's personnel file. An employee will be given thirty (30) days to respond in writing to the adverse comment. Any written response must be provided to the Personnel Division, which will attach the response to the adverse comment for inclusion in the personnel file.

Personnel files shall be confidential and access to the file or specific information therein shall not be available to the general public or unauthorized employees without the written approval of the subject of the file. Access to personnel files shall be strictly limited to only those with a legitimate need to have such information for Department business reasons or as required by laws.

### **3.02 References and Release of Information in Personnel Files**

Upon request, the Department will release to the public information about its employees as required by the Public Records Act. The Department will not disclose personnel information if it believes doing so would constitute an unwarranted invasion of personal privacy.

Responses to credit or employment references shall be limited to verification of name, position title, and dates of employment unless the employee authorizes in writing the release of additional information. The home address and phone number of an employee shall not be released except on the written authorization of the employee.

### **3.03 Access to Personnel File**

An employee may submit a request to review his/her own personnel files (with the exception of investigative data pertaining to a possible criminal offense and letters of reference or other items which may be withheld from review as provided by law). Upon receiving a request, the Personnel Division will make arrangements for the employee to review documents. Any review must be done under supervision of Personnel Division staff. Any employee may also, by his/her written authorization, permit his/her representative to review his/her personnel file under the supervision of Personnel Division staff.

An employee may request in writing that the Personnel Officer remove erroneous data from his/her file. The Personnel Officer shall give his/her decision as to the removal of such data within 10 calendar days, subject to approval of the Personnel Officer. Under no circumstances is the employee or the employee's representative permitted to add to or remove any document or other item from the employee's personnel file during the inspection.

#### **3.04 Changes in Personal Information**

Each employee is responsible for promptly notifying the Personnel Division of any changes in relevant personal information, including mailing address, telephone number, persons to contact in an emergency, and number and names of dependents.

#### **3.05 Medical Information**

All medical information about an employee or applicant is kept separately and is treated as confidential, in accordance with applicable state or federal law.

Access to employee or applicant medical information shall be strictly limited to only those with a legitimate need to have such information for Department business reasons. In the case of an employee with a disability, managers and supervisors may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations.

The Department will not provide employee or applicant medical information to a third party, except as authorized by law (e.g., in response to a subpoena or as necessary in the event of a medical emergency), unless authorized by the employee or applicant in writing.

#### **3.06 Recruitment Records**

Records gathered during any recruitment process shall be filed and maintained in confidentiality by the Personnel Division. Access to recruitment records shall be strictly limited to only those with a legitimate need to have such information for Department business reasons or as required by law.

#### **3.07 Payroll Records**

The Finance department shall maintain such records that are necessary for payroll and retirement system reporting purposes. Access to payroll and retirement system records shall be limited to those with a legitimate need to have such information for Department business reasons or as required by law.

#### **3.08 Destruction of Records**

All records relating to personnel, including correspondence, applications, examination reports, and all other personnel records, may be destroyed pursuant to the laws of the State

of California and the Department's Retention Policy as it may be adopted and amended by the Department's Board.



## **SECTION 4 - APPLICATIONS AND EXAMINATIONS**

### **4.01 Announcements**

Whenever an examination is to be given for a position, the Personnel Manager shall prepare a job announcement that specifies the position title, essential functions of the job, nature of duties, minimum qualifications, rate of compensation, application procedure and other pertinent information for the position. All announcements for examinations shall be publicized by such methods as the Personnel Manager deems appropriate.

### **4.02 Applications**

Applications for a Department position shall be made only in the format as provided by the Personnel Division. All applications must be completed and signed by the person applying, unless otherwise provided for in the job announcement.

### **4.03 Character of Examinations**

The selection techniques used in the examination process shall be impartial and relate to those subjects which, in the opinion of the Fire Chief or designee measure the relative capabilities of the persons examined to execute the duties and responsibilities of the class to which they seek appointment. Examinations shall consist of selection techniques which will test the qualifications of candidates such as, but not necessarily limited to, achievement and aptitude tests, review of work history and/or education, written tests, personal interviews, performance tests, physical ability tests, skill tests, evaluation of daily work performance, work samples, medical tests, psychological tests, successful completion of prescribed training, or any combination of these or other tests. Applicants meeting the minimum qualifications are not guaranteed advancement through any portion or phase of the selection process. Examinations shall be designed to provide equal opportunity to all candidates by being based on an analysis of the essential requirements of the class and covering only factors related to such requirements.

### **4.04 Promotional Examinations**

Promotional examinations shall be conducted on order of the Personnel Officer whenever practical and consistent with the best interest of the Department. Employees are encouraged to prepare for, and compete in, promotional examinations. Only permanent employees who meet the requirements set forth in the announcement for the promotional examination may apply. The promotional examination may include any of the selection techniques mentioned in Section 4.03, or any combination of them.

### **4.05 Conduct of Examinations**

The Department may contract with any competent agency or individual for the preparing and/or administering of examinations. In the absence of such a contract, the Fire Chief or

designee shall see that such duties are performed. The Fire Chief or designee shall arrange for the use of buildings and equipment for the conduct of examinations.

#### **4.06 Disqualification**

The Personnel Officer or designee may reject any application that is incomplete or was not submitted by the specified filing date. Applications may also be rejected if the applicant:

- a. Is found to lack one or more of the minimum qualifications established for the examination or position for which he or she applies.
- b. Has been dismissed from employment for reasons which indicate unfitness for performing the duties and responsibilities of the class or position;
- c. Has used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment.
- d. Has directly or indirectly obtained, or attempted to obtain, information regarding examinations to which an applicant he or she was not entitled.
- e. Does not satisfactorily complete any element of the examination process.
- f. Has made false statements of any material fact, or practiced, or attempted to practice, any deception or fraud in his or her application, on the examination or in securing eligibility.
- g. Is unable to perform the essential functions of the class or position, with or without reasonable accommodation if disabled.
- h. Has otherwise violated provisions of these Rules.
- i. For any material cause which in the judgment of the Fire Chief or designee would render the applicant unsuitable for the position, including but not limited to a prior resignation from the Department, termination from the Department, or prior disciplinary action.

When an application is rejected, the applicant may be notified of the rejection. At the discretion of the Fire Chief or designee, an applicant may be asked to correct an application that is missing required information; provided, however, that all filing deadlines are met by the applicant.

#### **4.07 Shared Recruitment and Examinations**

The Department may use eligibility lists established as a result of a shared recruitment or testing process with one or more agencies to substitute for any of all of the process that would otherwise be administered by the Department. In any case where the Personnel Officer or designee determines that such action is in the best interest of the Department, such eligibility lists provided may be treated as partially prepared eligibility lists with the applicants, whose names are on such lists, subject to further testing before the resulting eligibility lists are used to make an appointment to Department service.

#### **4.08 Notification of Examination Results and Review of Examination Records**

Each applicant shall be given notice of his or her final band or score and, if successful, his or her placement on the employment eligibility list.

A candidate shall have the privilege of inspecting a copy of his/her test answers for any written examination, except that inspection shall be permitted of standardized or copyrighted tests or of a test not scored by an absolute standard.

Written examinations subject to inspection shall be made available for inspection by candidates for three (3) days after notice of written examination results are mailed or delivered, for the purposes of detecting whether any clerical or other error has been made in the scoring of papers. No further inspection of written examination results shall be permitted after such period of time.

Any error in scoring, if called to the attention of the Fire Chief or designee within three (3) days after notification of examination results, shall be corrected. Such corrections shall not, however, require invalidation of appointments previously made.

Regulations concerning the giving of notice, the type of inspection, who may inspect, and the time, place, manner and frequency of inspection may be established to prevent the abuse of this privilege.

## **SECTION 5 - EMPLOYMENT LISTS**

### **5.01 Establishment of Employment Lists**

After each examination, the Personnel Officer shall prepare an employment eligibility list consisting of the names of candidates who qualified in the selection process. Multiple employment lists for a single class are permitted. When multiple employment lists exist, an eligible shall be considered based on his/her overall rating as opposed to when he/she was placed on an employment eligible list.

### **5.02 Request for Employment List**

Whenever a vacancy is to be filled other than by transfer or demotion, the appointing authority shall make a request to the Personnel Division for the names of eligibles on a certified employment list for the applicable classification to which the vacant position belongs. The Personnel Division will provide the appointing authority with an appropriate certified list.

### **5.03 Order of Certification**

Whenever a vacancy is to be filled in the competitive service from an employment list, the proper name or names of eligibles shall be certified from such lists in the following order:

- a. Reemployment list
- b. Promotional list
- c. Open competitive list

### **5.04 Duration of Employment Lists**

Open competitive employment lists shall remain in effect for one year, unless sooner exhausted or abolished by the Personnel Officer or designee. The list may be extended by action of the Personnel Officer or designee for a period of up to one year. In no event shall an open competitive employment list remain in effect for more than two years.

Promotional employment lists shall remain in effect for one year, unless sooner exhausted or abolished by the Personnel Officer or designee. The list may be extended by action of the Personnel Officer or designee for a period of up to one year, but in no event shall a promotional employment list remain in effect for more than two years.

In cases where open competitive examinations are held continuously, names resulting from such examinations shall remain on the employment lists for a period of two years.

### **5.05 Removal of Names From Employment Lists**

The Personnel Officer may remove the name of an eligible from an employment list:

- a. On evidence that the eligible cannot be located; or
- b. On receipt of statement from the eligible in writing that he or she no longer desires consideration for the position with the Department; or
- c. If the eligible fails to respond within 72 hours after any notice sent to him or her requiring an answer, or fails to keep the Personnel Division advised of his or her correct address and telephone number; or
- d. If an offer of probationary appointment to the class for which the employment list was established has been declined by the eligible; or
- e. If the eligible is on a promotional list and has resigned or has been terminated from Department employment; or
- f. If the eligible is disqualified on the medical examination or another portion of the examination process; or
- g. Other good and sufficient reason.

An eligible shall be notified in writing of any decision to remove his or her name from an employment list. Notice will be mailed to the eligible's last known address. It shall be the sole responsibility of those on an eligibility list to provide the Department with information regarding any change of address or telephone number.

### **5.06 No Guarantee of Employment**

No person whose name appears on an eligibility list is guaranteed employment with the Department. The Fire Chief or designee may opt not to hire any and/or all persons whose names appear on an eligibility list.

## **SECTION 6 - APPOINTMENTS**

### **6.01 Interview and Selection**

The appointing authority or designee to whom a list of eligibles is provided shall interview eligibles as he/she deems necessary. The appointing authority shall make the selection from the names certified and shall notify the appointing authority and the Personnel Division of his/her selection for potential appointment.

Any eligible on the certified employment list for a classification may be considered for appointment. Such consideration of eligibles shall be termed “rule of the list” such that any individual on the list may be appointed. However, no person on an employment list shall be considered for appointment unless all other eligibles with a higher or equal employment list ranking have been interviewed by the appointing authority or designee.

### **6.02 Background Investigation**

As part of the examination process and in the process of considering any eligible on the employment list for appointment, it shall be Department policy to obtain as much job-related/pre-employment information as possible, within the confines of the law, from current and/or former employers of potential new Department employees before a formal employment offer is extended. The Personnel Officer or designee may conduct such investigation of an eligible’s training, experience, and mental, physical and personal fitness as may be necessary to determine suitability for appointment. Eligibles may be required to submit fingerprints as part of any background investigation conducted by the Department.

### **6.03 Documentation of Authorization to Work in the United States**

Any person appointed to a position will be required to submit documentation of his/her authorization to work in the United States.

### **6.04 At-Will Employment**

Except as defined as being within the competitive service or as defined in an employment agreement, all appointments, regardless of type, are at-will appointments which may be terminated with or without cause and with or without notice at any time by either the employee or the Department. Nothing in these Personnel Rules or in any document or statement shall limit the right to terminate employment at-will. Only the Board of Directors may approve or authorize an employment agreement and any such employment agreement must be in writing.

## **6.05 Types of Appointments**

Appointments shall be in the categories established below:

- A. Regular Appointments – Appointment to a position which works an on-going schedule, whether part-time or full-time. Regular appointments that are included in the competitive service must serve a probationary period as provided in these Rules.
- B. Provisional Appointments - The appointing authority, on recommendation of the Personnel Officer, may make a provisional appointment of a person who possesses the minimum qualifications established for a particular class, in the absence of an available employment list. Such appointment may be in effect until an employment list is established and an appropriate hire is made. A provisional employee is an at-will employee who may be removed at any time without the right of appeal or hearing. If a provisional employee is selected for a full time position with the Department in the same classification, the time served as the provisional appointee may be counted as time toward the fulfillment of the required probationary period, provided there is no break in service. A provisional employee must compete for the position to which he/she was provisionally appointed in order to secure the regular position. No special credit shall be given to a provisional employee in competing for a regular position for the service rendered under a provisional appointment.
- C. Temporary Appointments - The Personnel Officer may authorize a temporary appointment for when personnel services are required to be rendered for a limited term, in a non-regular position. The Personnel Officer shall further have the authority to terminate any temporary employee at any time without cause and to alter or modify any of the previously prescribed terms, conditions and time period of such employment. Temporary employees shall not have the right to appeal decisions made by the Department affecting their employment. Temporary employees are not entitled to earn, accrue, or participate in any Department employee benefit plans or receive paid or unpaid leave, except as required by law. A temporary employee may be terminated at any time without right of appeal or recourse to the grievance procedure. No person shall achieve probationary or regular status as a result of appointment to a temporary position and such service shall not be counted as fulfillment of any part of probationary requirements in the event of subsequent appointment to a permanent position by the Department.
- D. Limited Term Appointment - Appointment of a person to a position that is to perform a specific assignment or a position that is necessary for a limited period of time that does not exceed three (3) years. Circumstances under which a limited term appointment may be made include, but are not limited, to: (a) a position that is created for a project(s) or work that is expected to be completed within three (3) years; (b) a position that is funded by grant funds of three (3) or less years in

duration; (c) a position that is funded by moneys from capital or enterprise funds that may be unavailable after three (3) years; or (d) a time-limited trainee position. A limited term appointment may also be made when there is a temporary vacancy due to the long-term approved leave of a regular employee. For the purposes of this provision, "long-term approved leave" shall mean a leave of absence expected to be at least three (3) months in duration. Individuals employed in a limited term appointment are serving in an at-will capacity and may be removed at any time without the right of appeal or hearing. Limited term appointments shall be considered exempt from the competitive service.



## **SECTION 7 - MEDICAL STANDARDS**

### **7.01 Post-Offer, Pre-Employment Medical Examination**

A post-offer, pre-employment medical examination may be required for applicants for certain positions. Any such examination will be administered by, or approved by, a physician, or physicians, designated by the Department prior to appointment. Applicants shall be entitled to only one medical examination, unless further medical examinations have been recommended in writing to the Personnel Division by the approving physician designated by the Department.

Any pre-employment physical will be done in accordance with the standards set forth in the Americans with Disabilities Act or other applicable law to determine whether the employee can perform the essential duties of the position, with or without reasonable accommodation. If the results of a pre-employment examination will result in the disqualification of an applicant, the applicant will be notified and given an opportunity to submit an independent medical opinion for consideration before a final decision on disqualification is made.

No appointment may be made official until a positive determination is made that the applicant can perform the essential functions of the position, with or without reasonable accommodation.

### **7.02 Fitness for Duty Examinations**

An employee may be required to undergo a physical and/or mental evaluation (i.e., a medical examination) to determine his/her capacity to perform the duties of his/her position.

An employee may be required to submit to an examination by a competent medical practitioner whenever there is a reasonable suspicion that an employee is physically or mentally unfit to perform the duties of his/her position, may subject others to infection or may subject the employee or third persons to the risk of injury.

The Department also may require a medical examination and/or medical release before an employee may return to work following an absence due to illness, injury, or surgery.

A standard medical examination also may be required before an employee is appointed to a classification with more rigorous medical standards.

### **7.03 Standards for All Medical Examinations**

Any medical examinations done pursuant to this rule will be done in accordance with the standards set forth in the Americans with Disabilities Act or other applicable law to determine whether the employee can perform the essential duties of the position, with or

without reasonable accommodation. Applicants and employees appointed to or seeking appointment to positions assigned fire suppression duties may be required to demonstrate that they can safely and efficiently perform the essential functions of the position, with or without reasonable accommodation, by meeting National Fire Protection Association Standards, as those standards may be amended from time to time.

## **SECTION 8 - PROBATIONARY PERIOD**

### **8.01 Nature, Purpose and Duration**

The probationary period shall be an essential part of the examination process, and shall be utilized to determine whether an individual appointed to a position in the competitive service is able to effectively perform the duties of the position. The probationary period is designed to encourage the most effective adjustment of an employee newly appointed to a position in the competitive service, and specifically for dismissing any employee on probationary status whose performance does not meet the required standards.

The initial length of probation for full-time and part-time employees appointed to positions in the competitive service shall be for a period of not less than twelve (12) months of actual service. For sworn Fire employees, probation shall be not less than eighteen (18) months of actual service. The probationary period after a promotion shall begin on the date the employee is appointed to the new class. The need for a probationary period following transfer, reinstatement, reemployment or demotion, shall be in accordance with these Rules.

The probationary period of an employee who is absent from work, temporarily reassigned to perform work in another classification, or temporarily assigned to perform modified or light duty will be automatically extended by the same amount of time as the absence or reassignment, so as to result in a probationary period of active working duty performing the full scope of duties of the regular position for the required 12 months (or 18 months for sworn Fire personnel) of active duty service.

### **8.02 Extension of Probationary Period**

The appointing authority or designee may extend the probationary period of an employee up to, and not to exceed, an additional six (6) months to provide for additional time to determine the suitability of the employee for continued employment in the regular position. In the event that an extension of initial or promotional probation is required, an employee shall be evaluated and counseled monthly by the process set forth in Section 8 below. Notice of any extension will be provided in writing to the employee in advance of completion of the probationary period.

### **8.03 Recommendation for Permanent Status**

An employee will attain permanent status on the day following the date ending the probationary period, provided that the Personnel Division has received from the Fire Chief or designee a statement in writing that the services of the employee during the probationary period have been satisfactory and that the employee is recommended to be continued in the service. An employee whose appointment is to be made permanent shall be so notified. No probationary employee shall achieve status as a permanent employee until permanent status is authorized by the Fire Chief.

#### **8.04 Rejection of Probationary Employee**

During the probationary period, an employee may be rejected at any time without the right of appeal or recourse to the grievance procedure. Delivery in person or depositing of a postage-paid, first-class letter in the U.S. mail addressed to the employee's address of record shall constitute notice. Unless an appointment is made permanent at the close of the probationary period, the services of the employee shall be terminated.

#### **8.05 Promotional Probationary Period**

The serving of a probationary period shall not, of itself, prevent an employee from being appointed to a position in a higher class, provided he is certified from an appropriate employment list for such higher class. If an appointment is made in this manner during a probationary period, the probationary period for the new class or position to which he is appointed shall begin with the date of appointment to such latter class of position.

An employee who has previously completed the requisite probationary period associated with his/her initial appointment with the Department and who is rejected during a subsequent probationary period for a promotional appointment shall be reinstated to the former position from which the employee was appointed; except that if the employee is dismissed for cause during the promotional probationary period, the employee shall not be entitled to such reinstatement rights.

An employee who has not previously completed the requisite probationary period before seeking promotion and who is rejected during the probationary period for the promotional appointment shall be released from Department service. The employee will have no right to reinstatement to the former position from which the employee was appointed.

#### **8.06 Promotional Period Following Reemployment**

A probationer who is laid off during the probationary period shall, in the event of reemployment, be required to complete the balance of the probationary period.

## **SECTION 9 - PERFORMANCE EVALUATIONS**

### **9.01 Purpose and Policy**

Evaluation of work performance provides the employee and management of the Department with an assessment of the individual's development over the employee's entire period of employment. Performance evaluations also establish performance expectations and development plans for future performance.

It is the policy of the Department that regular reports shall be made on all employees regarding efficiency, competency, conduct and merit. The responsibility shall be borne by the Fire Chief and his/her subordinate managers and supervisors. It shall be the responsibility of the Personnel Division to provide and prescribe the forms and procedures to be used in performance evaluations and to assist in the training of supervisor personnel so that performance evaluations will be carried out in a sound, effective and timely manner.

### **9.02 Timing of Evaluations**

Performance evaluation reports should be rendered at least once annually for all regular employees, except that those employees serving in a probationary status should be evaluated at least quarterly during the probationary period. An employee may be evaluated at more frequent intervals at the discretion of the Fire Chief or designee.

All performance evaluations shall be submitted in writing to the Personnel Division and reviewed by the Personnel Officer. The performance evaluation, a copy of which is to be provided to the employee, shall indicate the progress, capacity, and suitability of the employee. An employee who receives an overall rating of anything less than satisfactory should be re-evaluated within three (3) months of receiving such rating.

Nothing in this section shall preclude the Department from rejecting an employee serving in a probationary status at any time, with or without cause for such rejection.

### **9.03 Performance Evaluation Process**

Each employee evaluation shall be discussed by the supervisor with the employee and signed by the employee being evaluated at the time of counseling and evaluation. The employee's signature on the evaluation does not indicate agreement with its contents. If an employee refuses to sign, such refusal shall be noted, initialed by the employee, and witnessed. Appropriate department management shall review and sign the form before routing it to the Personnel Officer for review. The original evaluation shall be filed in the employee's official personnel file. A copy of the approved performance evaluation form shall be provided to the employee.

An employee who disagrees with his/her evaluation may file a written rebutting statement within thirty (30) calendar days after the evaluation. The rebutting statement shall be

placed in the employee's official personnel file with the performance evaluation to which it refers. Performance evaluations shall not be subject to grievance or appeal.

## **SECTION 10 - TRANSFERS AND VOLUNTARY DEMOTIONS**

### **10.01 Transfers**

A transfer of an employee from a position in one department, division or assignment of the Department to a position of the same class in another department, division or assignment of the Department may be made at any time by the appointing authorities concerned. No increase or advance in salary shall be made unless the regulations governing salary advancement are complied with.

Whenever possible, an employee being transferred from one position to another position in the same class or a comparable class will receive five business days' notice. The transfer process shall not be used to effectuate a promotion or demotion, each of which may be accomplished only as provided in these Rules. No person shall be transferred to a position for which he/she does not possess the minimum qualifications. Probationary employees transferred from one department to another in the same classification will continue their original probation period. A change from a lower to a higher classification shall not be considered a transfer but shall be considered a promotion and shall be subject to appropriate examination procedures.

At the request of an employee who has one year of continuous service in the competitive service, and with the approval of the Personnel Officer, an employee may be transferred from a position in one class to a position in another class with the same salary range involving substantially the same level of duties and responsibilities but requiring additional or different special requirements. The Personnel Officer may require the employee to demonstrate in an examination that he/she possesses the additional or special requirements. A transfer from one class to another class shall require the service of a new probationary period unless such probationary period is waived by the appointing authority.

The decision as to whether or not to transfer an employee shall be at the sole discretion of the appointing authority and is not subject to any grievance or appeal procedure.

### **10.02 Voluntary Demotions**

At the request of an employee who has one year of continuous service with the Department, and with the approval of the Personnel Officer, an employee may be demoted from a position in one class to a position in another class with a lower salary range involving the same type of duties and responsibilities. The Personnel Officer may require the employee to demonstrate in an examination that he or she possesses any additional or special requirements. A demotion from one class to another shall require the service of a new probationary period unless such probationary period is waived by the appointing authority.

**SECTION 11 - RESIGNATIONS, JOB ABANDONMENT AND  
REINSTATEMENTS**

**11.01 Resignation**

An employee who wishes to resign in good standing shall submit notice of his or her resignation in writing to the appointing authority or their supervisor at least two weeks prior to the separation date. Resignations are irrevocable and shall be promptly forwarded to and recorded by the Personnel Division. Resignations shall become effective upon receipt by the Department, with the necessity of any written acceptance, unless the employee is notified otherwise.

Failure of an employee to provide notice as described in this section shall be entered on the service record of an employee and may be cause for denying future employment with the Department.

**11.02 Failure to Report to Work (Job Abandonment)**

An employee will be deemed to have voluntarily resigned employment through job abandonment if the employee is absent without authorized leave, fails to report to work when directed, and/or fails to return following the conclusion of an authorized leave of absence. If the employee has attained permanent status, the employee will receive notice of the Department's intent to terminate for job abandonment, an opportunity to respond, and a final notice of termination for job abandonment before being separated under this provision. Employees separated from employment for job abandonment automatically waive all rights of appeal under these Rules.

At the discretion of the Fire Chief or designee, an employee who is separated from service for job abandonment will be reinstated with such charge removed from the employee's record upon presentation of justification for absence, such as severe accident, severe illness, false arrest, or mental or physical impairment, within three (3) days of the effective date of his/her separation.

**11.03 Reinstatement**

A regular employee who resigns in good standing, upon written request and the submission of a current employment application, may be considered for reinstatement to a vacant position in the same or comparable class in the Department service without examination within twelve (12) months of the effective date of such resignation. A comparable position is one with the same or similar duties and/or requires substantially the same basic qualifications. Reemployment lists shall take precedence over reinstatements. Final approval of any reinstatement shall reside with the Fire Chief; it shall not be mandatory to reinstate a former employee. Reinstatement may be contingent upon successfully passing a medical examination as required by these rules. If reinstatement is to a position other than previously occupied, a probationary period may be required as set forth in these Rules.



Reinstated employees shall not receive credit for former employment in computing pay, benefits or seniority.

## **SECTION 12 - MEDICAL SEPARATIONS**

### **12.01 Medical Separation Procedures**

An employee who becomes unable to perform the essential functions of his or her position due to a disability or other medical condition may be medically separated from employment.

Prior to medical separation, the Department will determine what accommodations, if any, can be reasonably provided to the employee in accordance with Department policy and any applicable law. In addition, if appropriate, the Department may consider an employee's potential eligibility for disability retirement benefits.

Before medically separating a regular employee in the competitive service who has completed his/her probationary period, the Personnel Officer or designee will provide the affected employee with notice of the proposed decision to medically separate. The notice shall: (1) inform the employee of the action intended, the reason for the action and the proposed effective date; and (2) inform the employee of the right to respond to the proposed action and to whom to respond. After review of any timely response, the Personnel Manager or designee shall notify the employee of any final action to be taken and the effective date of that action.

A medical separation of an employee in the competitive service who has completed his/her probationary period may be appealed pursuant to the disciplinary appeals procedures contained in these Rules. An at-will employee, or an employee who has not completed the probationary period for his/her regular appointment has no right to appeal or grieve a medical separation.

### **12.02 Right to Use Accrued Leaves**

Vacation, sick leave, administrative leave, compensatory time off, holiday, paid time off or other accrued leave may not be used to extend an employee's employment separation date beyond the employee's last day of actual work, unless approved by the Fire Chief. Use of sick leave shall be authorized only upon proper medical verification that the use of such leave complies with the rules pertaining to the use of sick leave.

### **12.03 Rehire of Employee Retired or Separated for Disability**

An employee who is retired or otherwise separated on account of disability may apply for reinstatement pursuant to Section 11.03 with the Department if the medical condition causing the disability improved such that the employee may perform the essential functions of the position for which he/she is applying, with or without reasonable accommodation.

**SECTION 13 - CALPERS DISABILITY RETIREMENT APPLICATION  
BY SAFETY MEMBERS**

**13.01 Initial Determination**

The Board of Directors has delegated responsibility for making initial determinations on an application for disability retirement benefits for a safety member to the Fire Chief. In accordance with that delegation, upon receipt of an application for disability retirement benefits from a safety member, an initial determination will be made by the Fire Chief upon medical and other available evidence. The applicant may be required to submit to a medical examination in order for the Fire Chief to obtain sufficient information to make a determination.

The Fire Chief's determination will address the following: (1) whether the applicant is incapacitated from the performance of duty pursuant to the standard for disability retirement under the Public Employees' Retirement Law (PERL); and (2) if the applicant is determined to be incapacitated, whether the cause of such incapacitation was industrial or non-industrial.

The Fire Chief's determination shall be made within six (6) months of the date of the request for such determination from CalPERS unless this time requirement is voluntarily waived in writing by the applicant. The Department will provide written notice of its determination to CalPERS and applicant.

**13.02 Appealing an Initial Determination**

An applicant may appeal the Fire Chief determination on the issue of incapacity by requesting a written request for a hearing on this issue directly to the Fire Chief. An applicant may appeal the Fire Chief's determination as to the issue of causation by filing an appeal with the Workers' Compensation Appeals Board (WCAB) for a Finding of Fact determination as to causation. Any appeal of the Department's initial determination on an application must be filed within thirty (30) calendar days of the date on the notice of determination. The Fire Chief's determination shall not be subject to review under the grievance procedure.

**13.03 Hearing on Appeal**

If the applicant requests a hearing on the issue of incapacity, the hearing shall be held in conformity with the Administrative Procedures Act. When an applicant requests a hearing, the Department will notify CalPERS. The Department will also notify the Office of Administrative Hearings and will request a hearing date and a pre-hearing conference with an Administrative Law Judge. The applicant will be informed of the hearing date, time and location. The hearing shall be conducted before the Administrative Law Judge. The hearing shall be recorded. The burden of proof is on the applicant to demonstrate incapacity.

Following the hearing the Administrative Law Judge will issue a written proposed decision. The proposed decision will include a determination of issues, findings and summary of facts. The proposed decision will be reviewed and acted upon by the Board. The Board will either:

1. Adopt the proposed decision as its own decision.
2. Make changes in the proposed decision and adopt it as its own decision.
3. Reject the proposed decision and in doing so either:
  - a. Make its own decision without hearing additional evidence; or
  - b. Make its own decision following the acceptance of additional evidence; or
  - c. Remand the case back to the administrative law judge to take additional evidence and to issue a new or revised proposed decision.

The Board's decision and findings shall be served by the Department on the applicant and the applicant's designated representative, if any, by U.S. Postal Service mail (with at least mail delivery confirmation) or by personal service. The Department shall also notify CalPERS of the decision. The Board's decision shall be final and is not subject to review under the grievance procedure.

## **SECTION 14 DISCIPLINARY ACTION**

### **14.01 Disciplinary Action**

The Fire Chief or designee may discipline any employee in the Department service; provided however, that no employee in the competitive service who has attained permanent status will be disciplined except for cause. Employees who are excluded from the competitive service or who have not completed probation are considered at-will employees, serving at the pleasure of the Fire Chief and are not entitled to appeal or grieve any disciplinary action taken against them.

### **14.02 Types of Disciplinary Action**

Disciplinary action may take the form of a verbal reprimand, written reprimand, reduction in pay, demotion, suspension or dismissal.

### **14.03 Causes for Discipline**

Employees in the Department service may be disciplined for reasons that include, but are not limited to:

- a. Absence without leave, or excessive absenteeism or tardiness.
- b. Abuse of leave, which includes taking sick leave without a medical certification when required or using sick leave for unauthorized purposes.
- c. Upon conviction of any criminal act.
- d. Conduct unbecoming of any employee in public service.
- e. Dishonesty involving employment, including falsifying time sheets or any other official Department record, or making untruthful statements orally or in writing.
- f. Incompetence, which is an inability to comply with the minimum standards for an employee's position for a significant period of time or unsatisfactory job performance.
- g. Inefficiency or neglect of duty, including the failure to perform duties required of an employee's position.
- h. Insubordination, including violation of any lawful or reasonable regulation or order made and given by a superior officer or encouraging an employee to violate any such order.
- i. Violating the Department's policy against alcohol or drugs in the workplace.
- j. Negligence or willful damage to public property or waste of public supplies or equipment.
- k. Discourteous or disrespectful treatment of the public, other employees or Department officials.
- l. Working overtime without authorization.
- m. Outside employment not specifically authorized by the Department.

- n. The conviction of a crime having a nexus to Department employment. The record of conviction shall be conclusive evidence of the conviction. The Personnel Division may inquire into the circumstances surrounding the commission of the crime in order to fix or assist in fixing the degree of discipline. A pleas or verdict of guilty, or a conviction showing a plea of nolo contendere, is deemed to be a conviction within the meaning of this provision.
- o. Violation of any of the provisions of these Rules, or any Department resolution, ordinance, code, administrative procedure, operating procedure, or safety rule or regulation.
- p. Willful and/or intentional acts of fraud or misrepresentation in obtaining benefits from the Department or under any Department sponsored plan, including workers' compensation benefits
- q. Violation of any conflict of interest resolution or policy.
- r. Violation of the Department's policy against harassment, discrimination or retaliation in the workplace.
- s. Possession of weapons on Department property, unless authorized.

#### **14.04 Reprimands**

An employee whose work or conduct is unsatisfactory may be verbally reprimand and/or provided a written reprimand. A written summary of a verbal reprimand or a written reprimand may be placed in the employee's personnel file. The employee will be asked to acknowledge receipt of or sign the written confirmation of verbal reprimand or the written reprimand. An employee's refusal to acknowledge receipt or to sign shall be noted, initialed, and witnessed before filing in the personnel file. The notice, hearing and appeal processes provided in this Rule shall not apply to a written confirmation of a verbal reprimand or to a written reprimand. An employee who disagrees with the contents of the summary of a reprimand or a written reprimand may file a written rebuttal statement within thirty (30) days. Such written rebuttal shall be placed in his/her personnel file with the written confirmation of the verbal reprimand or the written reprimand.

#### **14.05 Disciplinary Action Other Than a Reprimand**

##### **A. Notice of Proposed Discipline and Opportunity to Respond**

Written notice of any proposed suspension, demotion, reduction in pay, or discharge shall be given to a regular employee in the competitive service. Such notice shall include all of the following:

1. A statement of the level of discipline proposed;
2. The charge(s) upon which the proposed discipline is based;
3. A summary of the facts upon which the charges are based;
4. A copy of all written materials, reports or documents upon which the proposed discipline is based;

5. Notice of the employee's right to respond to the charges within 7 calendar days from the date of the notice, either in person during an informal conference or by providing a written response or both;
6. Notice of the employee's right to have a representative of his/her choice at the informal conference should he/she chose to respond orally; and
7. Notice that the failure to respond by the time specified shall constitute a waiver of the right to respond prior to the imposition of discipline.

If the employee exercises his/her right to respond to the notice, the individual proposing the discipline or his/her designee shall consider the employee's response before taking any final disciplinary action. The employee's failure to make an oral response at the arranged conference time, or the employee's failure to cause his or her written response to be delivered by the date and time specified in the notice of proposed disciplinary action, constitutes a waiver of the employee's right to respond prior to the imposition of discipline. In that case, the proposed disciplinary action will be imposed on the date specified.

### **B. Final Disciplinary Action**

After receiving the employee's timely written or oral response, or after expiration of the time to provide a written or oral response, the individual who proposed discipline will either: (1) dismiss the notice of proposed disciplinary action; (2) modify the notice of intended disciplinary action; or (3) impose the proposed disciplinary action. The individual who proposed disciplinary action will provide notice of his/her decision. This notice shall include all of the following:

1. The level of discipline, if any, to be imposed and the effective date of the discipline;
2. The specific charges upon which the discipline is based;
3. A summary of the facts upon which the charges are based;
4. A copy of all written materials, reports or documents upon which the discipline is based; and
5. A statement of the nature of the employee's right to appeal.

In all cases in which discipline is imposed, a copy of the final notice shall be placed in the employee's personnel file.

### **14.06 Appeal of a Disciplinary Action**

An employee in a position in the competitive service who has attained permanent status may appeal a suspension, demotion, disciplinary reduction in pay, or discharge by requesting an administrative hearing before the Board. The provisions of this section shall not apply to reductions in pay which are part of a general plan to reduce salaries and wages or to eliminate positions.

A disciplinary appeal must be submitted, in writing, to the Fire Chief or designee within seven (7) days after the date of the final notice of discipline. When an appeal is received,

it shall be the duty of the Fire Chief or designee to inform each member of the Board, as well as all other affected persons, of the appeal.

The Board may either hear the appeal or assign the appeal to be heard by a hearing officer. If the Board designates a hearing officer to hear the grievance, the fees and expenses of the hearing officer will be borne by the Department. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Any decision by the hearing officer will be advisory to the Board.

If the Board has heard the matter, the Board shall render a decision within sixty (60) calendar days of the close of the hearing process. If the hearing is conducted by a hearing officer, the Board shall either affirm, set aside or modify the decision within sixty (60) calendar days of receipt of the hearing officer's advisory decision, except that if the Board takes no action within sixty (60) calendar days of receipt of the advisory decision, the advisory decision shall become final and binding. Any decision by the Board shall be final and binding on the parties.

All hearings shall be conducted in accordance with the Administrative Procedures Act. Any hearing conducted under this Rule shall be recorded. Whenever a hearing on a disciplinary appeal is to be held, unless incapacitated, the person submitting the appeal shall appear personally at the hearing.

Whenever any person who has requested a hearing resigns from Department employment or withdraws the appeal before final action has been taken, no further action shall be taken.

#### **14.07 Firefighters' Procedural Bill of Rights**

Nothing in these rules is intended to supersede the Department's obligations under the Firefighters' Procedural Bill of Rights Act.



## **SECTION 15 - LAYOFFS AND REDUCTIONS IN FORCE**

### **15.01 Layoff Policy**

Whenever the Fire Chief and/or Board determines in his/her/their sole discretion that it is necessary to abolish any position of employment, the employee holding that position may be laid off, transferred, or demoted without disciplinary action and without the right of appeal.

### **15.02 Notification**

An employee being laid off shall be given at least fourteen (14) days prior notice.

### **15.03 Order of Layoff**

In each class in the competitive service, employees shall be laid off in the inverse order of their seniority and according to employment status in the following order: temporary, regular part-time, probationary full-time, and regular full-time. In this section, probationary status means the probationary period required upon the initial employment with the Department leading to a regular position.

For purposes of layoff, seniority shall be defined as an employee's tenure in a class. When an employee retreats to a lower class, seniority for that class shall include the tenure of all higher classes.

Seniority includes time accrued in regular full-time and regular part-time service. In this chapter, length of service for regular part-time employment is calculated on a pro-rata basis. Employment in an appointment other than a regular position does not count in calculating seniority.

In cases where there are two or more employees with the same employment status and the same seniority date, such employees will be laid off on the basis of the last evaluation rating in the class, providing such rating has been on the file at least ninety (90) days and no more than twelve (12) months prior to lay off, as follows:

- First, all employees having ratings of less than minimum requirements;
- Second, all employees having ratings of meeting minimum standards; and
- Third, all employees having ratings of exceeds minimum standards.

### **15.04 Employee Options**

Whenever a regular or probationary employee has been notified that he/she will be laid off from his/her current position, the employee shall have the following options:

1. If an employee has held status in a lower classification, he/she may retreat to

that lower classification if the employee has more seniority than at least one of the incumbents in the lower class. If an employee has not held status in a lower class, then no retreat rights accrue to the employee. An employee exercising retreat rights must provide written notice to the Personnel Officer or designee within seven (7) days of receipt of notice of layoff. An employee retreating to a lower class shall be placed on the salary step representing the least loss of pay. An employee who does not timely exercise retreat rights will forfeit the ability to retreat to a lower class and will be laid off.

2. If an employee has not held status in a lower classification, or if such lower classification is occupied by a more senior employee, the employee may be eligible for transfer to a vacant position if the employee is qualified and capable of performing the duties of the vacant position as determined by the Fire Chief or designee. Employees who are transferred in lieu of layoff will be paid at the rate of pay for the new position at a step to be determined by the Fire Chief and shall serve a new probationary period. Any employee who does not accept a transfer within seven (7) days after receipt of notice of layoff will forfeit the ability to transfer and will be laid off.
3. Accepting layoff.

#### **15.05 Reinstatement List**

The names of all regular and probationary employees laid off or demoted (either through a transfer or exercise of retreat rights) in lieu of layoff shall be placed on a reinstatement list, provided their performance has been satisfactory. Said reinstatement list shall remain in effect for twelve (12) months, unless exhausted sooner.

Reinstatement lists shall take precedence over all other employment lists except that employees on such lists shall not have the right to displace working employees.

Failure to promptly respond to and accept a reinstatement offer within seven (7) days of the date of the offer shall result in removal from the reinstatement list. It shall be the employee's responsibility to advise the Department of the employee's current contact information.

Reinstatement will result in removal from the reinstatement list except when reinstatement is in a lower class.

#### **15.06 Reinstatement**

A former employee appointed from a reinstatement list shall be reinstated to the salary range and step held at the time of layoff and have the following benefits restored:

1. Accrued but unused sick leave.

2. Seniority at the time of layoff for vacation accrual and future reduction in force.

A former employee shall not accrue any benefits during the period of time he/she was on layoff.

**15.07 Layoff of At-Will Employees**

By definition, employment at-will may be terminated by either the employee or the Department at any time with or without cause and with or without notice. Nothing in this Rule shall require the Fire Chief to allow a displaced at-will employee to displace an employee in a lower class or require the Fire Chief to place the displaced at-will employee on a reinstatement list.

## **SECTION 16 - CLASSIFICATION PLAN**

### **16.01 Purpose of the Plan**

The classification plan provides a systematic arrangement and inventory of all Department positions. The classification plan shall consist of all classifications in the Department and a written job specification for each class. Positions with similar duties, authority, responsibility, and qualifications shall be grouped together in common classes for purposes of equity of standards in selection, transfer, demotion, promotion, and pay.

### **16.02 Administration of Classification Plan**

The Personnel Officer or designee shall ascertain and record the duties and responsibilities of all positions in the Department and shall recommend to the Board a classification plan for such positions, including any revisions or amendments to that plan. The classification plan or any revisions or amendments to that plan shall become effective upon adoption by the Board.

The classification plan shall consist of classes of positions defined by a written class specification that contains an appropriate title, examples of the duties and responsibilities involved, and the desirable qualifications of applicants for such positions. The classification plan shall be developed and maintained so that all positions which are substantially similar with respect to duties, responsibilities, authority and character of work are included within the same class and that the same salary range may be made to apply to all positions in the same class. No person shall be appointed to a position under a title not contained in the classification plan.

### **16.03 Class Specifications**

For each class established, official class specifications shall be maintained, including:

- a. The official class title.
- b. A definition of the class indicating, in terms of duties, responsibilities and/or place in the organization, the positions to be included in and excluded from the class.
- c. A statement of the minimum qualifications for determining the fitness and qualifications of employees for each class of position and for applicants for examinations, which may include education, experience, knowledge, skills, abilities, and personal and physical traits and characteristics.
- d. A statement of typical tasks to be performed by those holding positions allocated to the class.

- e. Any additional qualifications considered so desirable that any person considered for employment who possesses them may be given additional credit in the evaluation of his or her qualifications but shall not be considered a prerequisite to consideration for employment.

#### **16.04 Interpretation of Class Specifications**

The following principals shall be applied when interpreting specifications for the various classes of positions:

1. The specifications are descriptive only and not restrictive. They are intended to indicate the kinds of positions that should be allocated to the respective classes as determined by their duties, responsibilities and qualification requirements. Use of a particular expression or illustration shall not be held to exclude others not mentioned if such others are similar in kind or quality.
2. In determining the allocation of any position to a class, the specification shall be considered as a whole. Consideration is to be given to the general duties, the specific tasks, the responsibilities, the minimum and desirable qualifications and the relationships to other classes in order to obtain an inclusive picture of the kinds of positions that the class is intended to include.
3. The duties statement shall be construed as a general description of a kind of work usually performed by the incumbent of a position that is properly allocated to the class, and not as prescribing what the duties of any position shall be, nor as limited the expressed or implied power of the authority now or hereafter vested with the right to prescribe or alter the duties of any positions.
4. The typical tasks shall be construed as examples only, illustrative of the duties as outlined by the general statement. These examples are not intended to be complete or exclusive and the fact that the actual task performed by the incumbent of a position does not appear therein shall not be taken to mean that the position is necessarily excluded from the class, provided that the tasks constituting the main work or employment are duly covered by the general statement of duties. On the other hand, any one example of a typical task without relation to the general statement of duties and all other parts of the specification shall not be construed as determining whether a position should be allocated to the class.
5. The statement of minimum qualifications constitutes a part of the description of the kind of employment included within the class and expresses the minimum qualifications expected of an appointee. Such personal character qualifications as honesty, sobriety, and industry are deemed to be included in the statement of minimum qualifications and need not be specifically mentioned.

6. Nothing in the class specification is to be interpreted as restricting a supervisor in temporarily assigning an employee of one class to perform the duties of a higher class.

#### **16.05 Reclassifications**

Whenever the duties and responsibilities of an existing position are so changed or suggested to be changed, or when it otherwise becomes questionable whether a position should be allocated to a different class from the one to which it is currently allocated, a request may be made to the Personnel Division to investigate. Any employee or employee organization may also submit a request, in writing, to the Personnel Division that the work of the employee's position be reviewed. In addition, the Personnel Division may direct that certain positions be investigated from time to time.

In all cases, the Personnel Division shall make a recommendation as to whether the present allocation is correct or whether a reallocation to another class is appropriate. The Fire Chief may grant or deny any such recommendation. Before any such reallocation becomes final, the former position shall be abolished by the Board and the new position shall be created.

When a position is reallocated from one existing class to another existing class, the employee occupying the position shall be retained in the position after it has been allocated without further competitive examination provided the employee has permanent status in the class to which the position was formerly allocated and is certificated by the Personnel Manager and the appointing authority involved as possessing the knowledge, skills and abilities necessary to perform the duties of the class to which the position is reallocated, as long as such change does not involve a promotion. If however, the reallocation results in a higher maximum salary for the position, this constitutes a promotion and the rules governing promotions shall apply.

## **SECTION 17 - COMPENSATION**

### **17.01 Salary Plan**

The current salary plan adopted by the Board shall establish the pay range and steps assigned to each classification in the Department. The purpose of the salary plan is to provide fair and equitable rates of pay for Department employees. The salary for each class shall be consistent with the work as outlined in the class specification and shall be based on the principle that comparable salaries shall be paid for comparable duties and responsibilities. No person may be paid less than the minimum, nor more than the maximum of the salary range established for the class in which employed. No change in the salary range of a class may be made without Board approval.

### **17.02 Salary Upon Initial Appointment**

Initial pay for an employee in the Department service shall be at the first step of the salary range in effect for the class to which appointed, except that the Fire Chief may authorize appointment at a higher step within the salary range of the class when he/she determines that interests of the Department will best be served.

### **17.03 Advancement through the Salary Plan**

Advancement within a salary range is based on performance and requires the approval of the Fire Chief. Advancement through the steps of a salary range are not automatic. Employees are eligible to be considered for a salary range advancement after twelve (12) months following initial appointment/promotion to a classification and a determination of satisfactory service. Thereafter, an employee with satisfactory service may advance one step within the salary range every twelve (12) months. Employees who receive an overall performance rating of less than satisfactory, are placed on an improvement plan, or who receive disciplinary action (a written reprimand or more) are not eligible for consideration for a salary increase until they have served at least twelve (12) months of satisfactory performance or without further disciplinary incidents. Based upon meritorious service, the Fire Chief may provide an employee with a salary range advancement of greater than one (1) salary step.

### **17.04 Salary Upon Promotion**

An employee who is promoted from a position in one class to a position in a higher class, shall have his/her salary adjusted to the first step on the salary range for the higher class that is at least five percent (5%) greater than the employee's salary before promotion, except that under no circumstance shall the employee receive a salary that is greater than the maximum salary established for the class to which promoted.

### **17.05 Salary Upon Transfer**

An employee who transfers to another position in the same classification or to another classification with the same pay range shall retain the same rate of base pay. A merit increase shall not be applicable at the successful completion of any probation or evaluation period required as a result of a transfer.

### **17.06 Salary Upon Demotion**

Whenever an employee is demoted, whether such demotion is voluntary or otherwise, the employee's salary shall be adjusted to be within the salary range for the class to which the employee is demoted. The specific rate of pay within the range shall be determined by the Fire Chief, whose decision shall be final. An employee who is demoted to a position that he/she previously held shall not be placed at a step that is lower than the step held by the employee before the promotion.

### **17.07 Salary Upon Reclassification**

When an employee's position is reclassified, the employee's salary shall be determined as follows:

1. If the position is reclassified to a class with a higher salary range than the previous class, the employee's salary shall be determined in the same manner as if the employee had been promoted.
2. If the salary of the employee is the same or less than the maximum of the salary range of the new class, the salary of the employee shall not change; provided, however, that the employee shall not receive less than the minimum salary established for the class to which reclassified.
3. If the salary of the employee is greater than the maximum of the range of the new class, the salary of the employee shall be designated as a "Y-Rate" and shall not change during continuous Department service until the maximum of the salary range to which the class is assigned exceeds the "Y-Rate" salary of the employee.

### **17.08 Salary Upon Reinstatement or Reemployment**

An employee reinstated or reemployed shall be placed at no lower than the same salary step he/she held at the time of separation from Department service.

### **17.09 Timing of Salary Adjustments**

The date of changes to employee salary shall be effective the first day of the payroll period following the date of approval of the change. Exceptions to effective dates of change require approval by the Fire Chief.



### **17.10 Conversion Factors**

Hourly rates for positions assigned to a 40-hour per week schedule shall be computed by multiplying the monthly salary by 12 and dividing by 2080 hours.

Hourly rates for employees assigned to work 24-hour shifts shall be computed by multiplying the monthly salary by 12 and dividing by 2912 hours.

## **SECTION 18 - HOURS OF WORK AND OVERTIME**

### **18.01 Work Week or Work Period Defined**

The workweek for the Department begins at 12:00 a.m. on Sunday and ends 7 days later at 11:59 p.m. on the following Saturday. Employees assigned to work an alternative work schedule may have an alternative workweek as designated by the Fire Chief or designee.

Effective July 1, 2018, the work period for employees engaged in fire protection activities shall be a 24-day consecutive period.

The Fire Chief or designee shall determine the work hours to be worked by Department employees. Employees shall be in attendance at work during their regular hours of work and shall not absent themselves during working hours for any reason without prior approval of their supervisor.

### **18.02 Overtime Policy**

It is the policy of the Department that overtime work is kept to a minimum and shall be authorized in advance by the employee's Chief Officer or Manager. Overtime eligible employees are not permitted to work overtime except as authorized and approved. Overtime shall be assigned by the Fire Chief or designee to meet essential operating needs.

Working overtime without advance approval is a violation of these rules and grounds for discipline, up to and including termination. Employees are expected to report all hours worked in a work-reporting period.

### **18.03 Overtime Defined**

For an employee on a 7-day work week, overtime is defined as all hours an overtime-eligible employee actually works in excess of 40 hours in the workweek. For an employee engaged in fire protection activities, overtime is defined as all hours the overtime-eligible employee actually works in excess of 182 hours in the 24-day work period.

Overtime is compensated at 1.5 times the employee's regular rate of pay, as defined under the Fair Labor Standards Act ("FLSA"). All overtime entitlements shall be computed to the nearest tenth of an hour (6 minute increments).

An employee's eligibility to receive overtime compensation for services performed shall be determined in accordance with the FLSA. Those employees who are classified as "exempt" under the FLSA shall not be eligible to receive overtime. Notwithstanding this exemption, the Fire Chief or designee may authorize the payment of overtime to exempt personnel at the employee's established rate of pay, who are required to work for extensive periods beyond their normal work schedule because of emergency conditions.

#### **18.04 Attendance Records**

All employees are required to submit accurate and complete attendance records. Attendance records are due as directed by the Fire Chief or designee. Each employee shall sign his/her time sheet verifying the hours worked. It is the responsibility of the employee to make certain his time sheet has been filled out correctly before submitting. The employee's supervisor shall verify and approve each employee's accumulated hours of work prior to submitting to the Payroll Division for payment. Records of hours worked, vacation time, compensatory time, sick leave, and holiday accumulated and used, shall be kept by the Payroll Division.

## **SECTION 19 - EQUAL EMPLOYMENT OPPORTUNITY AND REASONABLE ACCOMMODATIONS**

### **19.01 Equal Employment Opportunity**

The Department is an equal opportunity employer. The Department prohibits discrimination against employees or applicants for employment on the basis of race, religious creed, color, ancestry, national origin, sex, age, political opinion, physical disability, medical condition, sexual orientation, marital status or religious affiliation or any other basis protected by law. The Department will afford equal employment opportunity to all qualified employees and applicants as to all terms and conditions of employment, including compensation, hiring, training, promotion, transfer, discipline and termination. Employees who believe they have experienced any form of employment discrimination are encouraged to report this immediately, using the complaint procedure in Section 19.

### **19.02 Reasonable Accommodations**

The Department recognizes and supports its obligation to reasonably accommodate job applicants and employees with disabilities who are able to perform the essential functions of the position, with or without reasonable accommodation. The Department also recognizes and supports its obligation to reasonably accommodate job applicants and employees with religious beliefs or practices who are able to perform the essential functions of the position, with or without reasonable accommodation.

The Department will provide reasonable accommodation to otherwise qualified job applicants and employees, unless doing so would impose an undue hardship on the Department or pose a direct threat of substantial harm to the employee or others.

An applicant or employee who believes he or she needs a reasonable accommodation of a disability should discuss the need for possible accommodation with the Personnel Officer or designee. Upon receiving an accommodation request, the Department shall engage in a timely interactive process with the employee to identify possible reasonable accommodations.

## **SECTION 20 - HARASSMENT, DISCRIMINATION AND RETALIATION PREVENTION**

### **20.01 General Policy**

The Department has a strict policy against and prohibits discrimination or harassment of or against our job applicants, contractors, interns, volunteers, employees, or officials by another employee, supervisor, vendor, customer, official or any third party on the basis of race (including traits historically associated with race, including, but not limited to hair texture and protective hairstyles including, but not limited to, such hairstyles as braids, locks and twists), religious creed, color, age, sex, sexual orientation, gender, gender identity, gender expression, national origin, ancestry, marital status, medical condition as defined by state law (cancer or genetic characteristics), disability, military service and veteran status, pregnancy, childbirth and related medical conditions, or any other characteristic protected by applicable federal, state, or local laws and ordinances (referred to as “protected characteristics”). The Department also prohibits retaliation as defined in this rule.

The Department is committed to a workplace free of discrimination, harassment and retaliation. The Department does not tolerate harassment, discrimination and retaliation. These behaviors are unacceptable in the workplace and in any work-related settings such as business trips and Department sponsored social functions, regardless of whether the conduct is engaged in by a supervisor, co-worker, client, customer, vendor or other third party.

### **20.02 Definitions**

#### **A. Discrimination**

Discrimination under this policy means treating differently or denying or granting a benefit to an individual because of the individual’s protected characteristic.

The Department prohibits all forms of discrimination, including any employment-related action that adversely affects an applicant or employee and is based on an individual’s actual or perceived race, ethnicity, national origin, religion, sex, sexual orientation, gender identity or expression, age, disability, pregnancy, genetic information, veteran status, marital status, and any other classification or status protected by law.

#### **B. Harassment**

Harassment is defined in this policy as unwelcome verbal, visual or physical conduct creating an intimidating, offensive, or hostile work environment that interferes with work performance. Harassment can be verbal (including slurs, jokes, insults, epithets, gestures or teasing), graphic (including offensive posters, symbols, cartoons, drawings, computer displays, or e-mails) or physical conduct (including physically threatening another, blocking someone’s way) that denigrates or shows hostility or aversion towards an individual because of any protected characteristic. Such conduct violates this policy, even if it is not unlawful. Because it is difficult

to define unlawful harassment, employees are expected to behave at all times in a professional and respectful manner.

### **C. Sexual Harassment**

Sexual harassment can include all of the above actions, as well as other conduct, such as unwelcome or unsolicited sexual advances, requests for sexual favors, conversations regarding sexual activities and other verbal or physical conduct of a sexual nature. Other examples of conduct that violates this policy include:

- Obscene or vulgar gestures, posters, or comments.
- Sexual jokes or comments about a person's body, sexual prowess, or sexual deficiencies.
- Propositions, or suggestive or insulting comments of a sexual nature.
- Derogatory cartoons, posters, and drawings.
- Sexually-explicit e-mails or voicemails.
- Leering, whistling, uninvited touching of a sexual nature, assault, blocking normal movement.
- Conduct or comments consistently targeted at only one gender, even if the content is not sexual.
- Teasing or other conduct directed toward a person because of the person's gender.

### **D. Retaliation Defined**

Retaliation means adverse conduct taken because an individual reported an actual or perceived violation of this policy, opposed practices prohibited by this policy, or participated in the reporting and investigation process described below. "Adverse conduct" includes but is not limited to: shunning and avoiding an individual who reports harassment, discrimination or retaliation; express or implied threats or intimidation intended to prevent an individual from reporting harassment, discrimination or retaliation; and denying employment benefits because an applicant or employee reported harassment, discrimination or retaliation or participated in the reporting and investigation process described below.

#### **20.03 Reporting Procedures**

The following steps have been put into place to ensure the work environment at the Department is respectful, professional, and free of discrimination, harassment and retaliation.

Any individual who believes that he/she has been discriminated against, harassed, or subjected to retaliation, or who has observed harassment or discrimination, is encouraged to promptly report such conduct in accordance with the procedures set forth in this policy.

If an employee believes someone has violated this Rule or the Equal Employment Opportunity Rule, the employee should promptly bring the matter to the immediate attention of the Personnel Division or the Fire Chief. If either of these individuals is the person toward whom the complaint is directed, the employee should contact the President of the Board of Directors. The employee

should provide the details of the incident, names of the individuals involved, and the names of any witnesses.

Every supervisor who learns of any employee's concern about or witnesses conduct in violation of this policy, whether in a formal complaint or informally, must immediately report the issues raised to the Personnel Officer or designee.

#### **20.04 Investigation Procedures**

Upon receiving a complaint, the Department will promptly conduct a fair and thorough investigation into the facts and circumstances of any claim of a violation of this rule or the Equal Employment Opportunity Rule. To the extent possible, the Department will endeavor to keep the reporting employee's concerns confidential. However, complete confidentiality may not be possible in all circumstances.

Investigation of the complaint may include the details of the specific incident, frequency, dates of occurrences, and names of any witnesses. Witnesses will be advised regarding the prohibition against retaliation, and that a disciplinary process, up to and including termination, may result if retaliation occurs.

During the investigation, the Department generally will interview the complainant and the accused, conduct further interviews as necessary and review any relevant documents or other information. Upon completion of the investigation, the Department shall determine whether this policy has been violated based upon its reasonable evaluation of the information gathered during the investigation. The Department will inform the complainant and the accused of the results of the investigation.

#### **20.05 Violations of this Rule**

The Department will take corrective measures against any person who it finds to have engaged in conduct in violation of this rule, if the Department determines such measures are necessary. These measures may include, but are not limited to, counseling, suspension, or immediate termination. Anyone, regardless of position or title, whom the Department determines has engaged in conduct that violates this Rule will be subject to discipline, up to and including termination.

In addition to being a violation of this Rule, harassment, discrimination or retaliation can also be against the law. Employees and officials who engage in conduct that rises to the level of a violation of law can be held personally liable for such conduct. No provision of this policy shall be construed to prevent an individual from seeking legal redress outside the Department. Individuals who believe that they have been harassed, discriminated against, or retaliated against are entitled to bring complaints of employment discrimination to federal, state, and/or local agencies responsible for investigating such allegations. Specific time limitations apply to the filing of such charges. Individuals are advised that proceeding with complaints under the provisions of this policy does not in any way affect those filing requirements.

## **SECTION 21 - LEAVES OF ABSENCES**

### **21.01 General**

The Department will provide employees with those leaves that are required by law. The Fire Chief or designee is responsible for developing and administering procedures to be followed by employees in requesting or using any leaves provided by applicable statutes.

### **21.02 Family Medical Leave**

The Family Medical Leave Act (“FMLA”) and the California Family Rights Act (“CFRA”) provide eligible employees with a right to leave, health insurance benefits and with some limited exceptions, job restoration. To be eligible for FMLA/CFRA leave, an employee must have worked for the Department for at least 12 months, worked at least 1,250 hours in the 12-month period immediately preceding the commencement of leave, and work at a location where there are 50 or more Department employees within a 75-mile radius. The amount of leave available is based on the reason for which leave is taken. The Fire Chief or designee is responsible for preparing procedures which describe an employee’s rights to FMLA/CFRA leave.

### **21.03 Pregnancy Disability Leave or Accommodation**

A female employee who is disabled due to pregnancy, childbirth or related medical condition is eligible to take pregnancy disability leave (PDL) as provided under State law. A female employee who is disabled due to pregnancy or related medical condition is also entitled to a reasonable accommodation as provided under State law. The Fire Chief or designee is responsible for preparing procedures which describe a female employee’s rights to PDL or a reasonable accommodation under this Rule.

### **21.04 Military Leave.**

Authorized leaves of absence for military duty shall be granted in accordance with the provisions of State and federal law. An employee entitled to military leave shall give the Fire Chief or designee an opportunity, within the limits of military regulations, to determine when such leave shall be taken.

### **21.05 Sick Leave**

Except as provided under any resolution or Board action providing for employee sick leave benefits, Department employees will be provided sick leave as described in this Rule.

Employees will accrue sick leave at the rate of one (1) hour of sick leave for every thirty (30) hours worked, up to a maximum accrual of 48 hours of sick leave. Accrual shall begin



on the first day of employment. Once an employee reaches the accrual cap of 48 hours, the employee will not accrue any further sick leave hours until some paid sick time is used.

An employee is eligible to use accrued sick leave beginning on the ninetieth (90th) day of employment. Employees may use a maximum of twenty-four (24) hours of sick leave in a fiscal year (measured from July 1 through June 30). Employees using sick leave must use a minimum of at least 2 hours of sick leave. Sick leave may be used for the following reasons:

- a. The employee's own illness, injury or medical condition;
- b. Visits to a medical doctor, chiropractor, acupuncturist, dentist, optometrist, optician, psychiatrist or psychologist, medical or clinical laboratory on order of a doctor, or other licensed medical provider for the employee or the employees family member;
- c. To attend to the illness of the employee's family member; or
- d. To seek medical treatment, counseling, social services or relief when the employee is a victim of domestic violence, sexual assault or stalking.

For purposes of this sick leave policy, the term "family member" means an employee's spouse, registered domestic partner, child (including biological, adopted or foster child, step child, legal ward or a child to whom the employee stands in loco parentis), parent (including biological, adoptive or foster parent, step parent or legal guardian of an employee, parent of the employee's spouse or registered domestic partner, or a person who stood in loco parentis when the employee was a minor child), grandparent, grandchild or sibling.

An employee requesting to use sick leave should notify his/her immediate supervisor prior to the beginning of any work shift that the employee is unable to report for work and the employee requests to use sick leave. An employee is to request prior authorization for any absence due to attendance at any medical appointment. For purposes of this section, "request prior authorization" shall mean that the employee has notified his/her supervisor as soon as reasonable practicable.

The Department will not pay employees for unused sick leave upon termination of employment. Employees who are rehired by the Department within one year from the date of separation will have any previously unused and accrued sick leave hours reinstated.

## **21.06 Jury or Witness Duty**

### **A. Jury Duty**

An employee who is summoned to serve on a jury must notify his/her Chief Officer or Manager as soon as possible after receiving notice of both possible and actual jury service. A leave of absence with pay will be granted to all regular employees for the period of any actual service, including any time during which the employee must be away from work to be present in court as a result of such a summons. Other employees will receive an unpaid

leave of absence. While on jury duty, any payment except travel pay, meals and lodging receiving by the employee as a juror shall be remitted to the Department. Time spent on jury duty is not work time for purposes of calculating overtime compensation.

**B. Subpoenas.**

An employee who is subpoenaed to appear in court will be given leave to appear in response to the subpoena. If the subpoena is for the employee to appear in a matter regarding an event or transaction which he/she witnessed or investigated in the course of performing his/her official Department job duties, the leave will be without loss of compensation and the time spent responding to the subpoena shall be considered work time. Any payment except travel pay, meals and lodging received by the employee for such service shall be remitted to the Department.

If the subpoena is for the employee to appear in a matter regarding an event or transaction that does not involve the employee's performance of official Department job duties, the leave will be unpaid and shall not be considered work time.

**C. Exception for Employee-Initiated or Non-Department Related Matters.**

An employee who is a named party or a witness in an action unrelated to the Department and its activities, who is a named party in an action against the Department, or who is serving as a paid expert witness is not eligible to receive compensation for time spent related to those proceedings. In such cases, an employee may request to receive time off without pay, or may use accrued vacation or compensatory time off for time related to those proceedings. The time spent in employee-initiated or non-Department related matters is not considered work time.

**21.07 Unpaid Personal Leave**

An employee who needs a leave of absence from work without pay shall file a written request with the Personnel Division, stating the title of the employee's position, the beginning and ending dates of the requested leave and a full statement for such a request. A request for personal leave shall be made on forms prescribed from the Department. The request shall normally be initiated by the employee, but may be initiated by the employee's Chief Officer or Manager.

A personal leave may be granted for the following reasons:

- a. Illness or non-job related disability including pregnancy, beyond or in lieu of that covered by sick or other available leave;
- b. Education or training which will benefit the Department; or
- c. Other personal reasons provided the needs of the Department are considered.

Upon written request of an employee setting forth the reasons for the request, and upon the recommendation of the Personnel Division, the Fire Chief may grant an employee holding a regular position appointment a leave of absence for a period not to exceed six (6) months. Absences of more than six (6) months require the approval of the Board.

An authorized leave of absence without pay shall not be construed as a break in service. Rights accrued at the time leave is granted shall be retained by employee. However, seniority, vacation leave, sick leave, holidays, increases in salary, or other Department paid benefits will not be provided during the period of leave.

Unless otherwise required by law, the Department will not maintain contribution toward group insurance programs or retirement benefits for any employee on an unpaid leave of absence. Instead, the employee will be permitted to continue coverage as allowed under law.

An employee returning from a personal leave may be required to provide medical documentation indicating the employee's fitness to return. Failure to provide requested medical documentation may delay an employee's return to work. If an employee requests to return to work prior to the scheduled end of his/her leave, the employee must first request approval from the Personnel Division at least three (3) days prior to the date of returning to work. The Personnel Division may request substantiating evidence (e.g., medical examination or doctor's written release).

Upon expiration of a regularly approved leave, the employee shall be reinstated to the same or similar position held at the time leave was granted or to an equivalent position, except that an employee on leave shall have no greater right to return to a position than if the employee had not been on leave. Failure on the part of an employee on leave to report to work promptly at the expiration of leave may be deemed to be a voluntary resignation.

### **21.08 Other Leaves**

The Department will provide eligible employees with any leaves required by State and federal law. The Fire Chief or designee is responsible for preparing procedures which describe the reasons for which employees may take leave and process by which employees may request the use of leave.

## **SECTION 22 - EMPLOYEE ETHICAL STANDARDS**

### **22.01 General Policy**

Employees and officials of the Department are required to discharge the duties and responsibilities of the positions with professional integrity, regardless of personal considerations. Employees are expected to recognize that the public interest, as articulated by Department policy, is their primary concern. The conduct of Department employees and officials in their official capacity must be beyond reproach.

### **22.02 Expectations**

No Department employee or official shall engage in any act which is in conflict, or creates an appearance of unfairness or conflict with the performance of official duties. To meet the standards set forth in this policy, employees and officials must:

1. Disclose all financial interests which may constitute a conflict of interest with official duties, and disclose the nature and extent of personal interest in any business entity engaging in any transaction with the Department as required under the Department's conflict of interest resolution.
2. Refuse to accept gifts, gratuities, favors, services or promise of future benefit from any person, firm, entity or corporation doing business with the Department, where such gift, gratuity favor, service or promise could compromise independence of judgment or action as a public official or employee. Employees should disclose any offer of gift, favor, service or promise to their Chief Officer or Manager immediately.
3. Refrain from engaging in activities or employment that may appear to be, or are incompatible with public duties, whether on or off duty. Employees of the Department should not become involved or affiliated with any agency or entity that receives funds from the Department, either directly or indirectly, whether that association or affiliation may create a conflict of interest, or an appearance of a conflict of interest or impropriety.
4. Refrain from disclosing, promulgating, using, or validating information concerning Department operations or other employees and officials which is confidential, or protected without prior authorization, confidential information concerning property or affairs of the Department to advance a private interest with respect to any contract or transaction which is or may be the subject of official action of the Department.
5. Refrain from using any Department funds or property for personal or private gain. Employees must be absolutely honest in all dealings, in whatever capacity, with Department funds, properties or facilities.

6. Refuse to represent private interests before government agencies in any matter in which the Department is a party, or in which the employee's official position with the Department is, or may be, a consideration in or influence the decision of such agency on the matter before it.
7. Comply with the provisions of the Political Reform Act, as regulated by the Fair Political Practices Commission, or any other state or federal laws governing conflict of interest matters.

### **22.03 Gifts on Behalf of the Department**

The Fire Chief and his/her designee is permitted to accept a gift, gratuity, or favor on behalf of the Department and may distribute such gift, gratuity, and favor as he/she deems appropriate to Department employees and elected officials in accordance with Fair Political Practices Commission regulations. (Examples may include sporting events tickets or cultural events tickets.)

### **22.04 Use of Public Property**

No employee of the Department shall request, use, or permit the use of Department-owned vehicles, clothing, equipment, materials, or other property for unauthorized personal convenience, for profit, for private use, or as part of secondary employment. Department property is to be used solely for the purpose of conducting official Department business.

### **22.05 Political Activities**

Employees are prohibited from using Department time or property in any manner for any of the following reasons: to promote any political issue or candidate; to solicit funds for any political purpose; or to influence the outcome of any election.

No employee shall be eligible for appointment or election to any public office (including appointment to a Board, Commission or Committee) when the holding of such office or position would be incompatible or would substantially interfere with the discharge of official duties.

### **22.06 Outside Employment**

#### **A. Incompatible Outside Employment Prohibited**

No employee of the Department shall engage in any employment, activity or enterprise that would detract from his or her effectiveness as a Department employee or that is inconsistent, incompatible, in conflict with, or inimical to his or her duties as an employee of the Department. An individual's outside employment, activity or enterprise is inconsistent, incompatible, in conflict with, or inimical to an employee's duties, functions or responsibilities set forth above if it:

1. Involves the use for private gain or advantage of the Department's time, facilities, equipment, or supplies; or the badge, uniform, prestige or influence of the Department;
2. Involves receipt or acceptance by an employee of any money or other consideration from anyone other than the Department for the performance of an act which the employee would otherwise be required or expected to perform in the regular course of his or her duties as a Department employee;
3. Involves the performance of an act in other than his or her capacity as an employee of the Department, which act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other Department employee, Department official or Department officer;
4. Involves such time demands as would render performance of duties as a Department employee less efficient.

## **B. Reporting Outside Employment**

Employees seeking to engage in outside employment, whether it be accepting a second job, self-employment or otherwise, must submit written requests to engage in such employment to their Chief Officer or Manager. The request shall include:

1. The name and address of the employer;
2. A summary of the nature of employment;
3. The number of hours to be worked by day, week, month, and/or quarter as appropriate;
4. Whether the outside employment will utilize any Department owned/controlled facilities, equipment, information, records, supplies, and/or uniforms;
5. Whether the outside employer will provide workers' compensation and liability insurance during said outside employment; and
6. The phone number of the employer in the event that the Department should need to contact the employee under emergency or relief situations.

It is the responsibility of each Chief Officer or Manager to notify the Personnel Division of outside employment request so that such requests can be considered. The Personnel Division, in consultation with the Chief Officer or Manager, will consider all requests and provide written notice to an employee of the determination on that employee's request. An employee may request review of that determination by the Fire Chief.

All employees holding or considering second jobs must obtain permission from the Personnel Division in order to ensure that the job will not create a conflict of interest or interfere with the proper performance of their duties. An employee who engages in any outside employment without written authorization from the Personnel Division, or who

performs work that exceeds the scope of a written authorization, is subject to discipline, up to and including termination.

Outside employment is defined to mean any employment, activity or enterprise outside of an employee's normal Department working hours wherein the employee is compensated for specific hours or duties on a regular basis. Outside employment does not include sporadic employment or occasional employment unless the employee is required to perform work related to his/her position with the Department or utilize any Department owned/controlled facilities, equipment, information, records, supplies, and/or uniforms.

### **C. General Terms**

During the workday, employees are expected to devote their full time to the performance of their assigned duties as Department employees. Any approved outside employment must be performed during off-duty, unpaid hours.

Employees who have accepted outside employment are prohibited from using sick leave time to work on the outside job or as a result of an injury sustained while performing outside employment. Any employee who engages in outside employment while on sick leave shall be subject to discipline up to and including dismissal.

All provisions of this section 22.06 shall apply to any outside employment held by an employee or officer on the effective date of this section, as well as any outside employment sought after such effective date. In the event the employee refuses to comply, disciplinary action may be taken. Employees engaged in outside employment in violation of the Department's Conflict of Interest Code shall be required to immediately termination such employment, or they may be subject to disciplinary action by the Department, up to and including the termination of their Department employment.

### **22.07 Procedures**

Interpretations of this policy shall be referred to the Fire Chief. The Fire Chief or designee shall investigate, or refer the matter to an outside agency for an investigation, all allegations and written complaints of unethical conduct.

Complaints or allegations that may be criminal in nature may be referred to an appropriate outside agency for investigation.

## **SECTION 23 - ANTI-NEPOTISM POLICY**

### **23.01 Policy**

It is Department policy not to discriminate in its employment or personnel actions with respect to its employees and applicants on the basis of marital status, registered domestic partner status or family relationship. Notwithstanding this policy, the Department reserves the right to reasonably regulate, for reasons of supervision, safety, bias, favoritism, security or morale, the assignment of spouses, registered domestic partners, immediate family members, or individuals in a personal relationship (as defined in this policy) within the same division, work location or shift. The Department further reserves the right to decline to hire or promote the immediate family member of any employee for any reason. Promotional advancement may also be denied if the promotion places one spouse, registered domestic partner, immediate family member, or individual in a personal relationship under the supervision of another.

To prevent potential conflicts of interest, favoritism, and bias, no employee will immediately supervise their spouse, registered domestic partner, immediate family member or with whom they share a personal relationship, as defined below. Employees shall refrain from intervening in any employment matter involving an individual subject to this policy and shall refrain from involvement in any employment matter which may be viewed as a conflict of interest. No employee shall appoint or participate in a hiring or promotion decision involving any person with which they have a relationship subject to this policy, nor use his/her position to influence another Department employee to hire or promote an individual subject to this policy.

Where a relationship subject to this policy exists, the person in the higher level position will bear the primary burden of accountability, and must ensure that he or she does not exercise any supervisory or evaluative function (or does not remain in a position where they can influence the supervisory or evaluative function) related to the other person in the relationship. Exceptions to this policy require the written approval of the Fire Chief or designee.

### **23.02 Definitions**

For purposes of this policy, the following definitions shall apply:

- a. Marital status is defined as an individual's state of marriage, divorce or dissolution, separation, or annulment.
- b. Registered domestic partner is as defined in Family Code section 297.
- c. Immediate family member means an individual's parent, stepparent, parent-in-law, grandparent, child, stepchild, grandchild, brother, sister, stepbrother, stepsister, aunt, uncle, niece, nephew or first cousin. The term "immediate family member" also includes an individual who falls within one of these categories by a previous marriage, adoption or registered domestic partnership.
- d. Personal relationship, for this purpose, means cohabitation, dating or any other intimate



relationship beyond mere friendship.

### **23.03 Employees Who Are Spouses and Registered Domestic Partners**

The Department will investigate to determine if there are any reasonable modifications or changes in procedure that can be made to minimize operational concerns regarding supervision, safety, security or morale whenever the employment status of two employees results in either:

- a. One spouse or registered domestic partner directly supervising another; or
- b. Two spouses or registered domestic partners working within the same division or unit.

In the event that no reasonable modifications or changes in procedure are available, or that any modifications or changes would affect safety, security, supervision or morale, the Department reserves the right to transfer or reassign one of the employees. While the wishes of the involved parties will be considered, the controlling factor in determining which relative shall be transferred shall be the positive operation, efficiency, and needs of the Department. There can be no guarantee that the new position will be within the same classification or at the same salary level.

If an employee does not accept a transfer or reassignment, or in situations where no transfer or reassignment is available, the Department may request the voluntary resignation of one of the employees and if one of the employees does not voluntarily resign, the Department will retain one employee and terminate the other. Factors the Department might use in evaluating which employee to retain include, for example, performance, tenure, position within the organization, or other factors deemed relevant by the appointing authority or designee.

### **23.04 Employees Who Are Immediate Family Members**

The Department will investigate to determine if there are any reasonable modifications or changes in procedure that can be made to minimize operational concerns regarding direct supervision, safety, security or morale whenever the employment status of two employees results in either:

- a. An employee directly supervising a member of his or her immediate family; or
- b. Immediate family members working within the same division, unit and/or worksite.

In the event that no reasonable modifications or changes in procedure are available, or that any modifications or changes would affect safety, security, supervision or morale, the Department reserves the right to transfer or reassign one of the employees. While the wishes of the involved parties will be considered, the controlling factor in determining which relative shall be transferred shall be the positive operation, efficiency, and needs of the Department. There can be no guarantee that the new position will be within the same classification or at the same salary level.

If an employee does not accept a transfer or reassignment, or in situations where no transfer or reassignment is available, the Department may request the voluntary resignation of one of the employees and if one of the employees does not voluntarily resign, the Department will retain one employee and terminate the other. Factors the Department might use in evaluating which

employee to retain include, for example, performance, tenure, position within the organization, or other factors deemed relevant by the appointing authority or designee.

### **23.05 Employees Who Are in Personal Relationships**

The Department will investigate to determine if there are any reasonable modifications or changes in procedure that can be made to minimize operational concerns regarding direct supervision, safety, security or morale whenever the employment status of two employees results in either:

- a. An employee directly supervising another employee with whom they share a personal relationship; or
- b. Employees in a personal relationship working within the same division, unit and/or worksite.

In the event that no reasonable modifications or changes in procedure are available, or that any modifications or changes would affect safety, security, supervision or morale, the Department reserves the right to transfer or reassign one of the employees. While the wishes of the involved parties will be considered, the controlling factor in determining which relative shall be transferred shall be the positive operation, efficiency, and needs of the Department. There can be no guarantee that the new position will be within the same classification or at the same salary level.

If an employee does not accept a transfer or reassignment, or in situations where no transfer or reassignment is available, the Department may request the voluntary resignation of one of the employees and if one of the employees does not voluntarily resign, the Department will retain one employee and terminate the other. Factors the Department might use in evaluating which employee to retain include, for example, performance, tenure, position within the organization, or other factors deemed relevant by the appointing authority or designee.

### **23.06 Policy Exceptions**

Spouses, registered domestic partners, immediate family members, or individuals in a personal relationship may continue to work in the Department or be otherwise exempted subject to approval by the Fire Chief or designee. Factors used to evaluate whether approval shall be granted include, among other things, the involved employees' performance, tenure, position, duties, the Department's staffing needs, and whether current or anticipated open positions for reassignment or transfer are available.

### **23.07 Appeals**

Any permanent employee who was employed in a position within the competitive service who is separated from Department service or demoted under this rule may utilize the grievance procedure as identified under the applicable collective bargaining agreement or, if none, the Grievance Procedure as described in these rules. Other actions (for example, a transfer or lost opportunity for overtime or supplemental pay) are not subject to appeal.

### **23.08 Immediate Family Members of Elected Officials**

No person who is the spouse, registered domestic partner, or immediate family member of a current Department elected official shall be eligible for regular position appointment.

The spouse, registered domestic partner or immediate family member of an official currently employed as of the date the elected official assumes office shall not be subject to automatic exclusion of employment. The Fire Chief may, however, utilize the provisions of this policy to transfer, reassign, or terminate the employee, if necessary, for the efficient operation of Department business.

## **SECTION 24 - STANDARDS OF CONDUCT**

### **24.01 Drug and Alcohol Free Workplace**

The Department is committed to providing a safe and healthy work environment for employees. It is also the Department's goal to provide the best service possible to the public. To achieve these goals, the Department is committed to providing an alcohol and drug-free workplace. The Department prohibits the manufacture, use, possession, distribution, trade, and/or offer for sale alcohol, illegal drugs (including recreational and/or medicinal marijuana) or intoxicants.

The Department's policy is intended to apply whenever anyone is representing or conducting business for the Department. This policy applies during all working hours, lunch hours, while on-call, on-standby, and on or off Department property including vehicles. The Department's drug-free workplace policy applies to any individual who conducts business for the Department, is applying for a position with the Department, or conducts business on the Department's property. This policy applies to all Department employees, appointed and elected officials, volunteers, interns, consultants, contractors, and those under the control of contractors.

To effectuate this policy, the Department reserves the right to conduct pre-employment, reasonable suspicion, and post-accident testing of employees and applicants. The Department will also comply with any applicable regulations issued by the Department of Transportation. The Fire Chief is responsible for preparing administrative procedures to give effect to the Department's Drug and Alcohol Free Workplace policy.

### **24.02 Tobacco Prohibited**

Smoking, including the use of electronic cigarettes, is prohibited in all Department-owned or leased buildings and in any Department vehicle. Smoking is also prohibited within 20 feet of entrances, exits, or operable windows of Department-owned or leased buildings.

### **24.03 Mandated Reporting**

The Department recognizes the importance of the safety and well-being of the children entrusted to its care. In support of this responsibility, the Department shall take all necessary steps to comply with its obligations under the Child Abuse and Neglect Reporting Act ("the Act") (Cal. Pen. Code §§ 11164 – 11174.3). The Fire Chief or designee is responsible for developing and disseminating procedures which describe rights and obligations of individuals who constitute mandated reporters under the Act.

### **24.04 Anti-Fraternization**

The Department reserves the right to reasonable regulate, for reasons of supervisor, safety, security or morale, the assignment of employees involved in a romantic or sexual

relationship within the same department, division, facility or unit. The Department discourages, but does not forbid, fraternization between managers or supervisors and subordinate employees or between co-workers. The Fire Chief or designee is responsible for developing and disseminating procedures which describe the obligations of employees who become involved in romantic or sexual relationships.

#### **24.05 Department Computers, Telephones and Electronic Media**

Access to Department owned computers, telephones, and other electronic media is provided to Department employees for their use in performing Department business. Department owned computers, telephones and electronic media may not be used for any prohibited purpose, including illegal activities, messages that may constitute discrimination or harassment under Department policy or state or federal law, or other inappropriate purposes as defined by Department policy. The Fire Chief or designee is responsible for developing and disseminating a policy which describes permitted and prohibited use of Department computers, telephones and electronic media.

#### **24.06 Workplace Violence**

The Department is committed to providing a safe and secure workplace for employees. The Department will not tolerate intimidating behavior, bullying, or acts or threats of violence in the workplace or while on Department business. The Fire Chief is responsible for developing and disseminating standards of conduct and procedures for reporting intimidating behavior, bullying, or acts or threats of violence.

#### **24.07 Use of Department Property and Vehicles**

Department employees may be required to drive Department-owned, Department-leased or personal vehicles in conducting Department business. The Fire Chief or designee is responsible for developing and disseminating a policy which describes permitted and prohibited use of Department vehicles and standards of conduct for employees required to drive vehicles in the performance of their duties.

#### **24.08 Other Conduct**

The Fire Chief or designee is authorized to issue policies and procedures which detail the standards of conduct expected of Department employees in the performance of their job duties.

## **SECTION 25 - SAFETY**

### **25.01 General Statement**

The Department recognizes the necessity of maintaining safe working conditions and practices in order to ensure employee safety.

The Department has adopted an Injury and Illness Prevention Plan. This Plan describes the Department's overall safety commitment as well as the safety responsibilities of all employees. A copy of the Injury and Illness Plan shall be made available to all employees.

### **25.02 Employee Responsibilities**

Each employee is required to follow all established safety rules, procedures and practices, necessary to minimize risk of injury to themselves and others, including those rules and procedures described in the Injury and Illness Prevention Plan.

Unsafe acts by employees shall be immediately pointed out by the supervisor and proper procedure discussed. Employees shall report all unsafe conditions to their Chief Officer, Manager or the Fire Chief. Unsafe acts by employees or failure to report an unsafe condition may result in disciplinary action.

### **25.03 Incident Reporting**

Employees are required to report all work related injuries, accidents, and property damage to their Chief Officer, Manager or the Fire Chief.

In the case of a vehicle accident involving another vehicle, the employee is required to obtain: the driver's license number, vehicle license number, names of the insurance company covering the other driver and, if the accident is investigated by a law officer, the name and title of the officer. All of this information will be given to the employee's supervisor, Chief Officer or Manager the same day of the accident.

## **SECTION 26 - GRIEVANCES**

### **26.01 Grievance Definition**

A grievance is any dispute which involves the claimed violation, misinterpretation or misapplication of these Personnel Rules, excluding those provisions of these Personnel Rules which are specifically excluded from the grievance procedure or which provide that the decision of the Board, Fire Chief or their designee shall be final.

In the event that an alternative complaint procedure is applicable to an employee's claim (e.g., harassment complaint procedure), the grievance shall be treated as having been submitted under that alternative procedure and will be processed accordingly. Any matter addressed through an alternative procedure may not also be raised as a grievance under this rule. A grievant may be an employee, or any group of employees, or a represented bargaining unit.

The following are some of the matters that are excluded from the definition of "grievance" and are not subject to the grievance procedure:

1. Challenges to any disciplinary action;
2. Challenges to or requests for changes in the content of employee evaluations or performance reviews, verbal or written warnings or reprimands, or counseling memorandums;
3. Challenges to a reclassification, layoff, transfer, denial of reinstatement or denial of step or merit increase;
4. Requests for changes in wages, hours or working conditions, including any impasses or dispute in the meet and confer process or matter within the scope of representation as defined by the Meyers Milius Brown Act;
5. Challenges to examination or appointment to positions; and
6. Challenges to a rejection from probation.

### **26.02 Grievance Procedure**

A grievance shall be processed in the following manner:

#### **Step 1 – Informal Step**

Within fourteen (14) days of when the grievant knew or should have known of the event giving rise to the grievance, the grievant will first try to resolve the grievance through discussion with the grievant's Chief Officer or Manager. During this discussion, the grievant must clearly state that a grievance is being initiated. Within fourteen (14) days of this discussion, the immediate supervisor shall give the grievant his/her decision or response to the informal grievance. This response may be provided orally or in writing. If the employee is not satisfied with the reply, he or she may file a formal grievance.

## **Step 2 – Formal Step**

If the grievance is not resolved in Step 1, or if it is determined, for good and sufficient reason, that the grievant may initiate the grievance at Step 2, the grievant may file a formal, written grievance. The written grievance shall contain the following:

1. Name of grievant(s)
2. Class title(s)
3. Mailing address(es)
4. A clear statement of the nature of the grievance (citing applicable sections of rules, regulations, resolutions, ordinances or existing practices)
5. The date(s) on which the event(s) giving rise to the grievance occurred
6. A proposed solution to the grievance
7. The date of execution of the grievance form
8. The signature of the grievant(s)
9. The signature of the bargaining unit representative, if such a representative is representing the grievant(s)
10. The date of the discussion meeting in Step 1 and the name of the supervisor involved

Any formal grievance must be filed within fourteen (14) days after either the response to the informal grievance is given or the time to provide a response to the informal grievance has expired if no response is given. If the grievance is initiated at Step 2, it must be filed within fourteen (14) days of when the grievant knew or should have known of the event giving rise to the grievance.

Upon receipt of a formal written grievance, the Deputy Chief will investigate the grievance and may, in his/her discretion, schedule a meeting with the grievant in an attempt to resolve the grievance. The Deputy Chief will issue his/her decision regarding the grievance in writing within fourteen (14) days of receipt of the written grievance, except that if the Deputy Chief conducts a meeting with the grievant, the Deputy Chief will issue his/her decision in writing within fourteen (14) days of that meeting.

## **Step 3 – Review of Deputy Chief Decision**

If the grievance is not resolved by the decision of the Deputy Chief in Step 2, or if the time for the Deputy Chief to provide a decision under Step 2 has expired, the grievant(s) may appeal the written grievance to the Fire Chief within fourteen (14) days of receipt of the decision in Step 2.

The Fire Chief may either hear the grievance or assign the grievance to be heard by his/her designee. If the Fire Chief designates a hearing officer to hear the grievance, the fees and expenses of the hearing officer will be borne by the Department. Each party, however, shall bear the cost of its own presentation, including preparation and post-hearing briefs, if any. Any decision by designee will be advisory to the Fire Chief.



If the Fire Chief has heard the matter, the Fire Chief shall render a decision within forty-five (45) calendar days of the close of the hearing process. If the hearing is conducted by a designee, the Fire Chief shall either affirm, set aside or modify the decision within forty-five (45) calendar days of receipt of the designee's advisory decision, except that if the Fire Chief takes no action within forty-five (45) calendar days of receipt of the advisory decision, the advisory decision shall become final and binding. Any decision by the Fire Chief shall be final and binding on the parties.

### **26.03 General Conditions of Grievances**

The Personnel Division will act as a central repository for all Step 2 and Step 3 grievance records.

Any time limit may be extended only by mutual agreement in writing.

An aggrieved employee may be represented by another individual at any stage of the proceedings at his/her request. Both employee and representative (if employed by Department) will be entitled to attend proceedings without loss of compensation, should such proceeding conflict with employee's and/or representative's normal working hours.

Proposals to add to or change these rules shall not be considered under this section, and no proposal to modify, amend, or terminate any Memorandum of Understanding between the Department and an employee organization may be considered under this section.

Failure by the grievant or grievant's representative to initiate or appeal a grievance within the prescribed time limits shall waive the right of the grievant, the grievant's representative, and the grievant's bargaining unit (if any) to initiate or appeal a grievance. In the case of an appeal, the last answer to the grievance shall be deemed to be the resolution to the grievance.