



CITY OF MORRO BAY CITY COUNCIL AGENDA

The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

Regular Meeting - Tuesday, March 14, 2017 Veterans Memorial Hall - 6:00 P.M. 209 Surf St., Morro Bay, CA

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
RECOGNITION - None
CLOSED SESSION REPORT
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS
PRESENTATIONS - None

PUBLIC COMMENT PERIOD

Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council at this time.

To increase the effectiveness of the Public Comment Period, the following rules shall be followed:

- When recognized by the Mayor, please come forward to the podium and state your name and city of residence for the record. Comments are to be limited to three minutes.
- All remarks shall be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.

A. CONSENT AGENDA

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FROM THE FEBRUARY 14, 2017 CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FROM THE FEBRUARY 21, 2017 SPECIAL CITY COUNCIL MEETING – WORK SESSION; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FROM THE FEBRUARY 28, 2017 CITY COUNCIL SPECIAL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF MINUTES FROM THE FEBRUARY 28, 2017 CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

B. PUBLIC HEARINGS

B-1 ADOPTION OF URGENCY ORDINANCE NO. 610 AND INTRODUCTION OF ORDINANCE NO. 611, REAUTHORIZING THE PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG) ACCESS CHANNEL FEE; (CITY ATTORNEY)

RECOMMENDATION: Council discuss and:

(i) Adopt, after reading by title only and with further reading waived, Urgency Ordinance No. 610: An Uncodified Urgency Ordinance of the City of Morro Bay, California, Reauthorizing the Public, Educational and Governmental (PEG) Access Channel Fee; and

(ii) Introduce, for first reading by title only and with further reading waived, Ordinance No. 611: An Uncodified Ordinance of the City of Morro Bay, California, Reauthorizing the Public, Educational and Governmental (PEG) Access Channel Fee.

C. BUSINESS ITEMS

C-1 ADOPTION OF PERSONNEL RULES & REGULATIONS; EMPLOYER-EMPLOYEE RELATIONS POLICY; POLICY PROHIBITING HARASSMENT, DISCRIMINATION AND RETALIATION; AND DRUG-FREE WORKPLACE POLICY; (ADMINISTRATION)

RECOMMENDATION: Council approve the Personnel Rules & Regulations and other related policies by adopting the following:

1. Resolution No. 07-17 rescinding Resolutions No. 46-74, 34-83, 127-89, 46-95, 90-98, 21-04, 58-04 and 26-05 and establishing Personnel Rules & Regulations for full-time City Employees,
2. Resolution No. 08-17 rescinding Resolution No. 74-69 and establishing Employer-Employee Relations,
3. Resolution No. 09-17 adopting a Policy Prohibiting Harassment, Discrimination, and Retaliation, and
4. Resolution No. 10-17 adopting a Drug-Free Workplace Policy.

C-2 COUNCIL GUIDANCE FOR FISCAL YEAR 2017-18 BUDGET COMPILATION;
(FINANCE)

RECOMMENDATION: Council provide direction in developing the Fiscal Year 2017-18 Budget, given the fiscal constraints identified during the February 28th 10-year budget forecast special meeting.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, March 28, 2017 at 6:00 p.m.** at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION AT CITY HALL LOCATED AT 595 HARBOR STREET; MORRO BAY LIBRARY LOCATED AT 625 HARBOR STREET; AND MILL'S COPY CENTER LOCATED AT 495 MORRO BAY BOULEVARD DURING NORMAL BUSINESS HOURS.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

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PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Heading	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Ikani Taumoepeau	Deputy City Manager
	Craig Schmollinger	Finance Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Cindy Jacinth	Associate Planner
	Jody Cox	Acting Police Chief
	Steve Knuckles	Fire Chief
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:02 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION - None

CLOSED SESSION REPORT – The Council did not take any reportable action pursuant to the Brown Act.

MAYOR AND COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PRESENTATIONS – Chamber of Commerce 2016 4th Quarter Report

Erica Crawford, Chamber of Commerce CEO, provided the 2016 4th Quarter Report.

https://youtu.be/BJgv_ErISRs?t=15m29s

PUBLIC COMMENT

https://youtu.be/BJgv_ErISRs?t=26m7s

Dana Charvet, owner of The Grateful Body Training Center, provided the business spot. The Grateful Body, located at 850 Shasta Avenue, and provides martial arts, fitness and advanced athletic training, and transformational health coaching. For more information, call 701-7397.

David Nelson, Morro Bay, urged the City to explore alternative technology for the sewer plant and suggested a marijuana dispensary could produce revenue to fund street repairs.

Betty Winholtz, Morro Bay, suggested having a consultant or Cal Poly intern write unbiased surveys will provide balanced community input and expressed concern about the amount of herbicide being used around the edges of the parks.

Janice Peters, Morro Bay, agreed with Ms. Winholtz' survey concerns, and announced the live theater opening of "On Golden Pond" this Friday at St. Peters by the Sea. Show times are Friday and Saturday at 7:00 p.m. and Sunday at 3:00 p.m. "On Golden Pond" is scheduled to run February 17 through March 5.

Peggy Mandeville, Morro Bay, spoke to Item C-2, suggested Goal #1, item 7 be revised to include "various approaches for parking management" and include paid parking as one of those approaches. Regarding the description for Goal #2, she suggested adding the phrase "fiscally conservative" comprehensive water resource policy.

Cherise Hansson, Morro Bay resident and owner of Under the Sea Gallery located at 725 and 833 Embarcadero, shared her vision for proposed improvements at 833 Embarcadero and asked residents to voice an opinion for what you'd like to see on the Embarcadero.

The public comment period was closed.

A. CONSENT AGENDA
https://youtu.be/BJgv_ErlSRs?t=44m

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

A-1 APPROVAL OF MINUTES FROM THE JANUARY 11, 2017 JOINT CITY COUNCIL / PLANNING COMMISSION MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FROM THE JANUARY 24, 2017 SPECIAL CITY COUNCIL MEETING – GOALS STUDY SESSION; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FROM THE JANUARY 24, 2017 CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF MINUTES FROM THE JANUARY 25, 2017 SPECIAL CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

A-5 ADOPTION OF RESOLUTION NO. 04-17 UPDATING THE CITY'S CONFLICT OF INTEREST CODE; (CITY CLERK)

RECOMMENDATION: City Council update the City's Conflict of Interest Code by adopting the proposed Resolution No. 04-17.

A-6 RELEASE OF A MARINE SERVICES FACILITY/BOATYARD RFQ; (HARBOR)

RECOMMENDATION: Council allow the release of a Request for Qualifications (RFQ) document, as recommended by the Harbor Advisory Board (HAB) and as outlined in a letter from HAB Chairman Ron Reisner. The RFQ process will assist with the development of a “short list” of parties or entities potentially interested and qualified to design, build and operate, or to assist the City in designing, building and operating a full-service marine services facility/boatyard in Morro Bay, in the “Triangle Parking Lot” area of the former power plant.

The public comment period for the Consent Agenda was opened.

Pandora Nash-Karner, Los Osos, spoke in support of Item A-6, stating a boat haul-out facility will bring more jobs, more boats, and supports the working waterfront concept.

Dana McClish, Morro Bay resident and member of the Harbor Advisory Board (“HAB”), spoke in support of a marine services facility and presented information gathered by the HAB ad hoc committee from Plan Morro Bay stakeholder meetings and other workshops.

Lexie Bell, Director of National Estuary Program, was pleased the Council is moving forward with the RFQ for a marine services facility and emphasized a properly sited and properly managed facility will benefit water quality and the community.

Jeremiah O’Brien, Morro Bay, thanked the Council for considering the RFQ for boatyard facility and thanked Ms. Peters for bringing live theater to Morro Bay.

The public comment period was closed.

There was Council consensus to pull Item A-6.

MOTION: Council Member Heading moved the Council approve Items A-1 through A-5. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

A-6 RELEASE OF A MARINE SERVICES FACILITY/BOATYARD RFQ; (HARBOR)
https://youtu.be/BJgv_ErISRs?t=54m44s

The Council discussed the value of the RFQ process and thanked the Harbor Advisory Board and its ad hoc committee for their work on this item.

MOTION: Council Member Makowetski moved for approval of Item A-6. The motion was seconded by Council Member Heading and carried unanimously, 5-0.

The Council took a short recess at 7:13 p.m. The meeting reconvened at 7:22 p.m.

B. PUBLIC HEARINGS

B-1 ADOPTION OF RESOLUTION NO. 05-17 APPROVING CONDITIONAL USE PERMIT NO. UP0-448 AND PARKING EXCEPTION NO. AD0-109 FOR GRAYS INN, 561 EMBARCADERO. PROJECT INCLUDES PUBLIC HARBORWALK & VERTICAL ACCESS IMPROVEMENTS, BUILDING FAÇADE IMPROVEMENTS, AND SIDEWALK REPAIR; (COMMUNITY DEVELOPMENT)
https://youtu.be/BJgv_ErISRs?t=1h12m37s

Associate Planner Jacinth provided the staff report.

Cathy Novak of Novak Consulting spoke on behalf of the applicant, providing background information on the project and highlighting key design features.

Gene Doughty, architect for the project, has reviewed sidewalk concerns with the Building Inspector and will need to raise sidewalk 2" to meet ADA requirements.

Staff and the applicant responded to Council inquiries.

The public comment period for Item B-1 was opened; seeing none, the public comment period was closed.

Council discussion stressed the importance of adhering to the Waterfront Master Plan, eliminating the pole sign to bring that into compliance and also eliminating the need for a parking exception.

Ms. Novak was invited to respond to Council comments. She suggested a compromise where the existing sign would be mounted as a projection sign on the front of the building. That would remove the need for a parking exception.

Mr. Doughty stated the Waterfront Master Plan was for major development on the waterfront and some of those requirements do not apply to this smaller project.

Staff offered various alternatives to move the process forward, including continuing the item to a future meeting to include the sign exception and remove the parking exception.

MOTION: Mayor Irons moved the Council continue this item to a date uncertain, with a new resolution that does not include the parking exception (conforms to requirement for 3 - 9' spaces), and including a sign exception to allow the existing sign to be mounted as a projection sign, for Council review. The motion was seconded by Council Member McPherson and carried, 5-0.

C. BUSINESS ITEMS

C-1 ADOPTION OF RESOLUTION NO. 06-17 APPROVING FISCAL YEAR 16/17 MID-YEAR BUDGET AMENDMENTS AND PROVIDE DIRECTION REGARDING RECOMMENDATIONS FROM THE CITIZENS OVERSIGHT/FINANCE ADVISORY COMMITTEE; (FINANCE)
https://youtu.be/BJgv_ErISRs?t=2h28m32s

Finance Director Schmollinger presented the staff report and responded to Council inquiries.

Barbara Spagnola, Citizens Finance Advisory Committee Chair, provided a review of 2015-16 Measure Q expenses and 2016-17 1st and 2nd quarter budget performance reports.

The public comment period for Item C-1 was opened; seeing none, the public comment period was closed.

MOTION: Council Member Heading moved the Council adopt Resolution No. 06-17 approving the Fiscal Year 16/17 mid-year budget amendments with the correction on Exhibit A. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

C-2 DISCUSS FISCAL YEAR 17/18 GOALS & OBJECTIVES; (CITY MANAGER)
https://youtu.be/BJgv_ErISRs?t=3h36m24s

City Manager Buckingham presented the staff report and responded to Council inquiries.

The public comment period for Item C-2 was opened; seeing none, the public comment period was closed.

Goal #1

The Council directed the following changes:

Objective #1 – integrate language such as “while adhering to our community values....” to clarify economic development is not an open floodgate to unencumbered development.

Objective #2 – change “medical center” to “ambulatory medical complex”

Objective #5 – edit to specify 3- to 4-star hotel rooms.

New Objective #8 – evaluate opportunities for new revenue sources (including potential tax measures) and cost control approaches and present to Council for consideration.

Goal #3

New Objective #6 – evaluate existing adopt-a-park program and new opportunities for community volunteer public space improvements.

Goal #4

Objective #4 – include fences and hedges.

Mission Statement

There was Council consensus to remove “safety” and include quality of life.

No formal action was taken on this item.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

https://youtu.be/BJgv_ErISRs?t=4h37m57s

Mayor Irons requested future discussion of Council Policies & Procedures, particularly related to advisory boards and offered to pre-craft language for Council input. Council Member McPherson asked that discussion of general training for advisory boards be included in the discussion. There was support for this item.

E. ADJOURNMENT

The meeting adjourned at 10:47 p.m. The next Regular Meeting will be held on Tuesday, February 14, 2017 at 6:00 p.m. at the Veteran’s Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson
City Clerk

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MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – FEBRUARY 21, 2017
COMMUNITY CENTER MULTI-PURPOSE ROOM – 4:00 P.M.

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Dave Buckingham	City Manager
	Rob Livick	Public Works Director
	Craig Schmollinger	Finance Director
	Mike Nunley	WRF Program Manager
	John Rickenbach	WRF Deputy Program Manager
	Joe Mueller	Utilities Division Manager
	Lori Kudzma	Deputy City Clerk

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 4:00 p.m., with all members present.

<https://youtu.be/MagtGE9N5KQ?t=1m9s>

Mayor Irons welcomed everyone to the meeting. City Manager Buckingham went over the format for the meeting and topics to be discussed.

Works Session Discussion Items:

1. Program Management Services and Contracts
2. Budgeting for Program Management Services
3. Contract Tasks Included in the Proposed PM Contract Amendment
4. Capital Budgets and Operating Budgets
5. Oversight of Program Management Services
6. Additional Questions and Issues
7. Next Steps

Public Works Director Livick and Utilities Division Manager Mueller distributed handouts to all present, including the public.

PUBLIC COMMENT PERIOD FOR ITEMS ON THE AGENDA

Mayor Irons opened public comment.

<https://youtu.be/MagtGE9N5KQ?t=9m17s>

Richard Sadowski, WRFCAC member, spoke requesting that a Coastal Commission representative be invited to attend a meeting because he believes there is a flaw with a lift station. In addition, Mr. Sadowski stated his work product is being used in the Wallace Group study and it is being misused - the flow data is erroneous. Mr. Sadowski stated records he submitted into record have not been provided to the public when requested. Mr. Sadowski would like to freeze all spending on the WRF until there is a discussion with the Coastal Commission in an open forum.

Barbara Spagnola requested that there be public comment made available after discussion and time to review documents that were just distributed.

Homer Alexander would like to speak regarding discussion topic #4. Mr. Alexander believes WRF should not be treated like a typical capital project, but instead should be budgeted annually. Mr. Alexander would like the amendment adjusted to cover through this fiscal year and a separate amendment for the next fiscal year.

Mayor Irons requested that detailed information be provided ahead of time for review.

Ron Reisner inquired as to when modified amendment #2 was published for the public.

Public Works Director Livick and City Manager Buckingham answered and clarified that documents are being distributed at this meeting to Council and the public at the same time. Staff is not asking for approval tonight; this item will be brought to the February 28th City Council meeting for a vote.

Mr. Reisner stated he has many questions that he will provide in a memo to Council.

City Manager Buckingham and Public Works Director Livick responded to public comment.

SPECIAL MEETING AGENDA ITEM:

- I. REVIEW OF AND DIRECTION REGARDING A PROPOSED AMENDMENT TO THE CURRENT CONTRACT FOR WATER RECLAMATION FACILITY (WRF) PROJECT PROGRAM MANAGEMENT SERVICES

<https://youtu.be/MagtGE9N5KQ?t=30m18s>

Public Works Director Livick gave a brief background on the project.

1. Program Management Services and Contracts

<https://youtu.be/MagtGE9N5KQ?t=32m15s>

Public Works Director Livick gave an overview on this topic. Mayor Irons opened the conversation, inviting each Council Member to ask questions.

Mayor Irons asked for clarification regarding the statement in the staff report that states the amendment could have been signed by the City Manager. Public Works Director Livick and City Manager Buckingham clarified the decision was made to bring the amendment to Council to be brought forward through a public process.

The Council took a short recess at 5:49 P.M.

The meeting reconvened at 5:59 P.M.

2. Budgeting for Program Management Services

<https://youtu.be/MagtGE9N5KQ?t=1h50m49s>

City Manager Buckingham introduced the topic and handed it over to Public Works Director Livick.

Mayor Irons opened the roundtable discussion.

Mayor Irons asked for public comment, there was none.

3. Contract Tasks Included in the Proposed Program Management Contract Amendment
<https://youtu.be/MagtGE9N5KQ?t=2h3m22s>

City Manager Buckingham introduced the topic and handed it over to WRF Program Manager Nunley.

Mayor Irons opened the roundtable discussion.
Mayor Irons opened public comment.

Barbara Spagnola, CFAC and WRFCAC member, speaking as a citizen, spoke regarding best practices as they relate to contracts and amendments. Quarterly reports still need some work, but are improving.

Ron Reisner suggested providing a provision for disputed items on an invoice. Mr. Reisner would like to see dependencies on the program schedule.

4. Capital Budgets and General Fund (Operating) Budgets
<https://youtu.be/MagtGE9N5KQ?t=2h29m45s>

City Manager Buckingham introduced the topic and turned it over to Finance Director Schmollinger. Public Works Director Livick added additional comments.

Mayor Irons opened the roundtable discussion.

Mayor Irons opened public comment.
Homer Alexander recommended converting the contract amendment schedules to specify which tasks take place in each fiscal year, even if in a memo format.

Staff responded to public comment. City Manager Buckingham suggested adding a memo to the contract amendment that estimates how much will be expended in each fiscal year. Mr. Nunley agreed to add a memo estimating expenditures for each fiscal year.

There was Council consensus that a memo estimating fiscal year expenditures would be acceptable and cost effective.

5. Oversight of Program Management Services Agreement
<https://youtu.be/MagtGE9N5KQ?t=2h50m49s>

City Manager Buckingham introduced the topic and turned it over to Finance Director Schmollinger and Public Works Director Livick.

Mayor Irons opened the roundtable discussion. There was discussion regarding periodic reporting and the upcoming Prop 218 process.

Mayor Irons asked for reporting feedback. Mr. Nunley explained that monthly consent reports are already worked into the budget. City Manager Buckingham confirmed that WRF reports are brought to City Council at least once a month.

Mayor Irons opened public comment.

Barbara Spagnola believes fiscal management of the entire project should be the responsibility of City staff rather than the outside program manager consultant. Ms. Spagnola suggested the Council seriously look at filling the vacant WRFAC position.

6. Additional Questions and Issues

<https://youtu.be/MagtGE9N5KQ?t=3h18m37s>

City Manager Buckingham introduced this topic and then turned it over to Mr. Nunley. There was discussion about the use of ProCor.

There was no public comment on this topic.

7. Discuss Next Steps

<https://youtu.be/MagtGE9N5KQ?t=3h23m53s>

City Manager Buckingham asked for direction as to whether the contract amendment should come to the City Council as a consent or business item.

There was Council consensus that consent would be acceptable, however in the spirit of transparency, the preference is to bring the contract amendment to the next Council meeting as a business item to easily allow for additional public comment.

City Manager Buckingham asked for affirmation of being on track with the current project goals, specifically the advanced treatment water recycling project.

There was Council consensus that if the upcoming Prop 218 process does not pass Council will re-evaluate goals at that time.

There was no public comment on this topic.

ADJOURNMENT

The meeting adjourned at 7:43 p.m.

Recorded by:

Lori Kudzma
Deputy City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL MEETING – FEBRUARY 28, 2017
VETERANS MEMORIAL HALL
209 SURF STREET – 4:00 P.M.

AGENDA NO: A-3
MEETING DATE: March 14, 2017

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Ikani Taumoepeau	Deputy City Manager
	Craig Schmollinger	Finance Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Jody Cox	Acting Police Chief
	Steve Knuckles	Fire Chief
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Irons established a quorum and called the meeting to order at 4:00 p.m. with all members present.

PUBLIC COMMENT

Mayor Irons opened public comment; seeing none, the public comment period was closed.

SPECIAL MEETING AGENDA ITEM:

- I. TEN-YEAR BUDGET FORECAST
<https://youtu.be/9AUfCaKV7XI?t=13s>

City Manager Buckingham introduced Bob Leland of Management Partners, who presented the ten-year budget forecast report (click [here](#) for PowerPoint).

PUBLIC COMMENT

Mayor Irons re-opened public comment:

Larry Truesdale, Morro Bay, asked the budget modeling tool be used to show the impact of incremental changes in various areas.

Paula Radke, Morro Bay, noted sales tax revenue for consumer goods is weak and asked if the Council opposed inviting small box stores into the community.

Ron Reisner, Morro Bay resident and Harbor Advisory Board member, stated the Harbor Fund chart includes current approved projects but no future needs. He asked the Council to consider that during the budget process.

The public comment period was closed.

Mr. Leland and Mr. Buckingham used the budget modeling tool to demonstrate the potential financial effect of various cost cutting or revenue increase alternatives. Staff will bring a discussion item forward at the March 14, 2017, City Council meeting to work through budgeting options in preparation for the FY 17/18 budget cycle.

No formal action was taken by the City Council.

ADJOURNMENT

The meeting adjourned at 5:40 p.m.

Recorded by:

Dana Swanson
City Clerk

PRESENT:	Jamie Irons	Mayor
	Robert Davis	Council Member
	John Headding	Council Member
	Matt Makowetski	Council Member
	Marlys McPherson	Council Member
STAFF:	Dave Buckingham	City Manager
	Joe Pannone	City Attorney
	Dana Swanson	City Clerk
	Ikani Taumoepeau	Deputy City Manager
	Craig Schmollinger	Finance Director
	Rob Livick	Public Works Director
	Scot Graham	Community Development Director
	Jody Cox	Acting Police Chief
	Steve Knuckles	Fire Chief
	Eric Endersby	Harbor Director

ESTABLISH QUORUM AND CALL TO ORDER

The meeting was called to order at 6:03 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION - None

CLOSED SESSION REPORT – No Closed Session Meeting was held.

MAYOR AND COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

CITY MANAGER REPORTS, ANNOUNCEMENTS & PRESENTATIONS

PRESENTATIONS – None

PUBLIC COMMENT

<https://youtu.be/y4HLlclGGHg?t=8m19s>

Cyndee Edwards of the Skin Stop provided the business spot. Cyndee is a licensed aesthetician offering alternative skin care treatments, including micro-current and other core treatments Complimentary consultations are available, please call (805) 459-3792.

Liz Moore, teacher at Morro Bay High School teacher, announced the upcoming Just 1 Job Fair, an opportunity for local businesses to hire one student for the summer. Morro Bay, San Luis Obispo and Coast Union High School students will have the opportunity to learn interview and work skills. For more information contact Ms. Moore at lmoore@slcusd.org.

Rigmor, Morro Bay, advocated for a medical marijuana dispensary in Morro Bay and opposed placing trash receptacles close to the bay.

Kerry Heller, Morro Bay, spoke on behalf of her husband, Jeff Heller, regarding Item C-1. Mr. Heller fully supports the project concept but is concerned about the long lasting financial effects and wants to be sure soft costs receive the same scrutiny as hard costs.

The public comment period was closed.

Council and staff responded to questions raised during Public Comment.

- A. CONSENT AGENDA
<https://youtu.be/y4HLlclGGHq?t=8m19s>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion.

- A-1 APPROVAL OF MINUTES FROM THE JANUARY 30, 2017 JOINT MEETINGS (ETHICS TRAINING); (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-2 APPROVAL OF MINUTES FROM THE JANUARY 31, 2017 SPECIAL CITY COUNCIL MEETING – GOALS FORUM; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-3 APPROVAL OF MINUTES FROM THE FEBRUARY 14, 2017 SPECIAL CLOSED SESSION CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

- A-4 ADOPTION OF 2017-18 CITY GOALS AND PROGRAM OBJECTIVES; (CITY MANAGER)

RECOMMENDATION: Council adopt the 2017-18 City Goals and Objectives, as presented.

- A-5 FY17 GOALS STATUS UPDATE; (CITY MANAGER)

RECOMMENDATION: Council receive and file this update.

- A-6 APPROVAL OF LICENSE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND SAAP TRUST FOR 1150 FRONT STREET (BAYFRONT INN) AND 1154 FRONT STREET (FRANKIE & LOLA'S FRONT STREET CAFÉ) FOR USE OF PUBLIC PROPERTY IN THE FRONT STREET PARKING LOT AREA FOR TRASH ENCLOSURES; (PUBLIC WORKS)

RECOMMENDATION: Council approve the license agreement for use of public property for a trash enclosure at 1196 Front Street, as proposed.

- A-7 ADOPTION OF RESOLUTION NO. 07-17 AMENDING THE COUNCIL POLICIES AND PROCEDURES REGARDING THE COUNCIL OUTREACH AND STAFF SUPPORT; (CITY ATTORNEY)

RECOMMENDATION: Council adopt Resolution No. 07-17 amending the Council Policies and Procedures regarding Council outreach and staff support.

- A-8 APPOINTMENT OF COUNCIL LIAISON TO THE ESTERO BAY ALLIANCE OF CARE (EBAC) AND CONFIRMATION OF COUNCIL SUB-COMMITTEES; (MAYOR)

RECOMMENDATION: Council approve the appointment of Mayor Irons and Council Member McPherson as liaisons to the Estero Bay Alliance of Care (EBAC) and affirm

Council sub-committees for the Aquarium project, Morro Bay Power Plant, and Chevron properties.

A-9 AUTHORIZATION FOR CITY MANAGER TO EXECUTE DOCUMENTS RELATED TO A RURAL TRANSIT FUND GRANT AWARD FOR PURCHASE OF A NEW MORRO BAY TRANSIT VEHICLE; (PUBLIC WORKS)

RECOMMENDATION: Council authorize the City Manager to execute all necessary documents related to the Rural Transit Fund (RTF) grant awarded by the San Luis Obispo Council of Governments on April 6, 2016, for the purchase of a new replacement Morro Bay Transit vehicle.

A-10 ADOPTION OF RESOLUTION NO. 05-17 APPROVING AMENDMENT NO. 1 TO THE LEASE FOR LEASE SITE 53-56/53W-56W (ESTERO LANDING, LOCATED AT 501 EMBARCADERO) BETWEEN THE CITY OF MORRO BAY AND ESTERO LANDING, INC.; (HARBOR)

RECOMMENDATION: Council adopt Resolution No. 05-17, approving Amendment No. 1 to the current lease for Lease Site 53-56/53W-56W, providing ten additional years of lease term for substantial tenant improvement investment completed.

A-11 DISCUSSION OF AGENDA FOR THE CALIFORNIA MARINE AFFAIRS AND NAVIGATION CONFERENCE (C-MANC) ANNUAL "WASHINGTON WEEK" MEETINGS IN WASHINGTON, D.C.; (HARBOR)

RECOMMENDATION: Council receive this report and provide any desired input on the elements herein.

A-12 APPROVAL OF EXTENSION OF THE CENTRAL COAST AQUARIUM CONSENT OF LANDOWNER AGREEMENT FOR REDEVELOPMENT OF THE MORRO BAY AQUARIUM LEASE SITE 69-70/69W-70W; (HARBOR)

RECOMMENDATION: Council approve extensions of all performance compliance dates by one year each on Central Coast Aquarium's (CCA) current Consent of Landowner (COL) agreement to facilitate CCA's continued pursuance of funding and intent to redevelop lease site 69-70/69W-70W. Staff further recommends the compliance dates be extended to 9 months after loan approval if such approval is granted by the USDA before December 31, 2017.

A-13 AUTHORIZATION TO ENTER INTO AN AGREEMENT FOR ALLOCATION OF CONSTRUCTION AND FINANCING COSTS FOR AN ANIMAL SERVICES SHELTER; (CITY MANAGER/POLICE)

RECOMMENDATION: Council authorize the City Manager to execute an Agreement for Allocation of Construction and Financing Costs for an Animal Services Shelter at 865 Oklahoma Avenue in San Luis Obispo, California, between the Cities of Atascadero, Arroyo Grande, Grover Beach, Morro Bay, Paso Robles, Pismo Beach, San Luis Obispo, and the County of San Luis Obispo.

A-14 RECEIVE DRAFT PERSONNEL RULES & REGULATIONS; EMPLOYER-EMPLOYEE RELATIONS POLICY; POLICY PROHIBITING HARASSMENT, DISCRIMINATION AND RETALIATION; AND DRUG-FREE WORKPLACE POLICY FOR CONSIDERATION AT THE MARCH 14, 2017, CITY COUNCIL MEETING; (ADMINISTRATION)

RECOMMENDATION: Staff has prepared the report and attached documentation as a Consent item to allow the Council adequate time to review the materials in preparation for presentation and adoption at the March 14, 2017, City Council meeting.

On March 14, the Council will be asked to approve the Personnel Rules & Regulations (“Personnel Rules”) and other related policies by adopting the following:

1. Resolution rescinding Resolutions No. 46-74, 34-83, 127-89, 46-95, 90-98, 21-04, 58-04 and 26-05 and establishing Personnel Rules & Regulations for full-time City Employees,
2. Resolution rescinding Resolution No. 74-69 and establishing Employer-Employee Relations,
3. Resolution adopting a Policy Prohibiting Harassment, Discrimination, and Retaliation, and
4. Resolution adopting a Drug-Free Workplace Policy

A-15 ADOPTION OF CITY MISSION STATEMENT; (CITY MANAGER)

RECOMMENDATION: Council adopt the following mission statement for the City of Morro Bay: “The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.”

The public comment period for the Consent Agenda was opened; seeing none, the public comment period was closed.

Council Member Heading pulled Item A-11. Council Member McPherson pulled Items A-4 and A-12. Council Member Makowetski pulled Item A-9. Council Member Davis pulled Item A-6. Mayor Irons pulled Item A-7.

MOTION: Council Member Heading moved the Council approve Items A-1 through A-3, A-5, A-8, A-10, and A-13 through A-15 on the Consent Agenda. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

A-11 DISCUSSION OF AGENDA FOR THE CALIFORNIA MARINE AFFAIRS AND NAVIGATION CONFERENCE (C-MANC) ANNUAL “WASHINGTON WEEK” MEETINGS IN WASHINGTON, D.C.; (HARBOR)
<https://youtu.be/y4HLlclGGHq?t=23m23s>

Council Member Heading appreciated the time and effort spent preparing letters on behalf of the City. Council Member Makowetski noted the dredging efforts would cease without support gained through C-MANC.

MOTION: Council Member McPherson moved for approval of Item A-11. The motion was seconded by Council Member Makowetski and carried unanimously, 5-0.

A-4 ADOPTION OF 2017-18 CITY GOALS AND PROGRAM OBJECTIVES; (CITY MANAGER)
<https://youtu.be/y4HLlclGGHq?t=30m59s>

Council Member McPherson requested further discussion of the objectives under Goal #1 to ensure they are prioritized appropriately and consistent with community values. She asked that specific steps within each objective be brought to Council to analyze which provide more return for investment of staff time. There was Council consensus to continue the item for further discussion at a Council work session.

MOTION: Council Member McPherson moved the Council continue Item A-4 to the next meeting for discussion. The motion was seconded by Council Member Heading and carried unanimously, 5-0.

A-12 APPROVAL OF EXTENSION OF THE CENTRAL COAST AQUARIUM CONSENT OF LANDOWNER AGREEMENT FOR REDEVELOPMENT OF THE MORRO BAY AQUARIUM LEASE SITE 69-70/69W-70W; (HARBOR)
<https://youtu.be/y4HLlclGGHg?t=38m48s>

Mr. Buckingham shared the Central Coast Aquarium has raised \$20,000 of the \$40,000 needed for the feasibility study since the first of the year.

MOTION: Council Member McPherson moved for approval of Item A-12. The motion was seconded by Council Member Headding and carried unanimously, 5-0.

A-9 AUTHORIZATION FOR CITY MANAGER TO EXECUTE DOCUMENTS RELATED TO A RURAL TRANSIT FUND GRANT AWARD FOR PURCHASE OF A NEW MORRO BAY TRANSIT VEHICLE; (PUBLIC WORKS)
<https://youtu.be/y4HLlclGGHg?t=42m>

Council Member Makowetski pulled this item to highlight a new transit vehicle will be purchased with these grant funds.

MOTION: Council Member Makowetski moved the Council approve Item A-9. The motion was seconded by Council Member Headding and carried unanimously. 5-0.

A-6 APPROVAL OF LICENSE AGREEMENT BETWEEN THE CITY OF MORRO BAY AND SAAP TRUST FOR 1150 FRONT STREET (BAYFRONT INN) AND 1154 FRONT STREET (FRANKIE & LOLA'S FRONT STREET CAFÉ) FOR USE OF PUBLIC PROPERTY IN THE FRONT STREET PARKING LOT AREA FOR TRASH ENCLOSURES; (PUBLIC WORKS)
<https://youtu.be/y4HLlclGGHg?t=44m15s>

There was concern about placing trash dumpsters along the Embarcadero, discussion of potential view shed issues, and a desire to amend language regarding reimbursement of installation costs should the City terminate the agreement.

Mayor Irons opened public comment for Item A-6.

Peter Behman, owner of Bayfront Inn, stated based on the current configuration, there is no space on their property to place the trash dumpsters. He requested the Council provide a minimum of three years to amortize the estimated cost of \$3,000 for the enclosure.

Following discussion, the Council agreed to amend Item 10 of the agreement from a 5-year amortization to a 3-year amortization.

MOTION: Council Member Headding moved the Council approve the agreement, revising Item 10 from a 5-year amortization to a 3-year amortization. The motion was seconded by Council Member McPherson and carried unanimously, 5-0.

A-7 ADOPTION OF RESOLUTION NO. 07-17 AMENDING THE COUNCIL POLICIES AND PROCEDURES REGARDING THE COUNCIL OUTREACH AND STAFF SUPPORT; (CITY ATTORNEY)
<https://youtu.be/y4HLlclGGHg?t=1h6m7s>

MOTION: Mayor Irons moved the Council approve Resolution No. 07-17, but striking item #2 for discussion. The motion was seconded by Council Member Headding.

Mayor Irons suggested striking item #2 of the resolution to allow time to discuss the process with other mayors in the County. There was Council support to continue the item to gather further input.

Mayor Irons withdrew the motion. Council Member Headding withdrew the second.

MOTION: Council Member McPherson moved the Council continue Item A-7. The motion was seconded by Council Member Headding and carried unanimously, 5-0.

The Council took a short recess at 7:12 p.m. The meeting reconvened at 7:22 p.m.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 APPROVE THE ANNUAL CONTRACT AUTHORIZATION FOR PROGRAM MANAGEMENT SERVICES FOR THE WATER RECLAMATION FACILITY AS CONTEMPLATED BY THE AGREEMENT BETWEEN THE CITY AND MICHAEL K. NUNLEY & ASSOCIATES, INC.; (PUBLIC WORKS)

<https://youtu.be/y4HLlclGGHg?t=1h16m11s>

Public Works Director presented the staff report and, along with City Manager Buckingham, responded to Council inquiries.

The public comment period for Item C-1 was opened; seeing none, the public comment period was closed.

The Council appreciated the level of detail provided in the contract amendment and were satisfied concerns previously raised were addressed during the February 21 Council work session. Mayor Irons confirmed a link to that work session will be provided on the City website. Council stressed the importance of overall fiscal management and requested financial information be provided in a format that is easier to read.

MOTION: Council Member Headding moved the Council authorize the City Manager to execute Amendment No. 2 to the Water Reclamation Facility Program Management agreement with Michael K. Nunley. The motion was seconded by Council Member Makowetski and carried unanimously, 5-0.

C-2 DIRECTION ON MARKET PLAZA REQUEST FOR QUALIFICATIONS; (COMMUNITY DEVELOPMENT)

<https://youtu.be/y4HLlclGGHg?t=1h26m54s>

Community Development Director Graham presented the staff report and responded to Council inquiries.

The public comment period for Item C-2 was opened; seeing none, the public comment period was closed.

The Council recognized the importance of economic development and the potential opportunity for this area. There was consensus the RFQ should not be too limiting and allow developers to bring forward an economically viable project for community review and input. There was Council support for the RFQ process but a desire to gather more community input from the General Plan Advisory Committee ("GPAC") before releasing the RFQ. Staff offered to include discussion of

this item at the March 8 GPAC Meeting during review of the Downtown Waterfront Strategic Plan. Following that meeting, staff will bring the RFQ to Council for approval.

No formal action on this item.

- C-3 CONSIDERATION OF AND DIRECTION REGARDING A REQUEST FROM *BY THE SEA PRODUCTIONS* FOR A REDUCTION OR WAIVER OF APPLICATION FEES FOR SPECIAL USE PERMIT (UP0-446) ALLOWING COLOCATION OF A LIVE THEATER IN AN EXISTING CHURCH IN A RESIDENTIAL ZONE AT 545 SHASTA AVENUE; (COMMUNITY DEVELOPMENT)
<https://youtu.be/y4HLlclGGHg?t=2h31m48s>

Mayor Irons explained he had previously recused himself from Council discussion when this item was agenzized at the December 13, 2016, meeting because he lives within 500 feet of the property.

Mr. Pannone explained the factual situation has changed since that time. In December, it was not yet established whether the theater would be located at this property. Since the decision at that time could potentially affect the real property value, the Mayor had to recuse himself. The facts now are the theater location is set and the decision is limited to a fee waiver, which does not affect the value of the real property the theater sits on, therefore there is no conflict of interest.

Community Development Director Graham presented the staff report and responded to Council inquiries.

The public comment period for Item C-3 was opened.

Janice Peters, Morro Bay resident and Board Member of By the Sea Productions, shared financial information to date for the first production and appreciated the staff recommendation. If fees could not be reduced, she requested the City accept installment payments.

The Council expressed appreciation for the theater and its benefit to the community. Council Member McPherson supported waiving all fees, while Council Members Heading and Makowetski supported charging for noticing and environmental fees for a total of \$398.

Council Member Davis supported live theater but wanted to remain consistent with Council direction to recoup 100% of the cost for issuing planning and building permits and be fair and equitable to Morro Bay businesses and taxpayers. Mayor Irons was supportive of reducing permit fees from \$5,706 to \$2,100.

Mr. Pannone clarified the Council has flexibility to determine what benefit the community is receiving and make certain concessions and that would not be a gift of public funds.

MOTION: Council Member McPherson moved the Council collect noticing and environmental fees (hard costs) in the amount of \$398. The motion was seconded by Council Member Heading and carried 3-2 with Mayor Irons and Council Member Davis voting no.

- C-4 DISCUSSION AND DIRECTION OF WASHINGTON DC REPRESENTATION FOR WATER RECLAMATION FACILITY (WRF) PROJECT; (CITY MANAGER)
<https://youtu.be/y4HLlclGGHg?t=2h57m31s>

Mr. Buckingham presented the staff report and responded to Council inquiries.

The public comment period for Item C-4 was opened; seeing none, the public comment period was closed.

There was Council support to negotiate a longer-term retainer agreement with the Ferguson Group. Council Member McPherson preferred to negotiate a short-term agreement to develop a Federal agenda and work plan and see what comes from that. Council Members Davis and Makowetski supported either a short-term or long-term agreement.

MOTION: Council Member Headding moved the Council direct staff to negotiate a longer-term retainer agreement as low cost as possible to build a Federal agenda, advocate for the City, and provide Federal grant-writing assistance to support the Water Reclamation Facility project, according to fiscal impact outlined in the staff report. The motion was seconded by Council Member Davis and carried unanimously, 5-0.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/y4HLlclGGHq?t=3h23m33s>

None

E. ADJOURNMENT

The meeting adjourned at 9:30 p.m. The next Regular Meeting will be held on Tuesday, March 14, 2017 at 6:00 p.m. at the Veteran's Memorial Hall located at 209 Surf Street, Morro Bay, California.

Recorded by:

Dana Swanson
City Clerk



AGENDA NO: B-1

MEETING DATE: March 14, 2017

Staff Report

TO: Honorable Mayor and City Council **DATE:** February 28, 2017

FROM: Joseph W. Pannone, City Attorney
Craig Schmollinger, Finance Director

SUBJECT: Adoption of Urgency Ordinance No. 610 and Introduction of Ordinance No. 611,
Reauthorizing the Public, Educational and Governmental Access Channel Fee

RECOMMENDATION

Staff recommends Council discuss and:

- (i) Adopt, after reading by title only and with further reading waived, Urgency Ordinance No. 610: An Uncodified Urgency Ordinance of the City of Morro Bay, California, Reauthorizing the Public, Educational and Governmental (PEG) Access Channel Fee; and
- (ii) Introduce, for first reading by title only and with further reading waived, Ordinance No. 611: An Uncodified Ordinance of the City of Morro Bay, California, Reauthorizing the Public, Educational and Governmental (PEG) Access Channel Fee.

(NOTE: The two ordinances are identical, other than the urgency ordinance will take immediate effect, while the second ordinance will proceed through the standard procedure of a second reading, plus 30 days, to become effective. Both ordinances will reauthorize the fee charged by the City to telecommunication companies to support PEG channel facilities.)

FISCAL IMPACT

The proposed Ordinances will allow the City of Morro Bay (City) to continue to collect PEG fees from AT&T as the operator of the City's cable TV provider. Those fees are typically \$28,000 to \$32,000 per year.

BACKGROUND/DISCUSSION

Subdivision 5870(n) of the Public Utilities Code, which was enacted as the Digital Infrastructure and Video Competition Act of 2006, authorized the City to adopt an ordinance establishing a fee on state-franchised video service providers to support PEG access channel facilities. On February 13, 2013, the City adopted Ordinance Number 582, codified as Morro Bay Municipal Code (MBMC) Section 5.30.010, "Fee for support of local cable usage," to establish such a fee.

Subdivision 5870(n) of the Public Utilities Code states such an ordinance shall expire, and may be reauthorized, upon the expiration of a state franchise. California Video Franchise Certificate Franchise No. 0002, granted to Pacific Bell Telephone Co. d/b/a AT&T California, which franchise includes the City, will expire on March 30, 2017.

In addition, other state-issued Video Franchise Certificate Franchises within the City's jurisdiction will

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Prepared By: <u> JWP </u>	Dept Review: <u> JWP </u>
City Manager Review: <u> </u>	City Attorney Review: <u> JWP </u>

expire in coming years, each of which expirations will trigger the need for renewal of MBMC Section 5.30.010. The proposed uncodified Ordinance is intended to establish an evergreen renewal of MBMC Section 5.30.010, until such time as the City Council takes action to repeal such reauthorizations;

The proposed ordinances will reauthorize the fee charged by the City to telecommunication companies to support PEG channel facilities

CONCLUSION

Staff recommends the City Council take the following actions as separate items:

1. Adopt, by reading by title only with further reading waived, Urgency Ordinance No. 610: An Uncodified Urgency Ordinance of the City of Morro Bay, California, Reauthorizing the Public, Educational and Governmental (PEG) Access Channel Fee;

a. Based upon finding the Urgency Ordinance is necessary for the immediate preservation of the public peace, health, or safety, as those terms are defined in Government Code subdivision 36937(b), in at least the following respects: The City only recently received notice of the expiration of the state-issued franchise held by the City's cable provider, and hence the need for reauthorization of Ordinance No. 582, such that it is essential the City adopt the above stated Ordinance re-authorization before March 30, 2017.

b. Requires supermajority vote.

2. Introduce, after first reading by title only with further reading waived, Ordinance No. 611: An Uncodified Ordinance of the City of Morro Bay, California, Reauthorizing the Public, Educational and Governmental (PEG) Access Channel Fee

ATTACHMENTS:

- 1) Proposed Urgency Ordinance No. 610
- 2) Proposed Ordinance No. 611

ORDINANCE NO. 610

**AN UNCODIFIED URGENCY ORDINANCE OF THE
CITY OF MORRO BAY, CALIFORNIA,
REAUTHORIZING THE PUBLIC,
EDUCATIONAL AND GOVERNMENTAL (PEG)
ACCESS CHANNEL FEE**

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, Section 5870(n) of the Public Utilities Code, which was enacted as part of the as the Digital Infrastructure and Video Competition Act of 2006, authorized the City of Morro Bay (the “City”) to adopt an ordinance establishing a fee on state-franchised video service providers to support PEG access channel facilities; and

WHEREAS, on February 13, 2013, the City adopted Ordinance No. 582, codified as Morro Bay Municipal Code (MBMC) section 5.30.010. “Fee for Support of Local Cable Usage,” to establish such a fee; and

WHEREAS, Section 5870(n) of the Public Utilities Code states that such an ordinance shall expire, and may be reauthorized, upon the expiration of a state franchise; and

WHEREAS, California Video Franchise Certificate Franchise No. 0002, granted to Pacific Bell Telephone Co. d/b/a AT&T California, which franchise includes the City, will expire on March 30, 2017. In addition, other state-issued Video Franchise Certificate Franchises within the City’s jurisdiction will expire in coming years, each of which expirations will trigger the need for renewal of MBMC section 5.30.010. This uncodified urgency Ordinance is intended to establish an evergreen renewal of MBMC section 5.30.010, until such time that the City Council takes action to cease such reauthorizations or Ordinance No. 611 becomes effective, which is sooner; and

WHEREAS, Government Code Sections 36934 and 36937 expressly authorize the City Council to adopt an urgency ordinance for the immediate preservation of the public peace, health or safety; and

WHEREAS, this uncodified ordinance will reauthorize the fee charged by the City to telecommunication companies to support PEG channel facilities.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1: The above recitals are true and correct and incorporated fully herein.

SECTION 2: The City Council hereby reauthorizes the fee on state-franchised video service providers to support PEG channel facilities adopted in Ordinance No. 582. The fee shall remain unchanged and in full effect as to all state-franchised video service providers.

SECTION 3: Commencing from, and after, the effective date of this Ordinance, the City's PEG fee in Ordinance No. 582 (MBMC section 5.30.010) shall automatically be reauthorized upon the expiration of any existing or future Video Franchise Certificate Franchise(s) held by any state-franchised video service provider operating within the City. Ordinance No. 582 (MBMC section 5.30.010) shall so renew upon the future expiration of Video Franchise Certificate Franchise(s), unless the sooner of the following occurs, (i) Ordinance No. 611 becomes effective or (ii) the City Council takes formal affirmative action to cease the renewals and repeal this Ordinance, which action may be taken at any time and without notice, except as required by the Ralph M. Brown Act, California Government Code section 54950 *et seq.*.

SECTION 4: Adoption of this uncodified Ordinance is exempt from the California Environmental Quality Act under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty that there is no possibility the amendment may have a significant effect on the environment.

SECTION 5: This Urgency Ordinance is enacted pursuant to the authority conferred upon the City Council of the City of Morro Bay by Government Code Sections 36934 and 36937 and shall be in full force and effect immediately upon its adoption by a four-fifths (4/5) vote of the City Council as if and to the same extent such ordinance had been adopted pursuant to each of the individual sections set forth hereinabove. **This Urgency Ordinance shall take effect immediately upon adoption and shall become operative on March 14, 2017.**

SECTION 6: Urgency Findings. The adoption of this Urgency Ordinance is necessary for the immediate preservation of the public peace, health, or safety, as those terms are defined in Government Code Section 36937(b), in at least the following respects: The City only recently received notice of the expiration of the state-issued franchise held by the City's cable provider, and hence the need for reauthorization of Ordinance No. 582 (MBMC section 5.30.010), such that it is essential the City Council adopt the above stated Ordinance re-authorization before March 30, 2017. In the absence of legislation effective by that date, Ordinance No. 582 (MBMC section 5.30.010) with its provisions providing for PEG (including PEG emergency and public safety broadcasts) will not be in effect. Accordingly, this Ordinance shall take effect immediately upon adoption.

SECTION 7: If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 8: The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

PASSED AND ADOPTED this 14th day of March, 2017.

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney

ORDINANCE NO. 611

**AN UNCODIFIED ORDINANCE OF THE CITY OF
MORRO BAY, CALIFORNIA, REAUTHORIZING THE
PUBLIC, EDUCATIONAL AND GOVERNMENTAL (PEG)
ACCESS CHANNEL FEE**

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, Subdivision 5870(n) of the Public Utilities Code, which was enacted as the Digital Infrastructure and Video Competition Act of 2006, authorized the City of Morro Bay (the "City") to adopt an ordinance establishing a fee on state-franchised video service providers to support PEG access channel facilities;

WHEREAS, on February 13, 2013, the City adopted Ordinance No. 582, codified as Morro Bay Municipal Code (MBMC) Section 5.30.010, "Fee for Support of Local Cable Usage," to establish such a fee;

WHEREAS, Subdivision 5870(n) of the Public Utilities Code states such an ordinance shall expire, and may be reauthorized, upon the expiration of a state franchise;

WHEREAS, California Video Franchise Certificate Franchise No. 0002, granted to Pacific Bell Telephone Co. d/b/a AT&T California, which franchise includes the City, will expire on March 30, 2017. In addition, other state-issued Video Franchise Certificate Franchises within the City's jurisdiction will expire in coming years, each of which expirations will trigger the need for renewal of MBMC Section 5.30.010. This uncodified Ordinance is intended to establish an evergreen renewal of MBMC Section 5.30.010, until such time as the City Council takes action to cease such reauthorizations; and

WHEREAS, this uncodified ordinance will reauthorize the fee charged by the City to telecommunication companies to support PEG channel facilities.

NOW, THEREFORE, the City Council of the City of Morro bay does ordain as follows:

SECTION 1: The above recitals are true and correct and incorporated fully herein.

SECTION 2: The City Council hereby reauthorizes the fee on state-franchised video service providers to support PEG channel facilities adopted in Ordinance Number 582. The fee shall remain unchanged and in full effect as to all state-franchised video service providers.

SECTION 3: Commencing from, and after, the effective date of this Ordinance, the City's PEG fee in Ordinance No. 582 (MBMC section 5.30.010) shall automatically be reauthorized upon the expiration of any existing or future Video Franchise Certificate Franchise(s) held by any state-franchised video service provider operating within the City. Ordinance No. 582 (MBMC section 5.30.010) shall so renew upon the future expiration of Video Franchise Certificate Franchise(s), unless the City Council takes formal affirmative action to cease the renewals and repeal this Ordinance, which action may be taken at any time and without notice, except as required by the Ralph M. Brown Act, California Government Code section 54950 *et seq.*

SECTION 4: Adoption of this uncodified Ordinance is exempt from the California Environmental Quality Act under CEQA Guidelines section 15061(b)(3) because it can be seen with certainty there is no possibility the amendment may have a significant effect on the environment.

SECTION 5: If any section, subsection, sentence, clause, or phrase of this ordinance is for any reason held to be invalid or unconstitutional by a decision of any court of any competent jurisdiction, such decision shall not affect the validity of the remaining portions of this ordinance. The City Council hereby declares that it would have passed this ordinance, and each and every section, subsection, sentence, clause and phrase thereof not declared invalid or unconstitutional without regard to whether any portion of the ordinance would be subsequently declared invalid or unconstitutional.

SECTION 6: This Ordinance shall take effect 30 days after its adoption. The City Clerk, or her duly appointed deputy, shall attest to the adoption of this Ordinance and shall cause this Ordinance to be published and posted in the manner required by law.

INTRODUCED at a regular meeting of the City Council of the City, held on the ___ day of _____, 2017, by motion of _____, seconded by _____.

PASSED AND ADOPTED on the ___ day of _____, 2017, by the following vote:

AYES:
NOES:
ABSENT:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

JOSEPH W. PANNONE, City Attorney

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AGENDA NO: C-1

MEETING DATE: March 14, 2017

Staff Report

TO: Honorable Mayor and City Council

DATE: March 8, 2017

FROM: Dana Swanson, City Clerk/Risk Manager

SUBJECT: Adoption of Personnel Rules & Regulations; Employer-Employee Relations Policy; Policy Prohibiting Harassment, Discrimination and Retaliation; and Drug-Free Workplace Policy

RECOMMENDATION

Staff recommends the Council approve the Personnel Rules & Regulations (“Personnel Rules”) and other related policies by adopting the following:

1. Resolution No. 07-17 rescinding Resolutions No. 46-74, 34-83, 127-89, 46-95, 90-98, 21-04, 58-04 and 26-05 and establishing Personnel Rules & Regulations for full-time City Employees,
2. Resolution No. 08-17 rescinding Resolution No. 74-69 and establishing Employer-Employee Relations,
3. Resolution No. 09-17 adopting a Policy Prohibiting Harassment, Discrimination, and Retaliation, and
4. Resolution No. 10-17 adopting a Drug-Free Workplace Policy.

ALTERNATIVES

No alternatives are being recommended at this time.

FISCAL IMPACT

None

BACKGROUND

In 1969, the City adopted Resolution 74-69 establishing Employer-Employee Relations between the City and its represented employee organizations and a process for resolving disputes regarding wages, hours and other terms and conditions of employment. During staff review of the Personnel Rules, it was determined this policy should be updated to reflect changes in legislation.

A series of resolutions were adopted from 1965 through 1976 establishing Personnel Rules for permanent employees in accordance with Morro Bay Municipal Code (“MBMC”) Section 2.32.050. In 1983, Resolution 34-83 rescinded most of the previous policies and established a new set of Personnel Rules for those in the classified service (full-time/regular employees), except those “at-will” (City Manager, City Attorney, Department Heads); part-time or temporary employees; volunteers; and consultants. That resolution remains largely in place; however, there are seven other resolutions that are also in effect. Unfortunately, those amendments did not result in a consolidated policy to follow (i.e. the Council Policies & Procedures), but rather, resulted in separate stand-alone documents that must be reconciled and interpreted based on the issue at

Prepared By: DS

Dept Review: _____

City Manager Review: DWB

City Attorney Review: CMC

hand. Here is a list of the current active Personnel Rules and their basic content, which are included as Attachment 4.

1. Resolution No. 46-74 (June 1974) established Grievance Procedures
2. Resolution No. 34-83 (March 1983) revised and established a full set of Personnel Rules, but did not include the Grievance Procedures established by Reso. 46-74
3. Resolution No.127-89 (October 1989) established a Family Sick Leave and Bereavement Policy
4. Resolution No. 46-95 (April 1995) established a Catastrophic Leave Policy
5. Resolution 90-98 (September 1998) amended the Catastrophic Leave Policy
6. Resolution 21-04 (April 2004) adopted Equal Employment Opportunity Policies, including a Harassment Prevention Policy, Family Medical Leave Act (FMLA), Americans with Disabilities Leave Act, Pregnancy and Military Leave
7. Resolution No. 58-04 (August 2004) revised sections related to employment, classification, recruitment, selection and appointment, and employment status
8. Resolution No. 26-05 (June 2005) adopted a Layoff and Seniority Policy

In 2014, staff began working with Liebert, Cassidy & Whitmore, a firm who specializes in public employment law, to perform a comprehensive review and update of the existing Personnel Rules to clarify existing practices and ensure compliance with changes in State and Federal law. The project was set aside for a time in favor of other priorities, but in June 2016, the draft set of Personnel Rules were sent to the represented employee groups and all full-time employees for review and comment. Following that 3-month employee review period, staff received comments and questions from SEIU and the Management group that resulted in some minor changes and points of clarification. The draft set of Personnel Rules; Policy Prohibiting Harassment, Discrimination, and Retaliation; and Drug-Free Workplace were then sent to the City Attorney's office for a final legal review.

On February 1, 2017, the final set of draft Personnel Rules, Policy Prohibiting Harassment and Discrimination, and Drug-Free Workplace Policies were provided to all full-time employees, along with an invitation to meet and discuss any questions or concerns. One employee attended and provided feedback that resulted in additional fine-tuning, but no policy changes.

DISCUSSION

The City's Personnel Rules & Regulations were last revised in June 2005. Human Resources staff, in coordination with Liebert Cassidy Whitmore and the City Attorney's office has reviewed and revised the rules to comply with updates and changes to legislation and to ensure practices are in line with supporting employee morale and a productive work environment. The City's employer-employee relations resolution was also reviewed and updated appropriately. Human Resources staff provided opportunities to meet and confer with all bargaining groups and continues to encourage feedback and discussion of any questions that remain.

In addition to the Personnel Rules, two separate policies are being presented for Council review and approval, a Policy Prohibiting Harassment, Discrimination, and Retaliation and Drug-Free Workplace Policy. While these policies are referred to within the Personnel Rules, it is recommended they remain separate documents as those policies apply to all City employees, including part-time and temporary, as well as appointed and elected officials.

Drug-Free Workplace Policy. A Drug-Free Workplace Policy was implemented administratively in 2012, but not adopted by the City Council. Given recent changes in State law, including the

passage of Proposition 64 legalizing recreational use of marijuana, it is recommended the attached Policy be adopted by Resolution. The proposed Policy also meets Federal regulations governing workplace anti-drug and alcohol programs in the transit industry.

Policy Prohibiting Harassment and Discrimination. The policy contained in the current Personnel Rules is out of date and lacks a clear process for reporting and responding to harassment and discrimination complaints. The proposed stand-alone Policy applies to all full-time employees, part-time and temporary employees, appointed and elected officials, contractors and volunteers. The City offers Harassment and Discrimination Prevention training to all supervisors, as required by State law. The recent adoption of Assembly Bill 1661 extended that training requirement to all local agency officials (elected and appointed).

Workplace Violence Prevention Policy. The City has demonstrated its support for anti-bullying efforts with the adoption of proclamations, but currently lacks a clear policy regarding Workplace Violence. The language proposed in Section 15 (F) of the Personnel Rules establishes a zero-tolerance policy for any acts of intimidation, threats, actual or perceived, or any form of violence against an employee, a member of the public or the property of either, even if it was intended to be harmless, humorous, a prank or venting. Workplace violence can be confused with Harassment and Discrimination so it is necessary to have clear policies addressing both issues.

Catastrophic Leave Policy. The City established a Catastrophic Leave Policy in 1995 and later amended that policy in 1998 to allow employees to support one another in times of extreme stress resulting from the catastrophic illness or injury to the employee or an immediate family member. Employees voluntarily donate vacation or sick leave hours to a leave bank which can be accessed by an eligible employee who has been determined to meet policy requirements. Over the years, the policy has provided continuing income and healthcare coverage to a young mother to care for her husband with a life-threatening illness, allowed employees to provide end-of-life care to parents, and relieved the financial stress for employees facing their own catastrophic illness. The proposed changes to this policy tighten the provisions somewhat by requiring employees to make a donation to the leave bank in order to be eligible, and reduce the maximum allowed from 720 hours per year during any 12-month period to 360 hours during any 24-month period.

A final draft set of policies were provided to Council as a Consent Item in the February 28, 2017, agenda packet for review prior to adoption. Based on feedback received, the following points of clarification were made and are reflected in the attached documents as redline edits.

Personnel Rules & Regulations:

Section 4.E. – Department Rules & Regulations (pages 9-10). Language clarified to ensure Department Rules are reviewed by Human Resources and approved by the City Manager.

Section 15.D. – Drug and Alcohol-Free Workplace (page 60). Refers to separate Drug-Free Workplace Policy for use and abuse of legal drugs in the workplace.

Section 18.B.3. – Causes for Disciplinary Action (page 67). Refers to separate Drug-Free Workplace Policy for use of alcohol, illegal drugs, or use and abuse of legal drugs.

Drug-Free Workplace Policy:

The Policy has been amended to include volunteers.

Following the adoption of the updated policies, staff recommends annual review and updates when

changes in policies are needed to ensure compliance and/or when a business change warrants review.

ATTACHMENTS

1. Resolution No. 07-17 Adopting City of Morro Bay Personnel Rules & Regulations
2. Resolution No. 08-17 Establishing Employer-Employee Relations
3. Resolution No. 09-17 Adopting a Policy Prohibiting Harassment, Discrimination, and Retaliation
4. Resolution No. 10-17 Adopting a Drug-Free Workplace Policy
5. Current Personnel Rules & Regulations (provided in Feb. 28, 2017 Council agenda packet and available [here](#)).

RESOLUTION NO. 07-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ESTABLISHING PERSONNEL RULES AND REGULATIONS AND
RESCINDING RESOLUTIONS NO. 46-74, 34-83, 127-89, 46-95, 90-98, 21-04, 58-04, and 26-05.**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, Morro Bay Municipal Code (“MBMC”) Section 2.32.050 authorizes the City Council to adopt and amend Personnel Rules and Regulations governing the City of Morro Bay personnel system; and

WHEREAS, the Personnel Rules and Regulations have not been comprehensively reviewed or modified since 1983 and were last revised in 2005; and

WHEREAS, the Personnel Rules and Regulations should be updated to reflect legislative and other changes agreed to since the last revision in 2005; and

WHEREAS, the City’s recognized bargaining units, the Service Employees International Union (“SEIU”), the Police Officers Association (“POA”), and the Morro Bay Fire Fighters Association (“MBFFA”) were provided copies of the proposed revisions, with the offer to meet and confer; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morro Bay does hereby adopt the attached Personnel Rules and Regulations to facilitate efficient and economical services to the public and to provide for an equitable system of personnel management; and

BE IT FURTHER RESOLVED that Resolutions No. 46-74, 34-83, 127-89, 46-95, 90-98, 21-04, 58-04 and 26-05 are hereby rescinded.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of March, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

PERSONNEL RULES AND REGULATIONS
CITY OF MORRO BAY

-TABLE OF CONTENTS-

<u>SECTION</u>	<u>PAGE</u>
1. Merit Personnel System	2
2. Administrative Policy	3
3. Definition of Terms.....	4
4. General Provisions	9
5. Classification Plan	11
6. Compensation Plan	13
7. Recruitment, Selection and Appointment.....	19
8. Employment Status	27
9. Formal Performance Evaluations.....	30
10. Leaves	32
11. Attendance and Leaves	42
12. Grievance Procedures	51
13. Transfer, Promotion, Demotion, Suspension, and Reinstatement	53
14. Separation from the Service.....	55
15. Miscellaneous Rules	59
16. Training of Employees.....	65
17. Reports and Records	66
18. Disciplinary and Appeals Procedures	67

SECTION 1
MERIT PERSONNEL SYSTEM

A. Merit Personnel System Established.

1. By adopting this resolution, the City Council hereby establishes a civil service system in accordance with the provisions of the Municipal Code Chapter 2.32.
2. The City Council intends that the personnel system will establish an equitable and uniform procedure for dealing with personnel matters; attract to municipal service the best and most competent persons available; assure that appointments and promotions of employees will be based on merit and fitness; and provide a reasonable degree of security for qualified employees.

SECTION 2
ADMINISTRATIVE POLICY

A. Authority of City Manager

In accordance with Morro Bay Municipal Code Section 2.32, Personnel System, the City Manager shall have general control and supervision over the affairs of the city; the authority to establish, when not in conflict these Rules and Regulations, such other procedures as the city manager deems necessary for the control and supervision of the affairs of the City; and the power to appoint, to make transfers, promotions, demotions, reinstatements, and layoffs, and to discipline City employees for whom the City Manager is the appointing authority. The City Manager may delegate any of these powers and duties to any other employee of the city.

SECTION 3
DEFINITION OF TERMS

- A. Definitions. The following terms whenever used in these rules shall be defined as follows, unless a different meaning is clearly defined in a separate policy or rule:

Acting Appointment: unless otherwise provided in a current Memorandum of Understanding, the temporary appointment of a probationary or regular employee to a higher class or position occupied by a person on temporary leave, vacation, or disability, or until an eligibility list can be created for a vacant position, during which, the appointed employee performs all of the duties of the higher-level classification. A person in an acting appointment shall not acquire regular status in such appointment and, at the end of the acting appointment, will return to the classification from which they are appointed.

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

Allocation: the official assignment of a single position to its proper class in accordance with the duties performed, and the authority and responsibilities exercised.

Anniversary Date: the first day of continuous service used to determine seniority and benefit accrual rate for applicable benefits in accordance with the continuity of service requirements of these Rules.

Applicant: an individual who has completed and submitted a written application for employment with the City, unless otherwise permitted by the Human Resources Director or his/her designated personnel officer.

Appointing Authority: the City Manager, or designee(s), who, in their individual capacities, have the final authority to make the appointment to or from a position in accordance with the Municipal Code Chapter 2.32.

Appointment: the offer to and acceptance by a person of a position in the City service, either on a regular or temporary basis.

At-Will: employees, including but not limited to probationary, temporary, provisional, seasonal, contract, and Department Head employees, who do not hold “regular” status and serve at the pleasure of the City without any right to future employment. An at-will employee may be disciplined, or otherwise terminated, at any time without cause and without the opportunity to an appeal or hearing.

Business Day: any calendar day exclusive of Saturdays, Sundays, and legal holidays as defined by these Rules and Regulations.

Calendar Day: a continuous twenty-four (24) hour period commencing at 12:00 Midnight. Any use of the terms “day” or “days” shall refer to calendar days.

Class (Classification): a position or group of positions sufficiently similar in duties, authority, and responsibility, to permit grouping under a common title and the equitable application of common standards of selection, transfer, promotion and salary.

Class Specifications (Job Description): a written description of a class, setting forth factors and conditions which are essential characteristics of positions in the class.

Compensation Plan: the assignment by the City Manager of salary ranges to each class, normally established by Resolution.

Compensatory Time: time off work in lieu of monetary payment for overtime work.

Classified Service: all positions of employment in the competitive service of the City except those specifically excluded by Municipal Code or these Rules.

Construction of Genders: for the purposes of these rules and regulations, the masculine form of pronouns shall include the feminine and feminine forms of pronouns shall include the masculine.

Continuous Service: the employment without a break or interruption of service of an employee in a probationary or regular status.

Demotion: the voluntary or involuntary reduction of a regular employee from a position in one class to a position in another class having a lower maximum rate of pay, unless it is part of a general plan to reduce salaries and wages or to eliminate position.

Discharge: the involuntary separation of an employee from City service.

Eligible: a person whose name is on a current employment list.

Employee: an individual in the classified service who is legally employed by the City and is compensated through the City payroll for services rendered, but not including elected officials, members of boards or commissions, or a person under contract as an independent contractor.

Eligibility (Employment) List:

- (a) Open eligibility list: a list of names of persons who have taken an open competitive examination for a class and have qualified.
- (b) Promotional eligibility list: a list of names of persons who have taken a promotional examination for a class and have qualified.
- (c) Re-employment list: a list of names of qualified regular and probationary employees who have been laid off.

Examination: any test or group of tests to determine the fitness and relative ability of persons seeking employment or promotion in the classified service.

- (a) Open-competitive examination: an examination for a particular class which is open to all persons meeting the qualifications for the class.
- (b) Promotional examination: an examination for a particular class, admission to the examination being limited to regular and probationary employees in the classified service who meet the qualifications for the class.
- (c) Continuous examination: an open-competitive examination which is administered periodically and as a result of which names are merged on an eligibility list, in order of final scores, for a period of not more than one year.

Full-Time Position: a position in the classified service of the City normally scheduled for at least 40 hours of work per week.

Human Resources Office: the office charged with monitoring compliance with these rules and regulations. A personnel officer will carry out the day-to-day operations of the human resources office and will be designated by the City Manager.

Immediate Family: spouse, registered domestic partner, children, biological, adopted, foster, stepchild, ward, or child to whom the employee stands in loco parentis, regardless of age or dependency, parents, brothers, sisters, grandparents, grandchildren of the employee; and the corresponding relationships as required by law.

Leave: An approved absence from work as provided for by these rules.

May and Should: the use of “may” and “should” indicates the permissive nature of the applicable provision.

Memorandum of Understanding: a separate agreement between recognized employee representatives and the City concerning hours, working conditions, benefits and rates of pay.

Municipal Code: The Municipal Code of the City of Morro Bay.

Must and Shall: the use of “must” and “shall” indicates the mandatory nature of the applicable provision.

Out-of-Class Assignment: the short-term performance of the full range of duties of a higher regular position in one classification by an individual in a position of lower classification.

Part-Time Employee: an individual in a part-time position that is having fewer work hours than the work week established for a full-time position in the class. A part-time position may be temporary, regular, or provisional.

Personnel Board: the City Council shall act as the personnel board in accordance with the Municipal Code Chapter 2.32 creating a personnel system for the City.

Position: a combination of duties and responsibilities assigned to a single employee and performed on either a full-time or part-time basis.

Probationary Employee: an employee who has been appointed to a position but has not completed the probationary period.

Probationary Period: a specified working test period during which an employee serves at will (see Section 8).

Promotion: the movement of an employee from one class to another class resulting in a salary increase (excluding reclassification) and having a higher maximum rate of pay.

Provisional Appointment: an appointment of a person who possesses the minimum qualifications established for a particular class and who has been temporarily appointed to a position in that class for a specified period in the absence of available eligibles, pending an examination for said position. Provisional appointments may be terminated at any time without notice or right of appeal and the appointee obtains no right or property interest in the position to which he/she is provisionally appointed.

Reclassification: a change in classification of an individual position by raising it to a higher salary range, reducing it to a lower salary range, or allocating it to another classification at the same pay range, on the basis of significant and substantive changes in the type or difficulty of duties and responsibilities in that position.

Reemployment: the appointment, as provided in these Rules, of a former employee who was laid-off.

Regular Employee: an employee who has successfully completed a probationary period and has been retained as hereafter provided in these Rules.

Regular Position: a full-time or part-time position that is individually authorized in the budget and which is expected to exist indefinitely.

Reinstatement: the appointment, as provided in these Rules, of a former employee who resigned in good standing, or an employee who was rejected during a promotional probation unless he is discharged in a manner consistent with the Municipal Code and these Rules.

Rejection: the involuntary separation from the City service of an employee who does not successfully complete the probation period in a position and who did not have regular status in another position in a different class; or, the return of an employee who did not successfully complete the probation period in a position to another position in a different class in which regular status was previously acquired.

Reprimand:

(a) Oral Warning: a verbal statement to an employee pointing out an unsatisfactory element of job performance. An oral warning is intended to be corrective or cautionary only and is not disciplinary in nature.

(b) Written Reprimand: A written notice to an employee with a copy to his/her personnel file informing the employee of an action on his/her part which is the cause for disciplinary action.

Resignation: the voluntary separation of an employee from the City service.

Salary Range: the minimum through maximum salary increments of a salary range.

Salary Rate: dollar amount of each step in a salary range or the flat dollar amount for a class not having a salary range.

Salary Review Date: the date on which a probationary or regular employee is eligible, on the basis of satisfactory job performance for a prescribed period, for a merit salary advance within the salary range established for the class of position occupied.

Salary Step: one or more specific salary rates having a percentage relationship to one another, assigned to a class of positions as the compensation for that class.

Separation: a break in classified service without pay.

Suspension: the temporary separation from the classified service of an employee for disciplinary purposes.

Temporary Position: a full-time or part-time position of fixed duration.

Termination: the separation of an employee from the City service because of retirement, resignation, death or discharge.

Transfer: a change of an employee from one position to another position in the same class or in another class having the same maximum salary rate, involving the performance of basically similar duties and requiring substantially the same minimum qualifications.

Vacancy: an authorized position that is not occupied by an employee.

SECTION 4
GENERAL PROVISIONS

- A. Purpose. These rules establish the personnel system for the City of Morro Bay. These rules shall apply to all employees of the City of Morro Bay except those employees who are specifically excluded herein.
- B. Equal Employment Opportunity Employer. It is the City's policy to ensure equal employment opportunity for all persons seeking employment or promotion to assure equal employment opportunity based upon ability and fitness to all persons regardless of race, religious creed, color, national origin, ancestry, sex, childbirth, breast-feeding, age, physical or mental disability, medical condition, sexual orientation, marital status, gender identity, gender expression, genetic characteristics or information, military or veteran's status, and/or any other category protected by federal and/or state law.

Employees who believe they have experienced any form of employment discrimination are encouraged to report this immediately using the complaint procedure provided in the City's policy prohibiting harassment, discrimination, and retaliation.

- C. Policy Against Harassment, Discrimination, and Retaliation. City policy prohibits unlawful harassment and discrimination based on an employee's race, religious creed, color, national origin, ancestry, sex, childbirth, breast-feeding, age, physical or mental disability, medical condition, sexual orientation, marital status, gender identity, gender expression, genetic characteristics or information, military or veteran status, and/or any other category protected by federal and/or state law. In addition, City policy prohibits retaliation because of the employee's opposition to a practice the employee reasonably believes to constitute employment discrimination or harassment or because of the employee's participation in an employment investigation, proceeding, or hearing. Employees who believe they have been harassed, discriminated against, or retaliated against, should report that conduct to the City, and the City will investigate those complaints. For more information regarding the policy and complaint procedures, employees should review the City's policy against harassment, discrimination, and retaliation.
- D. Conflict with Collective Bargaining Agreements. If a provision of these rules conflicts with any provision of an applicable Memorandum of Understanding ("MOU") entered into by the City and a recognized employee organization, or Resolution of the City Council establishing compensation and benefits for unrepresented employees ("Resolution"), to the extent of such conflict, the provision of the MOU or Resolution shall be deemed controlling. City shall comply the provisions of Government Code §3505 to meet with employee organizations.
- E. Department Rules and Regulations. Subject to the approval of the appointing authority, Department Heads may create rules and regulations more specific to the department's operation. None of the department rules, regulations, or directives shall conflict with or supersede any provisions of a Resolution adopted by the City Council, including but not

limited to the Personnel Rules and Regulations, or current Memorandum of Understanding. In the event of any conflict, the same shall be resolved in favor of these Rules and Regulations and/or bargaining agreement. All departmental rules and regulations established by the Department Head shall be reviewed by Human Resources, respect the meet and confer process and be ~~reviewed~~approved by the City Manager.

- F. Conditions of Employment. The tenure of every employee in the City service shall be based upon continued satisfactory work performance, good conduct, continuing mental and physical fitness for their position as determined by the appointing power, existence of the need for the work performed, and the availability of funds. In accepting employment with the City of Morro Bay, each employee agrees to be governed by and to comply with these Rules and Regulations, the Morro Bay Ordinances and Resolutions, administrative rules and procedures established by the City Manager pursuant thereto, and rules, regulations and directives of the department in which the employee is employed. Violation of the provisions of these rules shall be grounds for disciplinary actions, up to and including dismissal.
- G. Legal Residency of Employees and Applicants for Employment. Employment is open to all qualified persons authorized to work in the United States. Authorization will be determined upon an applicant's completion and submission of Department of Homeland Security, U.S. Citizenship and Immigration Services Form I-9. Applicants who fail to complete and submit Form I-9 will not be employed by the City.
- H. Exceptions to the Application of the Rules and Regulations. These rules establish the City's personnel system for the classified service. Except as otherwise provided, these rules shall apply to all City employees and positions except:
1. Elected officers;
 2. The City Manager, City Attorney, and Department Heads;
 3. Persons engaged under contract to supply expert, professional, technical, or other services for a definite period of time;
 4. Persons designated as volunteer, temporary, provisional or seasonal;
 5. Appointed members of boards, commissions, or committees;
 6. 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;
 7. Any position primarily funded under a state or federal employment program;
- I. Non-Contract Provision. THESE RULES DO NOT CREATE ANY CONTRACT OF EMPLOYMENT, EXPRESS OR IMPLIED, OR ANY RIGHTS IN THE NATURE OF A CONTRACT.

SECTION 5
CLASSIFICATION PLAN

- A. Preparation of the Classification Plan. The City Manager, or his/her assignee, shall ascertain and record the duties and responsibilities of all positions in the City service and develop a classification plan for all positions in the City service. The classification plan shall consist of classes of positions defined by class specifications (or job descriptions) and job titles. The classification plan shall be developed and maintained so that all positions substantially similar with respect to duties, responsibilities, authority and character of work are included within the same class, and that similar schedules of compensation apply to all positions in the same class.
- B. Class Specifications. A class specification, also referred to as a Job Description, shall be a written record providing the title and definition of a class, a listing of illustrative examples of duties to be performed, and the qualifications necessary for consideration for appointment. Qualifications may be stated as a minimum that is acceptable or desirable, and shall be revised as the need arises. A class specification may include other pertinent information as deemed necessary by the City Manager.

All employees must be able to perform the essential functions of their job position, with or without a reasonable accommodation, in accordance with the requisite class specification and as provided in these rules and any other applicable City policies and procedures.

Where a position requires an employee to drive either a City-owned or privately-owned vehicle on official City business, such employee must possess and maintain a current certificate, license, permit or registration.

- C. Interpretation of Class Specifications. Class specifications shall be descriptive and explanatory, and not restrictive. They shall not be construed as limiting the assignment of duties of any position, nor as limiting or modifying the power of appointing authority to direct and control the work of employees under the appointing authority's supervision. The use of a particular expression or an illustration as to duties should not be interpreted to exclude others not mentioned that are of similar kind or level of responsibility. Consideration should be given to the general duties, specific tasks, responsibilities, qualifications desired and relation to other positions.
- D. Official Use of Class Titles. A position shall be identified by class title in all official personnel, accounting, budget, appropriation and financial records. Working job titles may be used in the course of departmental routine to indicate authority, status in the organization, or administrative rank
- E. Amendment and Revision of Plan. The City Manager has the power and authority to prepare, modify, and amend the classification plan, including but not limited to creating new classes or adjusting, dividing, combining, or abolishing existing classes, when, in the judgment of the City Manager, such modifications or amendments are in the best interest

of the City. The plan, or any subsequent revisions, shall become effective on the date when approved by the City Council.

The Human Resources Department, on its own initiative or upon a request from a Department Head, may initiate and conduct studies of any classified position to determine the position's proper classification, including whether to create a new class. This study may include access to department records, consultation with employees and/or supervisors regarding duties, functions and responsibilities of the position, and the collection of such other information believed necessary for making a decision.

- F. Filling New Positions. When a new position is needed, the Department Head shall notify City Manager, who will, in turn, notify the Human Resources, who will create the position or may amend the classification plan, as necessary.
- G. Reclassification. Human Resources shall recommend to the City Manager reclassification of any position(s) he or she determines to be improperly classified. Upon the approval of the City Manager of such reclassification and availability of funding, Human Resources shall allocate the position to the proper class. Such reclassification shall not be used for purposes of circumventing restrictions concerning demotions and promotions.
- H. Status of Incumbents in Reclassified Positions. Whenever reclassification occurs, an employee occupying the position may be retained in the position after it has been reclassified without further competitive examination when:
 - 1. The reclassification results from an official recognition of a change in duties and responsibilities which has already occurred for a significant period of time; and
 - 2. The changed duties and responsibilities justifying allocation to a different classification have taken place during the employment of the present incumbent in such position and were not the result of planned management action; and
 - 3. The incumbent possesses the knowledge, skills and abilities required of the different class.
- I. Request for Reclassification. When a Department Head believes a position is not properly classified due to a significant change in duties, functions and responsibilities, the Department Head may request that a position classification study be initiated by Human Resources for the position in question.
- J. Request for New Classification. A Department Head, when requesting a new classification to be created, shall provide Human Resources with information pertinent to the class specifications.

SECTION 6
COMPENSATION PLAN

- A. Preparation of Plan. Human Resources shall prepare a salary plan covering all classes in the classified service, as directed by the City Manager. Human Resources or the person or agency employed for that purpose shall thereafter make such further studies of the salary plan as may be requested by the City Manager.
- B. Adoption of Plan. The plan shall be adopted and may be amended from time to time by resolution of the City Council. No position shall be assigned a salary not in conformance with the salary plan unless the salary range for the class is amended in the same manner as provided for its adoption.
- C. Application of Rates. Classified service employees shall be assigned to a pay range and salary steps, or an hourly rate. New employees shall be paid at Step 1 or the minimum rate, if provided, upon original appointment. However, the City Manager may authorize original appointment or reinstatement at another rate, up to and including the 5th step of the salary range.
1. Full-time Regular, Probationary, and Acting Appointment. All pay rates shall be fixed on the basis of full-time positions, unless otherwise designated, and compensated at a monthly rate, paid bi-weekly.
 2. Other Appointments. An employee in any other type of appointment, including but not limited to temporary or seasonal service, may be compensated at any rate established for the class, including an hourly rate, paid bi-weekly. If a monthly rate is established for the position, the hourly rate will be computed by dividing the monthly rate by 173.33.
- D. Continuity of Service Requirements. Continuous service, as required for advancement within salary ranges and for other purposes specified in these rules, is defined as City employment on a probationary, regular, or acting appointment basis without break or interruption.

Authorized leaves of absence without pay of thirty (30) calendar days or less and leaves of absence with pay for any period shall not constitute a break in continuous service and shall not be deducted from total City service. Authorized leaves of absence without pay in excess of thirty (30) calendar days shall not count towards total City service for merit advancement in salary range or for other purposes specified in these rules, and the employee's salary review date shall be set forward a period of time equal to the employee's total absence.

Continuity of service requirements while on probation are provided in Section 8.A.

- E. Salary Review Dates. A salary review date is established as the effective date of employment and sets the date upon which employees shall next be eligible for

consideration of a merit step increase. For employees starting at Step 1, this is six months after date of hire, if performance is meeting expectations. Thereafter, it is every year. However, any approved leaves of absence without pay, exceeding thirty (30) calendar days, will set forward the review date a number of calendar days corresponding with the days of authorized leave in excess of thirty (30) calendar days.

If employee starts employment at a step greater than Step 1, the salary review date is one year after the date of hire.

Salary adjustments, such as merit increases and promotions, shall be made at the start of the next pay period following the employee's salary review date, unless otherwise authorized by the City Manager. Any delayed merit increases will extend the salary review date for the next eligible salary increase correspondingly, unless otherwise stated in MOUs or Agreements.

- F. Merit Salary Increases. Department Heads may recommend a merit salary increase on an employee's salary review date (see E above). Recommendations may only be made for full- and part-time regular or probationary employees, who have demonstrated appropriate standards of work performance. Merit increases may be recommended to the next highest step in the salary range for the classification. Human Resources may approve the recommendation, and processes all approved merit increases. No salary advancement shall be made so as to exceed any maximum rate established in the plan for the class to which the employee's position is allocated. All merit salary increases are to be approved by the City Manager, or his/her designee.

Merit salary increases are not automatic. They are made only after the Department Head recommends, and Human Resources approves, the merit salary increase, based on the increased service value of an employee to the City, as documented in performance evaluations by the Department, or other pertinent evidence.

The Steps 1 – 5 (6 for Police) are further described below:

1. Step 1 is the minimum rate, and is normally the hiring rate of the class, with the employee remaining in this step during the one-year probationary period. In the case where a person of unusual qualifications is engaged, the personnel officer may authorize hiring at an appropriate step within the established salary range.
2. Step 2 is an incentive adjustment, to reward an employee for the quality of his/her work. An employee is eligible for this step after 6 months of service, and has received a "meets" or "exceeds standards" in his/her performance evaluation, or has unusual qualifications or has demonstrated the same to be eligible for this step. An employee, hired into this step, is not eligible for a merit increase until 12 months of service.
3. Step 3 is awarded to an employee, who has proven to be fully qualified, experienced and conscientious. An employee is eligible for this step after one year at the preceding step, and has received a "meets" or "exceeds standards" in his/her

- performance evaluation. An employee, hired into this step, is not eligible for a merit increase until 12 months of service.
4. Step 4 is awarded to an employee, whose job performance clearly “meets” or “exceeds standards.” An employee is eligible for this step after one year of service at the preceding step. An employee, hired into this step, is not eligible for a merit increase until 12 months of service.
 5. Step 5 is awarded to an employee, whose job performance clearly “meets” or “exceeds standards” on a sustained basis. An employee is eligible for this step after one year of service at the preceding step.
- Step 6 (Police Safety only) is awarded to an employee, who job performance clearly “exceed standards” on a sustained basis. An employee is eligible for this step after two years of service at the preceding step.

G. Other Salary Provisions. Other salary adjustments will include:

1. Special Salary Adjustments. Notwithstanding anything in these rules to the contrary, to correct gross inequities or to reward outstanding achievement and performance, upon recommendation of the Department Head, the City Manager may adjust the salary rate of an incumbent of a particular position to any step within the salary range for that class.

A step increase may be withheld if the employee is not consistently meeting or exceeding standards for this classification. It may be withdrawn, when an employee’s job performance fails to maintain a “meets” or “exceeds standards” on a sustained basis.

2. Salary on Promotion. An employee who is promoted in accordance with these rules shall be placed at Step 1 of the new salary range or at a step of the new range which is approximately five (5) percent higher than the employee’s previous base salary; but, in no case shall the employee be compensated above the top step of the new salary range. The promotion shall establish a new salary review date for the employee and the employee shall serve a new probation period established for the position. Employees receiving acting pay based on a temporary assignment are not considered to have received a promotion, and this section therefore does not apply.
3. Salary on Demotion. Any employee who volunteers demotion or is involuntarily demoted shall not be required to serve a new probationary period, shall establish a new salary review date, and shall have their salary set at the salary step in the range for the lower class for which they qualify, as recommended by the Department Head and approved by Human Resources.

Upon the demotion of any employee to a class with a lower maximum salary, the employee shall be assigned to a salary step in the lower pay range as follows:

- i. If the demotion is involuntary or disciplinary, the employee may be assigned to any designated step in the pay range for the lower class which is at least one step less than the dollar amount received in the pay range for the class from which demoted.
 - ii. If the demotion is a voluntary demotion, the employee shall be assigned to that salary step in the new pay range so as to receive the same salary he/she was receiving in the old range. If the same salary is not a step in the new range, he/she shall be placed on such step of the new range as to receive the nearest lower salary. The employee's previous personnel action date shall be retained.
- 4. Salary on Transfer. Any employee who is transferred shall continue to receive the same salary rate and their salary review date shall not change.
- 5. Salary on Change in Range Assignment:
 - i. Salary Range Increase. With the approval of City Manager, or his/her designee, whenever a class is reassigned to a higher salary range, the salary of each incumbent on the effective date shall be increased to the corresponding step in the new range and their salary review date shall not change.
 - ii. Salary Range Decrease. Whenever a class is reassigned a lower salary range, the salary of each incumbent on the effective date shall be set at the same salary rate that they were receiving in the former range, providing it does not exceed the maximum salary rate of the new range, and their salary review date shall not change. If the present salary is between steps of the new range, the employee shall be placed on the step of the new range next higher than the present salary.

H. Acting Appointment. The City may temporarily appoint a probationary or regular employee to a higher class or position occupied by a person on temporary leave, vacation, or disability, or until an eligibility list can be created for a vacant position. The acting appointment may be made when the demands of the service are such that it is not practical to leave the position vacant and organizational constraints preclude filling the position in a timely manner. Upon the return of the incumbent or when the position is filled through appointment, the acting appointment shall be immediately terminated and the appointee shall resume the duties, compensation, and privileges of their regular classification.

- 1. Acting appointments may be made by the City Manager, or his/her designee only, provided that:
 - i. The employee is assigned to and actually performs all of the duties of the higher-level classification.

- ii. The employee is required to perform the duties of the higher-level classification for more than thirty (30) consecutive days. At that time, his/her Department Head may, with prior approval of the City Manager, make an acting appointment. The effective date of the acting appointment shall be the first day the employee began to perform the higher-level classification's duties.
 - iii. Acting appointments are of a limited duration and will not exceed six (6) months. One six-month extension of an acting appointment may be made upon the request of the Department Head and the City Manager's approval.
 - 2. Salary Increase following Acting Appointment. A one-step increase within the employee's current classification salary range shall be granted in accordance with the provisions of this Section. In the absence of available steps within their current range to be placed, the employee shall be granted a five percent (5%) increase above their current base salary.
 - 3. If an employee believes they are performing work which is outside of the work normally assigned to their class, they may submit a request to Human Resources, thru their Department Head, that a reclassification study be performed.
 - 4. Upon termination of the acting appointment, the employee shall be returned to the salary of his/her former position as though the special adjustment had not occurred. A person in an acting appointment shall not acquire regular status in such appointment. The merit system status and classification title for employees serving in an acting appointment capacity shall remain unchanged during the appointment.
- I. Out-of-Class Assignment. With City Manager approval, an employee who is temporarily directed by his or her supervisor or Department Head in writing to serve in a regular, higher position will be compensated at a higher rate of pay in accordance with the following:
- 1. To be eligible for the additional compensation, the employee must assume the full range of duties and responsibilities of the higher-level classification. Once these qualifications are satisfied, no additional requalification will be required.
 - 2. Temporary assignments out-of-class shall be recorded only in full-shift units, unless approved by the City Manager or otherwise stated in an applicable Memorandum of Understanding. For example, out-of-class pay may be considered when an employee is performing the full range of duties for half shifts or more, or work on a specific project, for a period of at least fifteen consecutive days.

3. Time worked in a higher class shall not earn credits toward the completion of probationary requirements in the higher class.
4. An employee who has qualified under these provisions will be compensated at the minimum rate established for the higher class for each completed work shift served in the higher class after thirty (30) shifts, or approved specific project with duration of less than thirty (30) days, has been completed. In the event of overlapping salary ranges, a one-step differential shall be paid out for out-of-class assignments. The higher rate of pay shall be used in computing overtime when authorized overtime is served in a non-exempt, out-of-class work assignment.

SECTION 7
RECRUITMENT, SELECTION AND APPOINTMENT

- A. Recruitment. Applicants for positions with the City shall be recruited to obtain qualified candidates for employment. Recruitment and selection procedures shall be designed to measure the job-related qualifications of applicants.
- B. Job Announcements: The City shall prepare recruiting notices to publicize vacancies and to attract qualified candidates for vacant or anticipated positions. All examinations for positions in the City service should be publicized by such methods as the City Manager deems appropriate. Job announcements should include:
1. Class title and pay for the position;
 2. A statement that the City is an equal opportunity employer;
 3. The nature of the work to be performed, including major job responsibilities;
 4. The minimum and desired qualifications;
 5. Whether the position is at-will or regular;
 6. The time and place of examination, if known;
 7. The method of applying;
 8. The closing date for application, if one is established;
 9. Whether a medical and/or psychological examination, including a drug screen, will be required, post-offer of employment;
 10. Such other information as desirable in the discretion of Human Resources, or designee.
- C. Application Forms: Application for employment shall be made either through the official City website or on an official application form available in the Human Resources Office or City Hall. Every application must be signed by the applicant, who must attest to the accuracy of the information contained in the application. Falsification of information contained in the application, or the failure to submit complete information may be reason for rejection of the application; or, if hired, disciplinary action, including discharge, regardless of when the falsification or omission is discovered. The City may refuse to process an application that is not completed, references a resume in lieu of filling out the application, is illegible or not signed.
- D. References: The City may contact former supervisors, employers, and personal references provided by applicants. All reference information shall be handled on a confidential basis.
- E. Disqualifications: The appointing authority may, at any time, remove from further consideration any applicant if the applicant:
1. Has made false statements of any material fact, or practiced any deception or fraud on the application, declarations or in securing eligibility or appointment;

2. Is found to lack any of the requirements, certifications, or qualifications for the position involved;
3. Is incapable of performing the essential functions and duties of the job, with or without reasonable accommodation, to which the applicant seeks appointment;
4. Was under the influence of alcohol or illegal controlled substances on the job or is using a prescription medicine in a manner which is illegal, or otherwise violates the Drug-Free Workplace Policy;
5. Is a relative of an employee and subject to the Nepotism Policy in these rules;
6. Used or attempted to use political pressure or bribery to secure an advantage in the examination or appointment;
7. Directly or indirectly obtained information regarding examinations;
8. Refuses to execute the Oath of Office;
9. Failed to submit the employment application correctly or within the prescribed time limits, or submitted an incomplete application to the personnel office within the prescribed filing date;
10. Has had his or her privilege to operate a motor vehicle in the State of California suspended or revoked, if driving is job related;
11. For any material cause which in the judgment of the personnel officer or designee would render the applicant unsuitable for the position, which may include dismissal from any position for any cause which would be cause for dismissal by the City, a prior resignation from a position in order to avoid dismissal, termination from the city, or information from reference or background checks of the applicant indicating probable unfitness.
12. For law enforcement applicants, applicant does not meet recommended or required job dimensions established by the Peace Officer Standards and Training (P.O.S.T.).

F. Criminal Conduct - Ineligibility for Employment: Conviction, including pleas of guilty and *nolo contendere*, of a felony or of any misdemeanor which evidences moral turpitude or unfitness for employment on the part of the applicant may be grounds for rejecting the applicant or removing the name of an eligible from any employment list.

1. The City will first, determine whether an applicant meets the minimum employment qualifications before asking the applicant to disclose information

concerning his or her conviction history or conducting a conviction history background check. The City shall then conduct an individualized, case-by-case analysis of the facts of each applicant's criminal history before making a decision regarding their employment.

2. This section shall not apply to positions for which the City is required by law to conduct a conviction history background check.

G. Selection Process:

1. Examination Process: The selection techniques used in the examination process shall be impartial and shall relate to those subjects which fairly measure the relative abilities of the individuals examined to execute the duties and responsibilities of the class or position to which they seek to be appointed, or whether they can perform a job function without posing a direct threat to health or safety. Examination techniques may include: written tests, personal interviews, performance tests, physical agility tests, psychological examination, background investigation, evaluation of daily work performance, work samples, medical tests and/or alcohol and drug tests for certain classifications, successful completion of prescribed training, or any combination of these or other tests. No medical, physical, and/or psychological examination will be conducted before making a conditional offer of employment to the applicant. All new and returning employees may be fingerprinted for Department of Justice clearance. The probationary period shall be considered as part of the examination process.

In the event there are a large number of qualified applicants, the personnel officer may rank, for qualifying purposes only, the applications submitted on the basis of the applicants' experience, education, training, and work history as related to the particular position, and may choose a suitable number of applications whom he/she determines would best fill the position. The chosen applicants shall then be given further examination in order to obtain a score and ranking on the eligible list.

2. Scoring and Qualifying Grade: Failure in one part of the examination, or to meet established standards described in the job announcement, may be grounds for declaring such applicant as failing in the entire examination or as disqualified for subsequent parts of an examination. A candidate's final score in a given examination (if a scoring process is used) should be the average of the scores on each competitive part of the examination on which the applicant qualified, weighted as shown in the examination announcement. The personnel officer may designate any part of the examination as qualifying only, and no numerical weight need be assigned to passing scores on such part.

3. Eligible List: After completion of an open or promotional examination, the personnel officer or designee shall prepare an eligible list consisting of the names of candidates who passed the examination, arrange in order of final score, from the highest to the lowest. Notwithstanding any other provision of these rules, if there are less than three (3) names on an eligible list, the personnel officer or designee may declare such list void and fill the position(s) by any method permitted by the Rules, including, but not limited to recruiting and testing procedures. Eligible lists shall become effective upon the certification by the personnel officer or designee.
 4. Eligible List Duration: Eligible lists should remain in effect twelve months, unless the list is exhausted or extended by the personnel officer or designee provided, however, that eligible lists for classes for which there is continuous recruitment shall remain in effect indefinitely. The personnel officer or designee may declare such list void or extend the list at any time prior to the expiration of the list if he or she determines that it is in the best interest of the City to do so.
 5. Removal of Name: The name of any person appearing on an eligible list shall be removed by the personnel officer or designee if the eligible so requests in writing, or fails to respond to a notification of an opening from the personnel officer or designee. It shall be the responsibility of the eligible to keep the human resources office informed of their current address and telephone number.
 6. Promotional Examinations. Promotional examinations may be conducted whenever, in the opinion of the City Manager, the needs of the City require them. Only qualified applicants who meet the requirements set forth in the promotional examination announcements may compete in promotional examinations.
- H. Method of Filling Vacancies. All vacancies in the classified service may be filled by re-employment, reinstatement, transfer, demotion, promotion, lateral entry, appointment of hourly employees, or appointment from established eligible lists, if available. In the absence of persons eligible in such manner, provisional, acting or temporary appointments may be made. The City Manager or designee shall decide in what manner the vacancy is to be filled. The City Manager or designee may appoint any qualified individual.
- I. Appointment: After an interview and background investigation, the Department Head shall make a recommendation to the City Manager for appointment from among those eligible, and, if approved by the City Manager, shall immediately notify the human resources office of the appointment. An individual accepting an appointment shall report to the City on or before the date of appointment. If a candidate accepts an appointment and reports for duty at the time prescribed by the City Manager, the

candidate shall be considered appointed; otherwise, the candidate shall be deemed to have declined the appointment.

J. Types of Appointments. Employment in the City service is divided into the following categories:

1. Acting Appointment
2. At-will or unclassified
3. Emergency Employee: Appointment(s) made by the City Manager as may be needed for the period of an emergency, to meet the requirements of an emergency condition which threatens life, property, or the general welfare of the City without regard to these Rules. Emergency employees are at-will and do not enjoy the same rights as regular employees.
4. Exempt Employee: An employee exempt from the overtime payment requirements of the Federal Fair Labor Standards Act.
5. Probationary: An at-will appointment for a set period of time that may lead to a regular appointment.
6. Provisional Appointment: The appointment of a person who possesses the minimum qualifications established for a particular position in the absence of available certified eligibles. Normally a provisional appointment shall not exceed six (6) months; however, the City Manager may extend the length of a provisional appointment when he/she determines such appointment is in the best interest of the city. A provisional appointment may be terminated at any time, without notice, and without the right of appeal or hearing. A provisional appointee obtains no right or property interest in the position to which the employee is provisionally appointed. Except as expressly authorized in these Rules, provisional appointees are not entitled to the benefits provided for in these Rules unless authorized by the appointing authority.
7. Full-Time Regular Employee: An employee in the classified service who has successfully completed the probationary period, who is assigned to an authorized position and who is regularly scheduled to work the full workweek as established by the appointing authority.
8. Part-Time Regular Employee: An employee in the classified service who has successfully completed the probationary period and who is assigned to an authorized budgeted position requiring a minimum of twenty (20) hours of work per week on a regular basis. Regular part-time employees are entitled to the benefits provided for in these Rules on a pro-rated basis.

9. Reinstatement: The re-employment without examination of a former regular employee within twelve (12) months of the last day of employment to a position in which the employee formerly served. Reinstatement shall be at the discretion of the City Manager. (See Section 8.)
10. Student Interns: Appointments made for the purpose of affording students participating in a career development program an educational opportunity to gain actual work experience. Student appointments may or may not be paid, shall not earn vacation, sick leave, or other benefits unless otherwise required by law.
11. Temporary Employee: An employee hired on a temporary basis. Except as expressly authorized in these Rules, temporary employees are not entitled to the benefits provided for in these Rules. They serve at-will, and may be terminated without cause or right of appeal.
12. Retired Annuitant: A retired annuitant is defined as a CalPERS retiree, whether a former City employee or not, who has returned to work with the City while remaining a retiree. A retired annuitant may serve without reinstatement from retirement or loss or interruptions of benefits provided by CalPERS upon appointment by the appointing power. Retired annuitants must comply with the work restrictions established by law without exception.
13. Volunteer:
 - a. A volunteer is an individual who performs service for the City for civic, charitable, or humanitarian reasons, and without promise, expectation or receipt of remuneration or compensation for services rendered. Volunteers shall meet all of the criteria set forth in the Fair Labor Standards Act, 29 U.S.C. §203(e)(4)(a), and applicable Department of Labor Regulations, 29 C.F.R. §§553.100 et seq.
 - b. Except as provided herein, these Rules do not apply to volunteers.
 - c. Volunteers serve at-will and at the pleasure of the City Manager or individual Department Heads. Volunteers do not acquire any right or interest, including, but not limited to any property right or interest, in their assignment, position or task. Accordingly, volunteers may be terminated from their assignment, position or task with the City at any time, without notice and without cause.
 - d. Nothing contained in these Rules shall be interpreted to change the at-will nature of the relationship between a volunteer and the city.

K. Nepotism.

1. For purposes of this section, a “relative” shall be defined as a son, daughter, brother, sister, parent, grandparent or grandchild, aunt, uncle, niece, nephew, spouse, registered domestic partner, or a person sharing the same household/cohabitating (in a marriage-like relationship). Half-relatives, step-relatives, adopted relatives, domestic partners as defined by State law, and in-laws are included in these restrictions.
2. The City retains the right to refuse to hire or promote a person to a position in any department in which such person’s relative by blood or marriage within the third degree already holds a position, when such employment would result in any of the following:
 - a. A supervisor-subordinate relationship;
 - b. The employee sharing job duties that require performance of shared duties on the same or related work assignment;
 - c. Both employees having the same immediate supervisor.
 - d. A potential for creating an adverse impact on supervision, safety, security, morale or efficiency that is greater for relatives than for unrelated persons.
3. If a City employee marries another person employed by the City within the same department, both employees shall be allowed to retain their respective positions provided a supervisory relationship does not exist between the couple. During the period of employment, no supervisory position shall exist between the two employees. For purpose of this section, a supervisory relationship shall be defined as one in which one person exercises the right to control, direct, evaluate, reward or discipline another person by virtue of the duties and responsibilities assigned to his or her position.
4. The City also retains the right to transfer one or both spouses in the same department, division or facility where such has the potential for creating adverse impact on supervision, safety, security or morale or involves potential conflicts of interest. Where the circumstances mandate that two spouses shall not work together, the human resources office will attempt to transfer one spouse to a similar position in another City department. Although the wishes of the involved parties as to which spouse is to be transferred will be given consideration by the city, the City maintains full discretion to make the determination. If any such transfer results in a reduction in salary or compensation, the same shall not be considered disciplinary in nature and shall not be the subject of any form of administrative appeal.

5. If continuing employment of two spouses cannot be accommodated consistent with the city's interest in promotion of safety, security, morale and efficiency, then the City retains sole discretion to separate one spouse from City employment. Absent resignation by one affected spouse, the less senior of the involved spouses will be subject to separation and the same shall not constitute discipline and shall not be subject to any administrative appeal.
- L. Pertinent Documents or Evidence: Each person appointed to a position in the classified service may be required to provide and/or sign certain documents such as: Oath of Office, birth certificate, fingerprints, automobile operator's license, high school diploma, education transcripts, technical certifications, military discharge papers, and waivers.

SECTION 8
EMPLOYMENT STATUS

A. Probationary Employment: The probationary period shall be regarded as part of the testing and selection process, and shall be utilized for closely observing the employee's work, for facilitating the effective adjustment of the employee to his/her position, and for rejecting any probationary employee.

1. All original and promotional appointments are tentative and subject to a probationary period. Original appointments are subject to a probationary period of twelve (12) months actual and continuous service. However, all sworn personnel in the Fire Fighter classifications shall serve an eighteen (18) month probationary period of actual and continuous service. The end of the probationary period shall coincide with the end of the payroll period after the employee's probationary twelve or eighteen-month probationary period.
2. The probationary period shall not include the time served under any interim, extra help, emergency, out-of-class, or acting appointment, and shall begin on the effective date of appointment to a regular position.
3. The probationary period is automatically extended by the length of any authorized unpaid leave(s) of absence of thirty (30) working days or more (consecutive or not).
4. Probationary employees will be evaluated at least twice during their probation period. Sworn police and fire employees will be evaluated at least three times during their probation period.

Nothing contained herein shall preclude additional evaluations during the probationary period as deemed appropriate by the appointing authority.

5. A probationary period may be extended for a six-month period, at the discretion of the City Manager.

B. Promotion: Vacancies may be filled by promotion from within City service with or without a promotional examination. A vacancy may be filled by an open competitive examination instead of a promotional examination if so determined by the City Manager.

C. Probation After Promotion: On accepting a promotion, an employee serves a new probationary period of six (6) months of actual and continuous service, subject to the rules described herein. On accepting a promotion, safety employees serve a new probationary period of twelve (12) months of actual and continuous service, subject to the rules described herein.

An employee does not acquire regular status in the promotional position until the

successful completion of this probationary period and may be rejected without right of appeal or hearing. If the employee is rejected during the promotional probation period, the employee shall be reinstated to the position held prior to promotion at the range and step held prior to promotion if there is a vacancy in the prior position, unless he or she is discharged from City service in addition to the rejection. If there is no vacancy, the employee may be assigned to a vacant position for which the employee is qualified and which is nearest the employee's prior pay range.

- D. Re-Employment: The names of regular employees who have been laid off or who have exhausted all leave time and are medically unable to return to work shall be placed on a re-employment list in the order of their seniority in the classification from highest to lowest. Such names shall remain thereon for a period of one (1) year unless such persons are sooner re-employed. As a vacancy within the classification becomes available, the name appearing at the top of the list shall be selected to fill the vacancy. An employee who is selected from the list to fill the vacancy, who refuses the assignment, shall be removed from the list without right of appeal.

Employees who are demoted as a result of a layoff shall have their names placed on a classification re-employment list, in order of their classification seniority. Vacant positions within a classification series shall be first offered to employees on this list.

Employees who are reemployed within six-months in a classification other than the classification held prior to layoff shall be subject to a new probationary period. All reemployed employees shall retain their previous action date, which may be adjusted to account for time of separation, and are entitled to any benefits accrued during prior employment with the City, provided they were not previously compensated for the earlier accrued benefits.

No laid off employee has a right to reemployment. Reemployment shall be determined in accordance with the needs of the City.

- E. Reinstatement: Separated employees, not laid off and not currently on a reemployment list may, with the approval of the City Manager, be reinstated within six (6) months of the effective date of resignation to a vacant position in the same or comparable class, provided they meet the minimum qualifications for the classification. Regular employees who successfully completed the relative probationary service for their classification and who separate with a satisfactory employment record are eligible for reinstatement.

Reinstated employees shall complete any probationary period associated with the new position. An employee reinstating within 6 months of the last day of employment may begin accruing vacation at the rate that he/she was accumulating prior to separation. The time in that rate for purposes of calculating an increase in vacation accrual rate will begin on the date of rehire. No other credit for former employment shall be granted in computing salary, sick leave, or other benefits.

No separated employee has a right to reinstatement. Reinstatement shall be determined in accordance with the needs of the City, and at the sole discretion of the City Manager.

- F. Rejection During Initial Probation: During the probationary period, an employee may be rejected at any time without cause and without the right of appeal.
- G. Relief of Duty: Relief of duty is the temporary assignment of an employee to a status of leave with pay. Relief of Duty may be used while investigating alleged misconduct by an employee.
- H. Demotion: Upon request of the employee, and with approval of the City Manager, an employee who has not held status in a lower classification may be allowed to voluntarily demote to a vacant authorized position in the same department if he/she meets all the requirements of the lower position as determined by the appointing authority. All employees who are demoted under this paragraph will be paid at the rate of pay consistent with the City's Compensation Plan, unless it is part of a general plan to reduce salaries and wages or to eliminate positions.
- I. Transfer: No person shall be transferred to a position for which that person does not possess the minimum qualifications unless waived by the City Manager. The City Manager may transfer an employee at any time from one position to another. If a transfer involves a change from one department to another, both Department Heads must consent thereto unless the City Manager orders the transfer. In the case of the transfer of an employee from one position to another in the same class, or to another class to which the same salary range is applicable, the employee shall remain at the same salary step and retain the employee's original anniversary date. Transfers are not to be considered disciplinary actions. Transfer shall not be used to effectuate a promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided in these Rules.
- J. Voluntary Transfer: A regular employee may request a transfer to a vacant position in the same or lower classification for which the employee is qualified. With the approval of the Department Head for whom the employee currently works, the Department Head for whom the employee wishes to work, and the appointing authority, the employee will be transferred to the new position. If the transfer is to a position in a class with a lower salary range, the employee shall be placed in the highest step in the lower salary range, which does not represent a salary increase.
- K. Lay-Offs and Seniority: The Lay-Off and Seniority Policy is set forth in Section 14 (B).

SECTION 9
FORMAL PERFORMANCE EVALUATIONS

- A. Evaluation Procedure. Managers and supervisors observe employees' performance and conduct every day, and should use their observations during the formal performance evaluation. In accordance with procedures and on forms provided by Human Resources for that purpose, supervisors shall evaluate, record, and report the performance of their employees such that:
1. Probationary employees shall be evaluated throughout the period of probation as provided in Section 8 above;
 2. Regular employees shall be formally evaluated at least annually by the individual's salary review date, and a report filed with Human Resources to record such evaluation; and
 3. As deemed desirable or necessary by the appointing authority, additional written evaluations of performance may be conducted at any time during the period of employment.

It is crucial to the organization that supervisors prepare and provide to employees, truthful and regular performance evaluations that document strengths, weaknesses, areas needing improvement and unacceptable performance. Factual evaluations are especially important when unacceptable behaviors persist, and disciplinary measures are needed.

- B. Rating Discussed with Employee. Each evaluation shall be discussed with the employee who has been evaluated. The employee shall be given a copy of the performance evaluation report following the discussion and shall be required to sign the report, but only as an indication that the report was discussed with him/her.

Performance evaluations are not appealable. Employees may file a written response to the performance evaluation, which will be placed in his/her personnel file along with the written performance evaluation.

- C. Unsatisfactory Performance. If an employee is rated overall as below competent, the appointing authority may recommend that the employee's next scheduled merit increase be withheld (see Section 6 for merit increase information).

Employees who receive unsatisfactory reviews shall take appropriate and immediate steps to improve or correct the performance or conduct which has been rated as unsatisfactory. Failure by the employee to demonstrate satisfactory effort toward improvement, if substantiated, shall be considered as cause for appropriate disciplinary action, such as but not limited to a reduction of step(s) in the employee's salary range or dismissal.

D. Postponement of Performance Evaluation. If an employee's anniversary date falls within the time the employee, or supervisor, is on leave, the annual performance evaluation may be postponed until the employee or supervisor returns from leave. The performance evaluation may also be postponed to meet the organizational or operational needs of the City, as determined by the City Manager.

SECTION 10
LEAVES

A. Vacation Leave.

1. The purpose of vacation leave is to enable eligible employees, annually, to use this paid time off to rest and return to work, mentally refreshed. With this in mind, employees are encouraged to take vacation leave.
2. Unless otherwise stated by an applicable and current Memorandum of Understanding, Contract, Resolution or Agreement, the following provisions shall apply.
3. Each probationary and regular full-time employee in the Classified Service shall earn vacation benefits in accordance with his/her length of continuous service and in accordance with any applicable Memorandum of Understanding, Contract, Resolution or Agreement.

Probationary and regular part-time employees in the Classified Service, scheduled to work at least 1040 hours a year, shall accrue vacation in an amount proportionate to the ratio of scheduled hours of work per week to the standard work week.

Dates of vacation may be requested by the employee, but are subject to the approval of the Department Head or his/her designee.

4. Vacation Accrual Rates.

Unless otherwise provided in a current Memorandum of Understandings, Contracts, Resolutions or Agreements, the following is the list of vacation accrual entitlement for each eligible employee by years of employment, to be earned on a prorated bi-weekly basis:

<u>Service Years</u>	<u>Entitlement in Days</u>
1 thru 2	10
3 thru 4	11
5 thru 6	12
7 thru 8	13
9 thru 10	14
11 thru 12	15
13 thru 14	16
15 thru 16	17
17 thru 18	18
19 thru 20	19
21 or more	20

5. For purposes of computing service years, continuous service from the employee's anniversary date as defined in Section 3 shall be the qualifying factor. Authorized leaves of absence without pay in excess of thirty (30) calendar days shall be deducted in computing an employee's total City service years.
6. Holidays Falling During Vacation. In the event one or more municipal holidays fall within an employee's annual vacation leave, such holidays shall not be charged as vacation leave.
7. Payment For Vacation Upon Termination. Vacation leave may not be used at the time of termination of employment. All accrued, but unused, vacation leave credits shall be paid off at the employee's current base hourly rate.

If the employee is retiring, the City Manager may approve use of vacation leave, upon the request of the retiring employee and recommendation of the retiring employee's Department Director.

B. Sick Leave.

1. Sick leave with pay shall be granted to all regular and probationary employees within the classified service. Employees may use sick leave for diagnosis, care or treatment of an existing health condition or preventive care for an employee or the employee's family member. Employees who are victims of domestic violence, sexual assault or stalking may use sick leave to implement safety measures, seek medical treatment and counseling, seek restraining orders and appear in court.
2. For regular employees, sick leave shall be earned at the rate of one (1) eight (8) hour work day for each calendar month of service, prorated on a bi-weekly basis. For eligible employees, scheduled to work at least 1040 hours a year, but less than 2080 hours a year, sick leave entitlement shall be a percentage of the sick leave days normally earned for the same number of service months identical to the percentage of work hours scheduled as to a 2080 hour scheduled work year (for example, a ½ time benefitted employee will earn 4 hours per calendar month).

For purposes of computing sick leave, a work day shall be considered as one-fifth of the number of working or duty hours in the established work-week for each employee, unless otherwise provided in current Memorandums of Understanding, Contracts, Resolutions or Agreements.

3. Any employee requesting sick leave shall notify his/her immediate supervisor or Department Head no later than one hour before their work shift begins or immediately when taken ill during work hours.
4. Prior to an employee's return to work following an illness or injury, the City may request a physician's statement confirming that the employee was out for sick

leave as defined in this policy, confirming the employee's ability to return to normal duties, with or without limitations.

5. Leave Chargeable to Sick Leave. An employee with accumulated sick leave may be granted sick leave for the following reasons:
 - i. Illness or physical incapacity of the employee;
 - ii. Medical and dental office appointment which cannot be scheduled at other than work hours.
 - iii. An employee may use up to one half of their yearly accrued sick leave to attend to any of the above mentioned medical needs of the following persons:
 - a. The employee's child (e.g., biological, foster, or adopted child, a stepchild, a legal ward, a child of a domestic partner, or a child of a person standing in loco parentis).
 - b. The employee's parent (e.g., biological, foster, or adoptive parent, a stepparent, or a legal guardian).
 - c. The employee's spouse or domestic partner.
 6. Sick leave may not be used at the time of termination of employment, and all accrued, but unused sick leave credits, shall not be paid off, unless otherwise provided in current Memoranda of Understanding, Agreements, Resolutions or Contracts.
 7. An employee, absent on approved vacation or compensatory time-off, may request a change to paid sick leave, and may be required, upon return to work, to provide a physician's statement, verifying the illness, injury, or disability of the employee or the employee's family member, as listed in iii above. Sick leave absence shall begin at the time the employee notified his/her Department Head or the duration of time indicated on the physician's statement.
- C. Bereavement Leave. Employees are permitted to utilize three (3) days of paid bereavement leave per occurrence in case of the death of members of the employee's immediate family (as defined in Section 3.A.). Any necessary extra time shall be taken from the employee's accrued sick leave. In cases where sick leave is exhausted, vacation time shall be charged. Paid leave beyond the initial three (3) days is subject to department head approval.

D. Catastrophic Leave Bank Policy.

1. Purpose.

The purpose of the Catastrophic Leave Policy is to establish a Catastrophic Leave Bank (“Bank”) into which employees may voluntarily donate sick or vacation leave hours. This Bank will be used to assist employees, who have exhausted all leave credits and require further time off for an extended serious or catastrophic illness or injury to the employee or his/her immediate family as defined herein.

The Bank is to be awarded on a case-by-case basis. Therefore, all employees should attempt to accumulate and maintain as high a sick leave balance as possible.

2. Definitions.

- i. **Catastrophic Illness or Injury:** An illness or injury which incapacitates an eligible employee, as defined within this policy. Catastrophic Illness or Injury is further defined as a debilitating illness or injury of an immediate family member that requires an eligible employee to take time off from work to care for the family member.
- ii. **Immediate Family:** For the purposes of the Bank only, immediate family includes spouse, registered domestic partner, son, daughter, or other individuals whom the employee has legal guardianship over, or employee's mother or father.
- iii. **Donor Employee:** Regular employees may voluntarily transfer up to 120 hours in excess of 40 hours sick leave and 40 hours vacation accrual per calendar year. Part-time employees in a regular position must maintain their prorated equivalent balance. (Example: Half-time employee - 20 hours)
- iv. **Eligible Employee:** To be eligible, an employee must meet all of the following criteria:
 - a. Be employed in a regular position by the City for a minimum of twelve (12) months;
 - b. Have exhausted all paid leave balances and are suffering from a long-term illness or injury that will result in the loss of work for a period of at least twenty (20) working days;
 - c. Have previously donated vacation or sick hours to the City's Bank at least once during their employment;
 - d. Employees receiving workers' compensation or disability insurance will only receive enough sick leave hours to bring their

total compensation up to base pay. Insurance will be maintained as long as employee is using sick leave bank hours; and

- e. The employee must be using catastrophic leave due to a verifiable, catastrophic injury or illness or to care for an immediate family member suffering from a verifiable, catastrophic injury or illness. The City reserves the right to request verification from a medical doctor that the employee or family member has a catastrophic illness prior to making an eligibility determination.
 - v. Donated Time: For the purposes of this program, sick leave and vacation may be transferred from a donating employee to the Bank. Transfers of remaining balances of vacation or sick leave will be allowed upon employees' termination, separation or retirement up to 75% of available accrued balance.
 - vi. An employee may donate a maximum of 120 hours of sick leave in any calendar year. Only sick leave and/or vacation time may be donated.
 - vii. All employees must maintain a minimum of 40 hours' sick accrual and 40 hours' vacation accrual at the time donation is made (i.e. full time employees – 40 hours; half time employees - 20 hours).
 - viii. Donations shall be in hourly increments and shall be on an hour for hour basis without regard to an employee's cash value equivalent of the amount of time donated or used.
 - ix. The transfer of leave hours is irreversible, and donations shall be processed in the same manner as any other leave request.
 - x. Donations are to the Bank, not individual employees.
 - xi. Records of sick leave donations/balances will be the responsibility of the Human Resources Office.
3. Procedure to Access the Bank.
- i. An eligible employee, who voluntarily chooses to participate, shall submit a "Catastrophic Leave/ Donation Application" to the employee's Department Head for recommendation to and approval by Human Resources.
 - ii. Along with the application, the employee must submit a written medical verification of his/her condition, or the medical condition of his/her immediate family member. This information will be maintained in a confidential file in Human Resources separate from the personnel file.

When the medical emergency involves an immediate family member, the employee must supply written documentation from the family member's medical physician that the medical condition of the family member necessitates the employee's personal attendance during the employee's normally scheduled work hours.

- iii. All information regarding the leave application will be kept confidential, and the employee will be notified by Human Resources when a determination has been made regarding the application.
- iv. Any application, which is denied, may be appealed to the City Manager. The City Manager's decision shall be final and not grounds for grievance or appeal.
- v. The maximum number of hours a regular employee may access from the Bank during any 24-month period shall be the lesser of 360 hours or the amount of leave hours available in the Bank. Part-time employees, in a regular position, may apply for a prorated equivalent of 360 hours, based on the number of hours per month employee works.
- vi. If the application is approved, hours from the Bank will be transferred to the sick leave account of the absent employee as the hours are used. Subsequent eligibility by additional employees for use of the Bank shall result in the concurrent use of available hours in the Bank.
- vii. There will be no coercion of employees to donate; this is voluntary program. Applying to receive and receiving a donation from the bank is also entirely voluntary. All donations will be confidential.
- viii. In the event an employee using approved catastrophic leave for the care of an immediate family member, and said family member dies, employee may receive up to three (3) working days off, per the City's Bereavement Policy.

E. Industrial Disability Leave (Workers' Compensation Leave): Employees who suffer a work-related injury or illness are eligible for Workers' Compensation in accordance with California law and these Rules. Additional information is available from the City's Risk Manager or his/her Workers' Compensation designee.

1. The procedure outlined below should be followed for reporting work-related employee injuries/illness:
 - i. In the event a work-related illness or injury occurs, the Department Director shall provide the necessary claim forms to the employee within 24 hours and insure the employee receives immediate medical attention, if other than first aid is necessary, at a City-authorized medical facility. The

Department Director shall insure the necessary forms are completed and submitted to the Risk Manager or Workers' Compensation designee by the next business day for processing and investigation.

- ii. In the event a work-related illness or injury occurs and it is determined no medical treatment is necessary, the employee and supervisor must complete an Employee Incident Only form and submit that form to the City's Workers' Compensation designee.

2. Public Safety Employees

- i. Public safety employees who receive compensation under Section 4850 of the Labor Code are eligible for City insurance benefits and leave accruals and shall not utilize sick leave until such time as they are no longer eligible to receive said compensation.
- ii. Should the employee's absence due to work related injury or illness extend beyond the time frame allowed under Section 4850 of the Labor Code, any temporary disability benefits received under Workers' Compensation shall be considered part of the employee's salary. During the time the employee receives Workers' Compensation temporary disability benefits, the employee may use sick leave, vacation or other compensatory time off to supplement compensation received under the Workers' Compensation Act in an amount not to exceed the employee's regular rate of pay.
- iii. Should the employee's accumulated sick leave, vacation, or other compensatory time off be exhausted, the temporary disability payments provided under the Workers' Compensation benefits shall continue, and the employee shall be subject to a leave of absence without pay.

3. Miscellaneous Employees

- i. Any compensation received under Workers' Compensation shall be considered part of the employee's salary. During the time the employee receives Workers' Compensation benefits, the employee may use sick leave, vacation or other compensatory time off to supplement compensation received under the Workers' Compensation Act in an amount not to exceed the employee's regular rate of pay.
- ii. Should the employee's accumulated sick leave, vacation, or other compensatory time off be exhausted, the temporary disability payments provided under the Workers' Compensation benefits shall continue, and the employee shall be subject to a leave of absence without pay.

4. The City does not compensate an employee for time to attend routine medical appointments relative to their workers' compensation claims. In the event the employee returns to work but requires follow up physician visits and/or rehabilitative treatments, the employee should schedule such appointments during off duty hours. Employees shall use sick time or another form of leave if their appointment conflicts with their work schedule.
5. The Risk Manager or designated representative shall continually monitor all active Workers' Compensation claims as necessary.

E. Transitional Return to Work (TRTW) Program

The purpose of the Transitional Return to Work (TRTW) Program is to return injured employees, who are **temporarily** precluded from performing their normal duties, to work in a TRTW assignment.

The purpose of this policy is to establish procedures for assigning employees to temporary modified duty. Temporary modified-duty assignments may be available to employees who have incurred a job-related illness or injury and, due to restrictions or limitations, are unable to perform their regular assigned duties. Non-job related illnesses or injuries may also be considered for eligibility in accordance with this policy.

1. Responsibility

Human Resources will act as the TRTW Coordinator and function as the liaison with the workers' compensation claims administrator for work related injuries. This policy must comply with all current workers' compensation rules and regulations.

2. Procedures

i. Identifying TRTW Assignments:

- a. Periodically, as needed, the TRTW Coordinator will request that all departments/divisions complete the "TRTW Assignment" form. This form assists the TRTW Coordinator in identifying possible TRTW assignments.
- b. An injured employee may be assigned to a modified duty position outside of his/her normal assignment, if one becomes available. If the injury or illness is non-duty related, the employee shall be given the option to either accept the position, or continue to draw on applicable sick leave or other leave accounts.

ii. Employee placed on TRTW by a treating physician:

- a. All work restrictions the employee has will be listed on the "Authorization for Medical Examination" or the treating physician's/facility's work status report (which authorization or report shall solely confirm functional limitation work restrictions).

- b. If the employee's department/division is able to accommodate the restrictions, the employee's supervisor will notify the TRTW Coordinator, and the coordinator will send a TRTW agreement letter to the employee. It is the City's intent to keep employees in their division/department if possible.
- c. If the employee's division/department is unable to accommodate the restrictions, the division will notify the TRTW Coordinator immediately.
- d. The TRTW Coordinator will then:
 - 1. Contact departments/divisions for possible TRTW assignments, based upon employee's restrictions.
 - 2. If an assignment in another department is located, the TRTW Coordinator will meet with the employee to advise him/her of the available work assignment(s). Should the employee accept the assignment, the TRTW Coordinator will provide the employee with a TRTW agreement letter. Should the employee refuse the assignment, he/she will need to be aware that his/her non-medical, worker's compensation benefits may end.
- e. The employee's assigned supervisor will ensure that the employee is complying with, and working within, the work restrictions imposed by the treating physician.
- f. Every 30 days, the TRTW Coordinator will review the employee's progress, which may require a duty status report from the treating physician/facility to extend the modified duty assignment.
- g. If the employee feels his/her injury precludes him/her from completing a TRTW assignment, then it is the employee's duty to notify the TRTW Coordinator of his/her problem, whereby the employee and the TRTW Coordinator can make plans for the subsequent course of action.

iii. Unavailable transitional assignments:

- a. If no transitional assignment is available, the employee will remain off- duty.
- b. Employees off duty are to contact the TRTW Coordinator on a weekly basis to assess the availability of TRTW assignments.
- c. Failure to contact the TRTW coordinator may result in disciplinary action.

iv. Intermittent Assignment:

- a. If an employee completes a temporary assignment, and there is no additional transitional work available, the employee will be placed in off-duty status, and Section iii above applies.
- b. If the injury is industrial, the TRTW coordinator must **immediately**

notify the workers' compensation claims administrator that the employee is not working.

v. Time Card Procedures:

- a. The time record code "TRTW" shall be used to track employees on transitional return to work assignments.
- b. The employee's regular account number is used.

SECTION 11
ATTENDANCE AND LEAVES

A. Family Care and Leave Policy (FMLA/CFRA):

1. Statement of Policy: To the extent not already provided for under current leave policies and provisions, the City will provide family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain of the rights and obligations with respect to such leave. Rights and obligations, which are not specifically set forth below, are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (“FMLA”), and the regulations of the California Family Rights Act (“CFRA”). Unless otherwise provided by this article, “Leave” under this article shall mean leave pursuant to the FMLA and CFRA.
2. Definitions:
 - i. “12-Month Period” means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
 - ii. “Serious health condition” means an illness, injury, impairment, or physical or mental condition that involves:
 - a. Any period of incapacity or treatment in connection with or subsequent to inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility;
 - b. Continuing treatment by a health care provider due to a serious health condition for a period of more than three (3) days requiring absence from work, school or other regular daily activities, and any subsequent or continuing treatment by a health care provider, or period of incapacity relating to the same condition that also involves:
 1. Treatment two or more times by a health care provider within 30 days of the first day of incapacity, or
 2. Continuing treatment under the supervision of the health care provider (e.g., prescription medication or therapy requiring special equipment to resolve or alleviate the health condition);
 - c. Any period of incapacity due to pregnancy or for prenatal care. (This entitles the employee to FMLA leave only. Under

California law, an employee disabled by pregnancy is entitled to pregnancy disability leave); or

- d. Continuing treatment by, or under the supervision of, a health care provider for a chronic or long-term serious health condition that continues over an extended period of time, causes episodic periods of incapacity (e.g., asthma, diabetes, epilepsy, etc.), or is incurable or so serious that the condition would likely result in a period of incapacity of more than three consecutive calendar days in the absence of medical intervention or treatment.

3. Reasons for Leave. Employees may take a total of twelve workweeks of unpaid leave during any 12-month period for any one or more of the following reasons:

- i. The birth of a child or to care for a newborn of an employee;
- ii. The placement of a child with an employee in connection with the adoption or foster care of a child;
- iii. Leave to care for a child, parent, spouse, or domestic partner who has a serious health condition;
- iv. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position;
- v. For a “qualifying exigency” arising out of the fact that an employee’s spouse, son, daughter, or parents is on covered active duty or called to active duty status (under the FMLA only, not the CFRA); or
- vi. To care for a spouse, son, daughter, parent, or next of kin who is a covered service member of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on activity duty in the Armed Forces (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under the FMLA only, not the CFRA).

4. Employees Eligible for Leave. An employee is eligible for leave if the employee:

- i. Has been employed for at least 12 months; and

- ii. Has worked at least 1,250 hours for the City during the 12-month period immediately preceding the commencement of the leave.

5. Amount of Leave. Eligible employees are entitled to a total of 12 workweeks of leave during any 12-month period:

- i. Minimum duration of leave: Leave taken for the birth, adoption or foster care placement of a child of the employee must be taken for no less than two-weeks and must be concluded within one year of the birth or placement of the child. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than the minimum two weeks on any two occasions.

If leave is requested to care for a child, parent, spouse, spouse or domestic partner's child, or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

6. Employee Benefit While on Leave. Leave under this policy is unpaid. While on leave, employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job. However, an employee will not accrue other benefits, including, but not limited to vacation or sick leave earnings, or continued coverage/contributions for employee elective benefit deductions (i.e., Colonial, deferred compensation, credit union). The employee is not entitled to greater rights than he or she would have if they remained in the workplace.

Employees on unpaid leave during this time shall make the appropriate contributions for continued health benefits/health insurance coverage or their coverage may be cancelled. If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City has the right to recover its share of health plan premiums for the entire leave period, unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition as specified in this rule, or because of circumstances beyond the employee's control.

7. Substitution of Paid Accrued Leaves. While on a leave under this policy, the City will require an employee to concurrently use any accrued paid leaves.

- i. City's Right to Require an Employee to Use Paid Leave When Using FMLA/CFRA Leave. Employees must exhaust their accrued leaves concurrently with FMLA/CFRA leave, but shall not be required to use accrued compensatory time earned in lieu of overtime earned.

- ii. City's Right to Require an Employee to Exhaust FMLA/CFRA Leave Concurrently With Other Leaves. If an employee takes a leave of absence for any reason which is FMLA/CFRA qualifying, the non-FMLA/CFRA leave shall run concurrently with the employee's 12-week FMLA/CFRA leave entitlement. The only exception is for peace officers that are on leave pursuant to Labor Code §4850.

- 8. Notice. Except for qualifying exigency leave, an employee is required to give 30 days' notice in the event of a foreseeable leave. In unexpected or unforeseeable situations, an employee should provide as much notice as is practicable.

If an employee fails to give 30 days' notice for a foreseeable leave with no reasonable excuse for the delay, the leave may be delayed until the City, in its discretion, can adequately cover the position with a substitute.

- 9. Medical Certification. Employees who request leave for their own serious health condition or to care for a child, parent or a spouse who has a serious health condition must provide written certification from the health care provider. If applicable, the certification must include a statement that the employee is unable to work at all or is unable to perform the essential functions of his/her position.

- i. Time to Provide a Certification. When an employee's leave is foreseeable and at least thirty (30) days' notice has been provided, the employee must provide a medical certification before the leave begins. When this is not possible, the employee must provide the requested certification to the City within fifteen (15) calendar days after the employer's request, unless it is not practicable to do so. Failure to provide a completed medical certification on time may impact the employee's ability to take the leave as requested.

- ii. Recertification. Where the employee's certification is incomplete, appears to be from physician lacking appropriate expertise, or appears fraudulent, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee but paid for by the City. The opinion of the third provider will be binding.

- 10. Reinstatement Upon Return from Leave. An employee will be reinstated to the position of employment held when the leave commenced, or to an equivalent position if the former position is no longer available. Employees have no greater rights to reinstatement, benefits and other conditions of employment than if the employee had been continuously employed during the

FMLA/CFRA period.

- i. Employee's Obligation to Periodically Report on His/Her Condition. Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.
- ii. Release for Duty Certification. An employee returning from leave taken due to the employee's own serious health condition, which made the employee unable to perform his/her job, must provide a release-for-duty certification from his/her health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.
- iii. Reinstatement of "Key Employees". The City may deny reinstatement to a "key" employee (i.e., an employee who is among the highest paid 10 percent of all employed by the City within 75 miles of the work site) if such denial is necessary to prevent substantial and grievous economic injury to the operations of the City, and the employee is notified of the City's intent to deny reinstatement on such basis at the time the employer determines that such injury would occur.

11. Required Forms. Employees may contact the Human Resources Department for applicable forms in connection with the leave under this policy.

B. Pregnancy Disability Leave (PDL).

1. Any employee with appropriate doctor certification may request an unpaid leave of absence for up to four months, due to conditions related to pregnancy, childbirth, or related medical conditions. Part-time employees are entitled to leave on a pro rata basis. PDL is an unpaid leave of absence. An Employee will be required to use any accrued sick leave first while out on leave, and then will be allowed to use accrued vacation or compensatory time available thereafter.
2. Employees are required to give at least thirty days' notice of intent to take leave in the event it is foreseeable. If the need for leave is not foreseeable, employees must provide notification as soon as is reasonable or practicable. Employees must consult with the Human Resources Department regarding the scheduling of any planned medical treatment or supervision in order to minimize disruption to the operations of the City. Any such scheduling is subject to the approval of the employee's health care provide.
3. Upon the request of an employee and recommendation of the employee's physician, the employee's work assignment may be changed if necessary to protect the health and safety of the employee and her child, but the transferred

employee will receive the pay that accompanies the job. The City will provide such accommodations unless the requested accommodations would constitute an undue hardship, upon which the employee may be placed on an unpaid leave of absence.

4. Under most circumstances, upon expiration of the approved leave and the City's receipt of a written statement from the health care provider that the employee is fit to return to duty, the employee shall be reinstated to her former position or to a comparable one, so long as it was not eliminated for a legitimate business reason during the leave. The comparable position is one having similar terms of pay, location, job content and promotional opportunities.
5. Failure to return to work after the authorized four month leave period may cause the employee to have no reinstatement rights. An employee who plans to take such a leave should give reasonable notice of the date the leave shall commence and the estimated duration of the leave.

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

Probationary and regular employees in the military reserves who are called to active duty, excluding weekend and other routine drill periods, shall receive the difference in pay between their military pay and their regular work pay. Such pay differential shall continue for a period of one-year from the date of the call to active duty. In addition, such employees shall have their health insurance benefits for themselves and their covered dependents continued by the City until the employee and the employee's covered dependents are first eligible and secure similar military health benefits.

- D. Jury Leave. Every employee in the classified service required to report for jury duty shall be granted leave from their duties with the City during the period of such service upon presentation of the notice to appear for jury duty to the Department Head.

Reasonable advance notice to the Department Head is required. If reasonable notice is given, the employee shall be paid the difference between regular full salary and any payment received, except travel pay, for such duty. An employee who serves on jury duty during a regular day-off may receive all jury duty fees paid for that day.

- E. Subpoena. The employee shall receive full pay for subpoenaed court appearances connected with the employee's official duties provided the employee remits to the

City all fees received for such appearances. Compensation for expenditures for mileage or subsistence allowances shall not be considered fees and shall be retained by the employee.

F. Holidays. The holidays to be observed in this City are as follows:

- New Year's Day
- Martin Luther King, Jr. Day
- Lincoln's Birthday
- Presidents' Day
- Memorial Day
- Independence Day
- Labor Day
- Veteran's Day
- Thanksgiving Day
- Day After Thanksgiving
- Christmas Day
- 2 Floating Holidays

And any other holiday proclaimed by the Mayor of the City.

Every regular and every probationary employee in the classified service except members of the Public Safety Departments, who are required to be on duty for 24-hour periods, shall be entitled to the above paid holidays unless the employee's services are needed and required in the interests of the public health, safety or general welfare, in which latter event any such employee shall be entitled to compensatory time off at such time as in the discretion of the Department Head, their services are not needed and required.

Members of the Public Safety Departments who are required to be on duty for 24-hour periods, shall be entitled to compensatory time off in lieu of holidays in the same number of hours as is commensurate with the holiday time hereby granted to other employees, which time shall be eight duty hours per holiday. Said compensatory time off may be taken in conjunction with annual vacation leave to allow for maximum personnel utilization.

For those employees who work Monday through Friday, any holiday falling on Saturday shall be observed on the proceeding Friday and any holiday falling on Sunday shall be observed on the following Monday. Employees who work schedules other than Monday through Friday shall be entitled to compensatory time off for any holiday which falls on their regularly scheduled days off.

An employee must be employed by the City on the day preceding and the day following a holiday to qualify for holiday pay. For purposes of this paragraph, an employee who is absent on authorized vacation with pay or on accrued sick leave

shall be deemed to be employed at such time.

G. Representatives of Recognized Employee Organizations. The City shall provide leave, without loss of pay, to employees serving as officers of a recognized employee organizations, or a designated representative, when the employee is to: (1) meet and confer with the City on matters within the scope of representation; (2) testify or appear in proceedings before the Public Employment Relations Board; and (3) testify or appear before a personnel or merit commission.

H. Time Off for Victims of Violent Crimes or Domestic Abuse.

1. An employee who has been a victim of a violent crime, domestic violence, sexual assault, or stalking may take time off to: (1) appear in court to comply with a subpoena or other court order as a witness to any judicial proceeding; (2) seek medical or psychological assistance; or (3) participate in safety planning to protect against further assaults. The City shall also, pursuant to Section 18.02 of these rules, provide reasonable accommodations for victims of domestic violence, sexual assault or stalking who request an accommodation for their safety while at work.
2. Victim shall mean any person who suffers direct or threatened physical, psychological, or financial harm as a result of the commission or attempted commission of a crime.
3. An affected employee must give the City reasonable notice that he or she is required to be absent for the purpose stated above. In cases of unscheduled or emergency court appearances or other emergency circumstances, the affected employee must, within a reasonable time after the appearance or circumstance, provide the City with written proof that the absence was required for any of the above reasons. Leave under this section is unpaid, unless the employee uses sick leave, vacation or compensatory time off

I. Absence Without Leave. Any employee who is absent from duty shall report the reason for such absence to the Department Head or immediate supervisor prior to the date of expected absence whenever possible and in no case, later than one (1) hour after the beginning of their normal work shift; except in the Public Safety Departments where such notice shall be at least one (1) hour before the beginning of their normal work shift. Absences not reported in such manner may be considered absence without leave. A deduction of pay shall be made for the duration of any absence without leave. Upon return to work, such absence shall be justified to the Department Head who shall consider the need for further disciplinary action.

An authorized absence without leave for more than three (3) consecutive work days may constitute a resignation of their position by the employee.

- J. Authorized Leave of Absence Without Pay. An employee shall not be entitled to leave of absence without pay as a matter of right (except as provided by federal or state law) but an employee may request a leave of absence without pay. The request must be submitted in writing and set forth the reason for the request. The City Manager may grant, in writing only, a regular or probationary employee's request for leave of absence without pay for a period not to exceed three months. A leave of absence without pay shall not be authorized until the employee has exhausted all accumulated compensatory time off.

An employee must return to employment upon expiration of an authorized leave without pay. An employee returning to employment may return to the same classification, status and salary step in the pay range in effect for the class at the time leave was granted, unless the City Manager determines that a position in the same classification, status, or salary step is not available. Failure to report promptly at the expiration of such leave, or after notice to return to duty, may be cause for discharge.

City benefits shall not be granted or accrue after the third consecutive day of leave of absence without pay. Employees and their dependents may continue their health/medical insurance by paying the premiums for such time as the employee is on authorized leave of absence without pay. Benefits waived shall resume upon employee's return to active duty.

- K. Reasonable Accommodations. The City provides employment-related reasonable accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act. (See Section 15.E.).

SECTION 12 GRIEVANCE PROCEDURES

Purpose of the Procedure

The primary purpose of this procedure shall be to provide a means whereby an employee, without jeopardizing his or her employment, can express a personal grievance relating to wages, hours of work, and working conditions, and obtain a fair and equitable disposition of such grievance.

Definition of Informal Grievance

An informal grievance is defined as a verbal disagreement by an employee expressed to the employee's supervisor with a request to informally discuss the grievance with the supervisor and/or the department head.

Definition of Formal Grievance

A formal grievance shall be defined as any written complaint of an employee filed with the employee's immediate supervisor within thirty (30) days of the subject of the grievance relating to his or her wages, hours of work, and working conditions.

Informal Discussion with Supervisor

An employee shall first pursue all informal grievances with his or her supervisors and at any time that the employee or the supervisor or department head deem that the informal grievance is a formal grievance, the employee may reduce it to a formal written grievance. An employee with an informal grievance is encouraged first to attempt to resolve the problem by discussing it informally with his or her first line supervisor before filing a written grievance.

Formal Conference with Supervisor

If an employee does not obtain satisfaction of the informal grievance by means of an informal discussion with the supervisor, or if the employee is unable to communicate with his/her supervisor, the employee and/or employee representative may, by written grievance, request and shall be accorded a formal conference within ten (10) days with the supervisor and/or department head. The decision of the supervisor shall be reported to the employee and/or his/her representative within five (5) business days of the date the conference was held with the supervisor.

Departmental Review

In the event the employee does not obtain satisfaction at any level of review by means of informal or formal grievance and a formal conference with his or her supervisors, the employee and/or his or her representative may submit the grievance in writing to the supervisor or department head. The procedure to be followed by the supervisor who receives a grievance in writing shall be established by each department head for his or her department, and shall include review of the grievance by the immediate supervisor and such successively higher levels of management as may be determined by the department head. A cumulative record of the decision and the reason for the decision at each level of review shall be

maintained. The ultimate decision shall be that of the department head. The decision must be reported to the employee in writing within ten (10) business days of the date that the request for departmental review was submitted to the supervisor.

Appeal to the City Administrator

In the event the employee does not obtain satisfaction by means of the departmental review, the employee and/or his/her representative shall submit the grievance in writing to the City Manager within 10 days after notification of the departmental decision is given to the employee. The City Manager may meet with the employee and/or representative and the department head before making a decision; or may waive administrative review and refer the grievance directly to a committee of the City Council appointed to hear grievances. A copy of the decision on the matter must be presented to the employee within ten (10) business days of the date the grievance was filed with the City Manager.

Submission to a Committee of the City Council

In the event that the employee does not obtain satisfaction by means of the administrative procedures outlined above, the employee may request a hearing by a committee of the City Council. The hearing shall be held by the committee within fifteen (15) business days of the date of receipt of the request at the convenience of all parties, unless waived by common consent of the employee and the department head. The hearing shall be informal. The employee and/ or his/her representative, the department head and/or the City Manager shall appear before the committee to present facts pertinent to the case. The burden of proof shall rest with the employee. The committee shall limit its review of the grievance to the subject matter contained in the previous steps of the grievance procedure and shall make its decision within thirty days after the termination of the hearing unless a reasonable time extension is deemed necessary and all parties are notified.

Time Limits

In case the time limits outlined above are not observed by the representative of the City, the employee and/or representative shall have the right to carry the grievance directly to the next higher level of review.

GROUP GRIEVANCE PROCEDURE

The recognized employee organizations may present a general grievance (affecting several employees) in writing directly to the City Manager. Upon receipt of such a grievance, the City Manager shall establish a time for a hearing, at which time all affected parties may appear before the City Manager to present facts pertinent to the issue. The decision of the City Manager shall be presented to all parties concerned within fifteen (15) business days and shall be appealable by the group to a committee of the City Council for their findings and recommendations within thirty (30) days. If either party wishes to appeal, they may file an appeal with the City Council as a whole within five (5) working days of the final decision of the committee of the City Council.

SECTION 13
TRANSFER, PROMOTION, DEMOTION, SUSPENSION, AND REINSTATEMENT

- A. Transfer. The City Manager may transfer employees at any time within departments and to positions outside a department in a manner most advantageous to the City. However, no person shall be transferred to a position for which they do not possess the minimum qualifications unless waived by the City Manager. Employees may be transferred by the appointing authority at any time to another position in a comparable class. For transfer purposes, a comparable class is one with the same maximum salary, involves the performance of similar duties, and requires substantially the same basic qualifications. The City's Compensation Plan will be used to determine an employee's applicable pay following transfer.

If the transfer involves a change from one department to another, both Department Heads must consent thereto, with approval of the City Manager, unless the City Manager orders the transfer. Transfers are not to be considered as disciplinary actions. Transfer shall not be used to effectuate a promotion, demotion, advancement, or reduction, each of which may be accomplished only as provided in the City's Compensation Plan or these Rules.

- B. Promotion. Consistent with the best interests of the service, vacancies within the classified service may be filled by promotion from within the service with or without a promotional examination. At Human Resource's discretion, the City may conduct a promotional examination to establish a promotional list of eligible candidates, or a vacancy in the position may be filled by an open-competitive examination instead of promotional examination, then an open-competitive examination shall be arranged. The City's Compensation Plan will be used to determine an employee's applicable pay following promotion.
- C. Demotion. The appointing authority may demote any employee whose ability to perform required duties falls below standard or for disciplinary purposes. Upon request of the employee, and with the consent of the prospective supervisor and appointing authority, an employee may voluntarily demote to a vacant position in the same department. No employee shall be demoted to a position for which they do not possess the minimum qualifications, as determined by the appointing authority. Written notice of the demotion shall be given the employee not less than five (5) working days prior to the effective date of the demotion, and a copy filed with Human Resources. The City's Compensation Plan will be used to determine an employee's applicable pay following demotion.
- D. Suspension. The City Manager may suspend any regular employee without pay at any time for cause (see Section 18 for definition of cause). When suspensions are imposed by Department Heads, said action shall be reported immediately to the City Manager and Human Resources.

- (1) Department Heads may suspend a subordinate employee for not more than five (5) working days at any one time, and not more frequently than one such suspension in a thirty (30) day period.
- (2) A suspension of not more than thirty (30) working days of any City employee may be made by or with the approval of the City Manager.
- (3) A suspension exceeding thirty (30) days must be approved by the City Manager.

E. Reinstatement. With the approval of the City Manager, a regular or probationary employee, who has separated from employment with a good record, except for layoffs, may be reinstated within six (6) months of the effective date of resignation, to a vacant position in the same or comparable class, provided they meet the minimum qualifications for the classification. (See Section 8.E.)

SECTION 14
SEPARATION FROM THE SERVICE

A. Discharge. A regular employee may be discharged by the appointing authority for cause. An employee may likewise be dismissed when off-the-job conduct either creates a conflict with the employee's work for the City or evidences an obvious unfitness to perform the duties of an employee. Whenever an employee is convicted of driving under the influence of alcohol or drugs, this shall be considered a prima facie indication of unfitness if part of the employee's duties involves operating a vehicle. Any employee who may be discharged shall be entitled to due process as provided in the Personnel Ordinance and these Rules.

B. Lay-off and Seniority Policy.

It is recognized that when it is necessary to reduce City employment due to outsourcing, fiscal constraints, reductions in revenue, reorganization, reductions in municipal services, or reduction in the demand for municipal service, such action and its implementation except as qualified herein, shall be at the sole discretion of the City. The City Manager may lay-off any employee in the classified service because of material change in duties or organization or shortage of work or funds. The City Manager shall notify Human Resources of the intended action who, in turn, shall notify the affected employees and employee organization in accordance with this Policy.

When it is deemed necessary to reduce City employment by layoff, the layoff procedures shall protect the right of the City to retain qualified employees, while recognizing the seniority of affected employees as outlined below.

Lay-offs shall occur by classification within department. The department head, with approval of the City Manager, shall determine the classification, number of positions to be affected within the department, the lay-off date, and shall notify Human Resources and the affected employee organization in writing at the earliest possible date.

This Policy and the procedures outlined herein apply to all employees in the City of Morro Bay whose positions may be eliminated as outlined above.

1. Definitions

a) Lay-off. An action caused by a reduction of authorized, budgeted positions wherein an employee is laid-off from the work force for economic reasons only. The term "Lay-off" shall include removal from City employment or reassignment to a former or other class pursuant to this Policy.

b) Classification. The job title and job description are the City's official description of the representative duties, responsibilities and employment qualifications of a job. Classification means one or more regular positions grouped according to the duties and responsibilities assigned to a specific

job title. A Classification Series consists of a grouping of two or more job classes performing similar work, but at different levels of responsibility, difficulty and pay. (i.e. Worker, Senior Worker, Lead Worker)

c) Seniority. Seniority for the limited purposes of this policy shall be measured from the time an employee was first granted permanent status in the employee's current classification, subject to the following:

(1) Service time shall be given only for continuous service with the City of Morro Bay in all regular classifications served.

(2) Continuous unbroken time worked includes time during which the employee was absent with pay. Approved leaves of absence without pay shall maintain the continuity of employment, but the duration of the leave shall be deducted from the total continuous time period except as provided by State and/or Federal law.

(3) In cases where there are two or more employees in the Classification from which the lay-off is to be made who have the same seniority date, such employees shall be laid off on the following basis: 1) (safety only) test score, provided that they took the same test on the same date, 2) total City seniority, 3) by lot.

(4) For bumping purposes only, seniority shall be calculated by adding service time in the higher classification(s) to service time in the classification to which the employee is attempting to bump.

d) Bumping Rights.

(1) Bumping rights or bumping shall mean the right of an employee, based upon the seniority as defined above in section c, (4).

(2) Subject to d, (3) below, an employee shall be permitted to bump into a classification where he/she previously held regular permanent status. Bumping may occur only in the case where the employee has seniority over the person being bumped. Bumping shall also be permitted to lower level positions in the same classification series. Title changes will not disqualify an employee from bumping if the position is substantially the same as determined by the City Manager.

(3) No employee shall have the right to bump into a classification for which the employee does not possess the minimum qualifications for the classification, such as specialized education, training, certifications, knowledge, skills and abilities.

(4) An employee who is bumped shall have the same rights as provided herein and shall be considered laid-off for the purposes of this Policy.

2. Scope and Order of Layoff. Layoff shall occur within a job classification and division in inverse order of seniority in the following order of employee status:

- a) Contract
- b) Provisional
- c) Probationary
- d) Regular employees (regular part-time employees' service time shall be prorated for the purposes of computing seniority).

3. Notification.

- a) In the event the City anticipates a lay-off covered by this Policy, the City will notify the employee organization 15 calendar days prior to notice being given to employees pursuant to section 3 (c) below of its intent prior to making any such lay-offs.
- b) Prior to formal announcement of lay-offs, the City shall meet and confer with the employee organization concerning the impact of the lay-off decision. Nothing in this section relinquishes the City's right to lay-off employees. The City shall, upon request, explain the rationale/need for the lay-offs.
- c) Employees subject to lay-off shall be given at least forty-five (45) calendar days' advance notice in writing. A lay-off notice shall include the following information:
 - (1) Reason for lay-off
 - (2) Effective date of the lay-off
 - (3) The employee's calculated seniority date
 - (4) Classes to which the employee may request displacement within the City
 - (5) A copy of this Policy.
- d) An employee who has bumping rights shall notify the Personnel Officer within ten (10) working days after notice of lay-off of his/her intention to exercise bumping rights.

4. Reemployment.

- a) Employees who are laid off shall have their names placed on a reemployment eligibility list for their current classification or a classification in which they previously held permanent status. The City shall maintain the list as long as any employee is in laid-off status or one (1) year, whichever occurs first (see Section 8. D).
- b) Reemployment Eligible List: The reemployment eligible list shall consist of the names of employees and former employees having probationary or regular status who have been laid off or whose positions have been reallocated as a result of reclassification. The affected employee shall be placed on the reemployment eligibility list. Such lists shall take precedence over all eligibility lists.
- c) The Personnel Officer shall make every effort to place an employee who has been laid off in a vacant position for which he/she is qualified during the life of the reemployment list.
- d) An employee, whose name is active on the reemployment list and was employed with the City in a permanent position for at least three

consecutive months prior to lay-off, shall be eligible to apply for any promotional recruitment.

e) To the extent feasible, the City will utilize re-employment lists when filling temporary and/or contract employee opportunities.

5. Voluntary Demotion in lieu of Lay-off.

a) An employee scheduled for lay-off may voluntarily demote to a vacant lower class, provided the employee possesses the minimum qualifications for the lower position, as determined by the Personnel Officer.

b) Employees may also demote to any previously held vacant position, provided that position is vacant, wherein their performance in that position has been documented to be satisfactory.

c) To be considered for voluntary demotion in lieu of lay-off, an employee must notify Human Resources in writing of this election no later than ten (1) working days after receiving the notice of lay-off.

6. Interpretation. Differences regarding interpretation of this policy shall be determined by the City Manager.

C. Resignation. An employee wishing to leave the classified service in good standing, shall file with the appointing authority, a written resignation stating the effective date and reasons for leaving at least two weeks before leaving the service, unless such time limit is waived by such official. A statement as to the resigned employee's service performance and other pertinent information shall be forwarded to Human Resources. Failure to give notice as required by this Rule may be cause for denying future employment by the City.

D. Retirement. Whenever an employee meets the conditions set forth in the City's retirement plan regulations, they may elect to retire and receive benefits earned under the retirement plan.

SECTION 15
MISCELLANEOUS RULES

- A. Political Activity. The City prohibits all officers and employees from engaging in political activities during work hours and from using his/her office or position to influence any vote or promote, propose, oppose, or contribute to any political cause or candidate. An officer or employee of the City shall not knowingly solicit political contributions from other City officers or employees unless done incidentally to a solicitation of a larger segment of the public which may include officers or employees of the City. No City officer or employee shall participate in political activities of any kind while in uniform.

Political activities are prohibited on all City premises with the exception that political activities may take place at a City-owned facility when said facility has been rented for the occasion.

- B. Gifts and Gratuities. No employee shall accept, receive or solicit any gift, gratuity, present, property or service of any kind, nature or value, including but not limited to money, loans, travel, entertainment, apparel, hospitality, or promises of preferential treatment of any kind, which may be directly or indirectly offered as a result of, or anticipation of said employee's position or performance of duties with the City. Inappropriate gifts and gratuities must be rejected firmly but tactfully so that the good intentions of the giver are properly acknowledged.

It is not the intent of this policy to prohibit the expressions of general appreciation, such as advertising and promotional pens, calendars, and other items of negligible value which are circulated widely, including small boxes of candy at holidays which are presented to an entire department and not to individuals.

Any questions regarding the appropriateness of a gift should be referred to the City Manager within 24 hours of the receipt thereof. The City Manager's decision shall be final.

- C. Outside Employment. No employee shall engage in outside employment or enterprise for compensation which is in conflict with their municipal duties or responsibilities, or the department by which he/she is employed, or which will lessen their efficiency or effectiveness as a City employee.
1. Determination of Inconsistent Activities. Each Department Head, subject to the City Manager's approval, may determine the consistency or inconsistency of outside employments, activities or enterprises with City employment. Authorization to engage in outside employment or activities for compensation is subject to revocation by the Department Head or City Manager without cause. Outside employment, activity, or enterprise shall be prohibited if it:

- i. Involves the use or advantage of City time, facilities, equipment, supplies, or the badge, uniform, City-issued business cards, prestige, authority or influence or his/her City office or position;
 - ii. Involves receipt or acceptance by the City employee of any money or other consideration from anyone other than the City for the performance of an act which the employee, if not performing such act, would be required or expected to render in the regular course of hours of his/her City employment or as a part of his/her duties as a City employee; or
 - iii. Involves the performance of an act in other than the capacity of the City employee, which act may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other officer or employee of the City
2. Use of City Equipment prohibited. No City-owned equipment, vehicles, tools, supplies or any other item shall be used by any employee while the employee is engaged in any outside employment or activity, or for personal use.
 3. Violations and Penalties. Any violation of these provisions respecting outside employment or activity and use of City property shall constitute sufficient grounds for disciplinary action, including termination of the employee from the City service.

D. Drug and Alcohol-Free Workplace.

1. No City employee shall bring to the workplace alcohol or illegal drugs, nor shall any employee report to work under the influence of alcohol or any illegal drug, nor may any employee whose duties include driving receive a conviction for driving under the influence of alcohol or drugs. The City has a Separate Drug and Alcohol Free Workplace Policy, which contains a prohibition on alcohol, ~~and~~ illegal drug use, and the use and abuse of legal drugs in the workplace, when reporting to work, and when on-call.
2. Violation of the Drug-Free Workplace policy shall be grounds for disciplinary action up to and including termination.
3. Any employee convicted of a drug crime shall immediately notify his/her supervisor, not later than five (5) days after any such conviction. Failure to do so will constitute grounds for disciplinary action up to and including termination.
4. Searches: In order to promote a safe, productive, and efficient workplace, the City has the right to search and inspect all City property, as provided in Section 15(G) of these Rules. Except as otherwise provided in a current

Memorandum of Understanding, or as modified for City employees who operate a commercial vehicle as defined by the Omnibus Transportation Employee Testing Act or other safety-sensitive employees, the City has discretion to test a current employee for drugs or alcohol in the circumstances outlined in the City's Drug-Free Workplace Policy.

E. Reasonable Accommodations and Fitness-for-Duty Medical, Physical, and/or Psychological Examinations.

1. Reasonable Accommodations. The City provides employment-related reasonable accommodations to qualified individuals with disabilities within the meaning of the California Fair Employment and Housing Act and the Americans with Disabilities Act. An employee who desires a reasonable accommodation in order to perform essential job functions should make such a request, preferably in writing, to the Human Resources Department. The request should identify the job-related functions at issue and the desired accommodations. The City will conduct an interactive meeting with disabled employees desiring a reasonable accommodation to discuss possible reasonable accommodations. The City then determines whether a reasonable accommodation exists, and if so, the reasonable accommodation to be provided.
2. Fitness-for-Duty Examinations. The City Manager or a designee may require an employee to submit to a fitness-for-duty examination to determine if the employee is able to perform the essential functions of his or her job when there is significant evidence: 1) the employee appears to be unable to perform or has difficulty performing one or more essential functions of his or her job; and 2) there are reasonable grounds to question the employee's ability to safely or efficiently complete work duties.

A City-selected health care provider will examine the employee at City expense. The City will provide the health care provider with a letter requesting a fitness-for-duty examination limited to the employee's job-related functional limitations and a written description of the essential functions of the employee's job. The health care provider will examine the employee and provide the City with information regarding whether the employee is fit to perform essential job functions and if the employee's continued employment poses a threat to the health and safety of him or herself or others. Should the health care provider exceed the scope of the City's request and provide confidential health information, the City will return the report to the health care provider and request another report that includes only the non-confidential fitness-for-duty information that the City has requested.

The City may require an employee to undergo an examination by a City-designated physician, psychiatrist or psychologist if the employee does not submit a certificate of employability from the treating physician before

returning to work after taking any leave due to injury or illness.

3. Determination. After receipt of reasonable documentation, the City will meet with the employee to fully consider all feasible potential reasonable accommodations. The purpose of the discussions will be in good faith to fully discuss all feasible potential reasonable accommodations. After the discussions, the City will determine, in its sole discretion, whether reasonable accommodation can be made and the type of accommodation to provide. The City will not provide accommodation that would pose an undue hardship upon City finances or operations, or that would endanger the health and safety of the employee or others. Employees unable to perform the essential functions of their position, with or without reasonable accommodation, may be subject to termination.

F. Workplace Violence Prevention Policy. The City is committed to providing a working environment that is free from violence or the threat of violence, or abusive conduct (up to and including bullying). Accordingly, there is "zero tolerance" for any acts of intimidation, threats, actual or perceived, or any form of violence against an employee, a member of the public or the property of either, even if it was intended to be harmless, humorous, a prank or venting. All threats and acts of violence will be investigated with the understanding that any such conduct may result in criminal prosecution and/or discipline up to and including termination.

1. Definitions:

- i. "Violent Act": An aggressive physical behavior or force exerted for the apparent purpose of harming, intimidating, damaging or abusing others, or damaging property. Specific examples include, but are not limited to:
 1. Striking, punching, slapping, kicking, or otherwise physically assaulting another person, including dangerous or threatening horseplay;
 2. Fighting or challenging another person to fight;
 3. Grabbing, pinching, or touching another person in an unwanted manner, whether sexually or otherwise;
 4. Physically or verbally threatening harm to another person, or any action or conduct that implies or would lead a reasonable person to fear bodily harm;
 5. Loud, disruptive, or angry behavior or language;
 6. Blatant or intentional disregard for the safety or well-being of others;
 7. Encouraging or inciting an employee to engage in prohibited activities, or uttering "fighting words" or language calculated to incite violence;
 8. Stalking;
 9. Harassing or threatening phone calls;

10. Possession of weapons at any City workplace or property or in any City vehicle, unless specifically required for work-related purpose or authorized and approved by the City Manager or as authorized pursuant to State law. Employees who have legal authority to carry a weapon, except sworn members of the Morro Bay Police Department, shall notify the Department Head in writing of what type of weapon is being carried. Employees with legal authority to carry a weapon violate this policy if they: accidentally discharge or lose their weapon, use, threaten to use, or display the weapon; or violate any law related to carrying a legal weapon while engaged in City business.
 - ii. “Workplace Violence”: Any conduct or verbal expression that causes an individual to reasonably fear that a violent act will be committed. Such threats include those conveyed in person, through a third party, or through other forms of communication including, but not limited to, telephone, email, other forms of electronic communication, and print media.
2. All City employees are responsible for immediately notifying their supervisor or manager of any threats which they have witnessed, received, or have been told that another person witnessed or received. Even without an actual threat, City employees shall also report any behavior they have witnessed which they regard as threatening or violent, when that behavior is job related, might be carried out on City property, or is connected to City employment. Employees are responsible for making this report regardless of the relationship between the individual who initiated the threat or threatening behavior and the person or persons who are threatened or were the focus of the threatening behavior. If the supervisor or manager is not available, employees should report the threat to the Department Head or another member of the management team immediately.
3. An employee acting in good faith that initiates a complaint or reports an incident under this policy will not be subject to retaliation or harassment. However, any employee who makes a report under this Policy, which the employee knows or reasonably should know is false, may be subject to disciplinary action.
4. Employees who have a signed restraining order, temporary or permanent, against an individual due to the potential of a violent act, and who would be in violation of the order by coming near them while at work, shall immediately supply a copy of the signed order and proof of service to the Morro Bay Police Department, the City Attorney's Office, Department Head, and Human Resources Director.

5. The Human Resources Director or his/her designee, along with the Department Head, shall determine the immediate response needs and provide direction to the department by gathering and assessing the facts of the incident. Any report of a violent act or threat of violent act by a City employee will be thoroughly investigated, however, the appointing authority may decide to take immediate action without investigation based on the exigency of the violent act or threat of an imminent violent act. Incidents involving a possible violation of the law shall be reported to the Police Department for criminal investigation.

G. City Rights to Maintain Jurisdiction Over Work Areas Utilized by Employees

1. Employee work areas are defined as the property of and open to the City.
2. Employee work areas which include, but are not limited to, City vehicles, desks, offices, cabinets, bookcases, lockers, and other places under the common or joint control of the City and employees are subject to inspection and control by the employer. No employee has any expectation of privacy in any City building, property, or communications system.
3. City property, equipment, or communications systems may be monitored and searched at any time and for any reason. Messages sent or received on City equipment including cell phones, computers, email accounts, desktops, City network, or texts may be saved and reviewed by others. As a result, City employees have no expectation of privacy in the messages sent or received on City property, equipment, or communications systems. Further, all employees assigned City communications equipment have no expectation of privacy as to the data residing in telecommunications devices or voicemail and are prohibited from using the camera function on any City cellular phone, except as authorized by a supervisor for work-related purposes.
4. While employees may bring personal items to work, the City maintains its right to inspect and disapprove the bringing of certain items to the workplace. The City also does not guarantee the safety of personal items brought to the workplace from damage or theft, except as expressly provided in the applicable Memorandum of Understanding, Agreements, Contracts, Administrative Policies, or these Personnel Rules and Regulations.

SECTION 16
TRAINING OF EMPLOYEES

- A. Training. Human Resources and Department Heads may prepare and conduct appropriate training programs within budget constraints. Such programs may include lecture courses, demonstrations, assignment of reading matter or such other devices as may be available for the purpose of improving the effectiveness and broadening the knowledge of municipal employees in the performance of their respective duties. There shall be no right to additional training.
- B. Credit for Training. Participation in and successful completion of special training courses may be considered in making advancements and promotions. However, all advancement and promotional decisions are based on merit and training credit will not confer a right to promotion. Evidence of such activity shall be filed by the employee or department with the Personnel Officer and placed in the employee's file.
- C. Seminars and Conferences. Employees shall be encouraged to continue their professional development through attendance at approved seminars and conferences subject to the following conditions
1. The conference should be a budgeted item when possible and must be of direct benefit to the City.
 2. Approval to attend the conference shall be requested from the appointing authority, preferably one month in advance of the travel date.

SECTION 17
REPORTS AND RECORDS

- A. Employee Records. Human Resources shall maintain a service record for each employee in the service of the City, showing the name, title of position held, the department to which assigned, salary, changes in employment status, residence data, and such other information as may be considered pertinent. Personnel records are the property of the City and access to the information they contain is restricted in accordance with the law. Personnel records shall be kept at City Hall.
- B. Change-of-Status Report. Every appointment, transfer, promotion, demotion, change of salary rate, and other temporary or permanent change in status of employees shall be reported to Human Resources in such manner as may be prescribed. Each employee is responsible to promptly notify Human Resources of any changes in relevant personal information, including: mailing address, telephone number, emergency contacts, and number and names of dependents.
- C. Public Information. It shall be the responsibility of Human Resources to preserve the confidentiality of all records placed under the custodianship of the Human Resources Department. Upon request, the City will release to the public information about its employees as required by the Public Records Act and any other applicable laws. The City will not disclose personnel information if it believes doing so would constitute an unwarranted invasion of personal privacy or is inconsistent with other legal standards.
- D. Employee Access. Every employee may inspect their own personnel file and every document therein at reasonable times and at reasonable intervals. An employee who wishes to review his/her file should contact the Personnel Officer to arrange an appointment. The review must be done in the presence of an employee of the Human Resources Department and, under no circumstances is the employee or his/her designee permitted to add or remove any document or other item from the personnel file during the inspection.

On request, an employee is entitled to receive a copy of any employment-related document he or she has signed. The City may charge the employee for the actual cost of reproducing the copy.

SECTION 18
DISCIPLINARY AND APPEALS PROCEDURES.

- A. Basis for Disciplinary Action. The tenure of every City employee in the classified service shall be based on standards of personal conduct and job performance that are consistent with the efficient and effective delivery of public services. Failure to meet such standards may be grounds for disciplinary action.

This Section shall not apply to the following categories of persons who can be terminated at-will and have no rights to any of the pre- or post-disciplinary processes or procedures in this Section, regarding Disciplinary and Appeals Procedures: (1) interim or temporary employees; (2) provisional or seasonal employees; (3) probationary employees; (4) reinstated employees; (5) employees serving in acting appointment and who may be returned to their original position at-will; (6) any person who serves pursuant to contract; (6) any person who is designated “at-will” or included in the unclassified service in any City policy, document, acknowledgement, resolution or ordinance.

- B. Causes for Disciplinary Action. Disciplinary action, including, but not limited to, written reprimand, demotion, suspension, or dismissal of any employee, may be based upon any of the following grounds. The purpose of specifying these causes is to alert regular employees to the more commonplace types of disciplinary issues. However, this list is not all inclusive, and there may arise instances of unacceptable behavior not included in this list:

1. Dishonesty, including fraud or the submission of false information related to employment application, payroll, or any work-related record or report,
2. Incompetency, inefficiency, neglect in the performance of duties, including failure to perform assigned tasks or training, or failure to discharge duties in a prompt, competent, and reasonable manner,
3. Drinking of alcoholic beverages on the job, or reporting for work under the influence of alcohol, illegal drugs, ~~or~~ other controlled substances, or use and abuse of legal drugs as stated in the City’s Drug-Free Workplace Policy.
4. Insubordination, including refusal to accept reasonable and proper assignment from an authorized supervisor,
5. Refusal or inability to improve job performance in accordance with written or verbal direction,
6. Improper or unauthorized use or abuse of sick leave,
7. Excessive absenteeism that precludes reasonable availability for assigned duties,

8. Absence without authorized leave; repeated tardiness to assigned work station; leaving assigned work without authorization; failure to report to work after a leave of absence has expired, or after a leave has been disapproved or revoked,
9. Misconduct, willful or negligent violation of the personnel rules, regulations, resolutions or other related ordinances, including written departmental rules, regulations, and policies, or as may be established by a supervisor or the City Manager,
10. Conviction of a felony or misdemeanor involving moral turpitude. A plea or a verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction,
11. Conviction of driving under the influence of alcohol or drugs.
12. Suspension of driver's license where job duties require driving,
13. Discourteous treatment of the public or fellow employees or disorderly conduct on City property or on City business including fighting, using profane or abusive or threatening language towards others,
14. Careless, negligent, or improper use of City property, equipment or funds, including unauthorized removal, or use for private purpose, or use involving damage or unreasonable risk of damage to property,
15. Participation in an illegal strike, work stoppage, slowdown, or other job action against the City,
16. Acceptance of gifts or gratuities in connection with or relating to the employee's duties,
17. Soliciting outside work for personal gain during the conduct of City business; engaging in outside employment for any business under contract by the City; or participating in any outside employment that adversely affects the employee's City work performance,
18. Engaging in political activities while on duty, in uniform or using the authority associated with City employment,
19. Violation or neglect of safety rules,
20. Discrimination, including harassment, against other employees or member of the public on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, military and veteran status, marital status, sex, gender, gender identity, gender

expression, age, sexual orientation, or any other legally protected classification,

21. Taking retaliatory action against persons engaged in protected conduct.
 22. Unauthorized release of confidential information or official records,
 23. Unlawful conduct on or off duty, or inappropriate conduct, failure of good behavior during duty hours, substandard job performance and other acts, including failure to cooperate reasonably with superiors or fellow employees, which tend to interfere with the reasonable management, operation of the City or any of its departments or divisions, cause discredit to the City or one of its operating services, or are incompatible with service to the public.
- C. Persons Who May Take Disciplinary Action. The City Manager or any Department Head or designee may take disciplinary action against an employee.
- D. Types of Discipline. The following procedures shall be followed when, in the judgment of the City Manager or Department Head, an employee has committed an act or omission that justified the disciplinary action indicated. In the case of any member of the staff of the City Manager's Office, the City Manager shall, for the purpose of this Section, be considered to be a Department Head. Except for written warnings/reprimands, the Department Head or his/her designee shall advise employees of contemplated disciplinary actions in writing and allow the employee an opportunity to respond to such charges prior to taking action.

When there exists a serious and imminent risk to the health or safety of any person or serious injury or loss to property, a supervisor shall take immediate action to reduce or eliminate the danger. In case of emergency, the Department Head may take action without prior written notice of proposed disciplinary action. In such cases, the notice will be served within three working days of the action taken in accordance with the City's Municipal Code. The Personnel Officer must be contacted immediately.

1. Written Reprimand. A written reprimand is an official notification to the employee containing a description of the events which need improvement in work performance or behavior, specific expectations of change by the employee, and notice of further action unless there is an immediate and sustained improvement in work performance or behavior. A written reprimand may be considered as pertinent evidence or information in any subsequent hearing.

The Department Head shall give the employee a copy of the written reprimand and forward a copy to the Personnel Officer for review and retention in the employee's personnel file. The employee may provide a written response to the written reprimand, and the response shall be placed in the employee's personnel file.

2. Suspension. A Department Head may temporarily suspend an employee without pay from his/her position. During a period of suspension without pay, an employee shall not accrue or be allowed to use any other paid time (vacation, sick leave, CTO, etc.). Unless extended by approval of the Manager, the maximum period of suspension shall be thirty (30) calendar days.
 3. Demotion. An involuntary reduction in pay for disciplinary purposes shall be a demotion unless it is part of a general plan to reduce salaries and wages or to eliminate a position in connection with a general economic or curtailment program.
 4. Discharge. Discharge is termination of an employee from City employment for cause.
- E. Proposed Notice of Suspension, Demotion, or Discharge. If the City proposes a suspension of five days or more, demotion or dismissal, a written notice of proposed disciplinary action shall be given to the employee, including the following information:
1. The factual basis and violations of rules/regulations for the proposed disciplinary action.
 2. All information relied upon in making the decision to propose disciplinary action.
 3. Any rights to respond to the proposed discipline either orally or in writing, including a pre-disciplinary Skelly conference prior to the imposition of the suspension, demotion or dismissal.

The proposed notice of suspension, demotion, and discharge will include a date for the pre-disciplinary Skelly conference that will be overseen by the Department Head. In the event the Department Head has a conflict and is unable to oversee the pre-disciplinary Skelly conference, the Director of Human Resources will designate another individual to oversee the pre-disciplinary Skelly conference. The pre-disciplinary Skelly conference is intended to be an informal meeting, not a formal or an adversary hearing. The employee shall not cross-examine a department's witness or present a formal case in opposition to the proposed discipline. An employee subject to the proposed disciplinary action shall have the right of representation at the pre-disciplinary Skelly conference, if so requested.

The Department Head or other designee(s) overseeing the pre-disciplinary Skelly conference will review the information received and make a decision to sustain, modify, or reject the proposed suspension, demotion or discharge. To the extent the final disciplinary decision includes suspension for five (5) days or more, demotion, or discharge, a final notice will be provided in accordance with Section 16(F) of these rules.

- F. Notice of Suspension, Demotion, or Discharge. If a suspension for five (5) days or more, demotion or discharge is imposed, a written statement shall be given to the employee of

the following:

1. The reasons for the disciplinary action.
2. The effective date(s) of the disciplinary action.
3. Any rights of appeal.

G. Appeal Procedures. The appeal procedure described herein shall apply to cases of disciplinary action resulting in a suspension of five (5) days or more, demotion, or discharge, or grievance appeals affecting the regular employees in the classified service. It shall not be applicable to those positions which may be deemed exempt by Council resolution or to probationary employees, nor shall it apply to disciplinary written reprimands.

1. Employees shall have five working days following receipt of a Final Notice of Discipline to file a written request to appeal with Human Resources. The request shall set forth the grounds or basis on the appeal. If the employee involved does not file said appeal the City's decision shall be final and take effect as prescribed.
2. If, within the five-day appeal period, the employee involved files a written notice of appeal to Human Resources, the City shall obtain a list of seven hearing officers from an outside entity and present that list to both counsels for review. The parties will select a hearing officer by taking turns striking proposed hearing officers off the list. The party striking first would be decided by the flip of a coin. The remaining hearing officer would be retained as the hearing officer for the appeal. The cost of the hearing officer should be evenly split between the parties.
3. A time for an appeal hearing shall be established which shall not be less than ten (10) working days, nor more than thirty (30) working days, from the date of the filing of the appeal. All interested parties shall be notified in writing of the date, time, and place of the hearing at least five (5) working days prior to the hearing.
4. All hearings shall be private unless the appellant requests a hearing open to the public.
5. The Hearing Officer may, if legally authorized, issue subpoenas at the request of either party to the commencement of such hearing.
6. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses but hearings shall be conducted in a manner most conducive to determinations of the truth. Any relevant evidence may be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in

itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence may be excluded. Decisions made by the Hearing Officer shall not be invalidated by any informality in the proceedings, and the Hearing Officer shall not be bound by technical rules of evidence.

7. The Hearing Officer shall rule on the admission or exclusion of evidence.
8. Each party shall have these rights: to be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the respondent does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination.
9. Oral evidence shall be taken only on oath or affirmation.
10. The hearing shall proceed in the following order, unless the Hearing Officer, for special reason, otherwise directs:
 - i. The party imposing discipline shall be permitted to make an opening statement.
 - ii. The appealing party shall be permitted to make an opening statement.
 - iii. The party imposing disciplinary action shall produce the evidence on his/her part.
 - iv. The party appealing from such disciplinary action shall produce the evidence on his/her part.
 - v. The parties may then, in order, respectively offer rebutting evidence only, unless the Hearing Officer for good reason, permits them to offer evidence upon their original case.
 - vi. Arguments shall be permitted in the discretion of the Hearing Officer.
 - vii. The Hearing Officer shall determine relevancy, weight, and credibility of testimony and evidence, and shall base his/her findings on the preponderance of evidence.
 - viii. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.

- ix. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing.
- x. The Hearing Officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to its reaching a fair and proper decision.
- xi. The Hearing Officer shall render his/her findings and recommendations as soon after the conclusion of the hearing as possible and in no event later than thirty (30) calendar days after conducting the hearing, unless otherwise agreed upon by both parties. His/her decision shall set forth the recommendations as to each of the charges and the reasons therefore.
- xii. The Hearing Officer may recommend the sustaining or rejecting of any or all of the charges filed against the employee. He/she may recommend sustaining, rejecting, or modifying the disciplinary action invoked against the employee.
- xiii. The decision of the Hearing Officer is advisory. The decision shall be filed with the charged employee, and the City Manager, and shall set forth all findings and conclusions. If a discharge is not sustained, the decision shall set forth the recommended effective date the employee is to be reinstated, which may be any time on or after the date the disciplinary action went into effect.
- xiv. Either the appellant or the City may file written exceptions to the decision, findings, and conclusions of the Hearing Officer within ten (10) working days of the Hearing Officer's decision.
- xv. A party desiring to contest the decision of the Hearing Officer may request a transcript for review by the City Council within ten (10) working days of the Hearing Officer's decision. If the appellant requests a transcript, he/she shall pay the sum of one hundred and no/100ths (\$100.00) dollars to the Clerk as a deposit at the time the request is made. This amount shall be applied toward the cost of preparing the record. When the total cost of the preparation of the record has been ascertained by the Clerk, the appellant shall pay the amount of the cost thereof within forth-eight (48) hours after being notified by the Clerk. If the cost of the record is less than one hundred and no/100ths (\$100.00) dollars, any amount in excess of the total cost shall be refunded to the appellant. The Hearing Officer shall not be held responsible for faulty taping equipment and the consequences thereof.

Within thirty (30) working days of: (a) the expiration of the ten-day exception period, or (b) the filing of exceptions, whichever period is later, the City Council shall review the decision of the Hearing Officer, any appeals or exceptions filed, and the record, if one is requested by a party.

The City Council may ratify, modify, or reverse the decision of the Hearing Officer. The decision of the City Council shall be final.

RESOLUTION NO. 08-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
RESCINDING RESOLUTION NO. 74-69 AND ESTABLISHING
EMPLOYER-EMPLOYEE RELATIONS**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500 *et seq.*) was enacted for the purpose of promoting full communication and improved employer-employee relations between public employers and their employees by establishing uniform and orderly methods of communication between employees and the public agencies by which they are employed; and

WHEREAS, Government Code Section 3507 empowers a city to adopt reasonable rules and regulations for the administration of employer-employee relations after consultation in good faith with representatives of its employee organizations regarding such proposed rules and regulations; and

WHEREAS, the Municipal Employee Relations Representative of the City of Morro Bay ("City"), as defined herein below, has met and conferred in good faith with the employee representatives of the City's Recognized Employee Organization, as hereinafter defined, regarding the preparation of reasonable rules and regulations for the administration of employer-employee relations in the form of a new and complete Employer-Employee Relations Resolution; and

WHEREAS, the City Council believes that it is in the best interests of the City and its employees to adopt a comprehensive and complete Employer-Employee Relations Resolution.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

ARTICLE I. GENERAL PROVISIONS

Section 1. Title of the Resolution

This Resolution shall be known as the Employer-Employee Relations Resolution of the City of Morro Bay.

Section 2. Statement of Purpose

2.1 This Resolution is adopted as authorized under Chapter 10, Division 4, Title 1 of the California Government Code (Sections 3500 *et seq.*), entitled the Meyers-Milias-Brown Act ("MMBA"), to provide reasonable, uniform and orderly procedures for the administration of employer-employee relations between the City and its employees, procedures for the recognition and/or decertification of employee organizations, procedures for determining

appropriate units of representation and/or modifying such units, and a reasonable, uniform and orderly method for the resolution of questions regarding wages, hours, and other terms and conditions of employment of City employees. This Resolution rescinds and supersedes all previous resolutions pertaining to employer/employee relations.

Section 3. Definitions

Except as otherwise specifically provided below, the terms used in this Resolution shall be defined in the same way as such terms are defined in the MMBA. In addition, the following definitions are adopted for terms used in this Resolution.

3.1 "Appropriate unit" or "Employee unit of representation" means a unit of employee classes or positions, established pursuant to Article II hereof.

3.2 "City" shall mean the City of Morro Bay, a general law city and municipal corporation, and where appropriate herein, "City" also refers to the City Council, the governing body of said City, or any duly authorized representative of the City of Morro Bay.

3.3 "Confer in good faith": See "Meet and Confer in Good Faith." .

3.4 "Confidential Employee" means any employee who formulates, develops, or determines management policy or administers the City's employer-employee relations, or whose duties normally require access to confidential information that is used to contribute significantly to the formulation, development, or determination of the same (e.g., secretary to a department head, analyst who prepares confidential employer-employee relations documents).

3.5 "Consult in Good Faith" or "meet and consult in good faith" means to communicate in writing or, if requested by the employee organization within the time limits set by the Municipal Employee Relations Representative (also referred to as "MERR"), orally, for the purpose of presenting and obtaining views and advising of intended actions in a good faith effort to reach a consensus; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of the meet and confer process, does not involve an exchange of proposals and counterproposals in an endeavor to reach agreement in the form of a memorandum of understanding, nor is it subject to Article IV hereof.

3.6 "Days" means calendar days unless otherwise stated.

3.7 "Employee" means any person regularly employed by the City in a position approved in the City's allocated positions and compensation plan, as approved by the City Council, except in a position designated in that plan as temporary or part-time and those elected.

3.8 "Employee Organization" or "Recognized Employee Organization" means any employee organization formally acknowledged by the City as an employee organization that represents the City's employees.

3.9 "Employee Representative" means the authorized representative of a Recognized Employee Organization or an Exclusively Recognized Employee Organization.

3.10 "Employee unit of representation" or "appropriate unit" means a unit of employee classes or positions, established pursuant to Article II hereof.

3.11 "Employer-employee relations" means the relationship between the City and its employees and their employee organization(s), or when used in a general sense, the relationship between City management and individual employees or employee organization(s).

3.12 "Exclusive Recognized Employee Organization" means a sole employee organization certified as the representative of all employees in a unit or units, whether or not those employees are its members, and having the exclusive right and duty to meet and confer in good faith on behalf of said employees concerning statutorily required subjects pertaining to unit employees and thereby assuming the corresponding obligation of fairly representing said employees. An Exclusively Recognized Employee Organization may not be challenged by another employee organization within twelve (12) months of initial recognition.

3.13 "Filing Period" means the period between November 1st and December 31st of every year following the adoption of this Resolution during which Employee Organizations may submit petitions to be recognized, decertified, or modified, or the period within which an Employee Organization or the City may propose to modify any existing unit of representation.

3.14 "Impasse" means that the representatives of the City and a Recognized Employee Organization or Exclusively Recognized Employee Organization have reached a deadlock or point in their meeting and conferring in good faith at which differences in positions on matters to be included in a memorandum of understanding or on more general mandatory bargaining matters within the scope of representation, and concerning that which they are required to meet and confer, are so substantial or prolonged that future meetings would be futile.

3.15 "Lead Negotiator" means the person in charge of the City's negotiating team when a tentative agreement, a proposed memorandum of understanding, or a proposed amendment to a memorandum of understanding is to be presented to the City Council.

3.16 "Management Employee" means any employee in a position having significant responsibilities for formulating, administering or managing the implementation of City policies and programs through independent judgment, including, but not limited to, the exercise of discretionary authority to develop and modify institutional goals and priorities, including but not limited to the City Manager, Deputy City Manager and all Department Heads.

3.17 "Mediation or Conciliation" means the efforts of an impartial third person or persons functioning as an intermediary to assist the parties in reaching a voluntary resolution to impasse, through interpretation, suggestion and advice. Mediation and conciliation are interchangeable terms.

3.18 "Meet and Confer in Good Faith" or "Confer in Good Faith" means performance by duly authorized City and Recognized Employee Organization representatives of their mutual obligations. The City and a representative of a Recognized Employee Organization or Exclusively Recognized Employee Organization shall have the mutual obligation personally to meet within the time periods established by Section 6 of this Resolution upon request, exchange information on matters within the scope of representation, including wages, hours and other terms and conditions of employment, in a good faith effort to 1) reach agreement on those matters within the authority of such representatives, 2) freely exchange information, opinions and proposals, and 3) reach agreement in the form of a memorandum of understanding, on what will be recommended to the City Council on those matters within the decision making

authority of the City Council. This does not require either party to agree to a proposal or to make a concession.

3.19 "Memorandum of Understanding" means a written document jointly prepared by the City's Municipal Employee Relations Representative, or designee(s), and a Recognized Employee Organization or Exclusively Recognized Employee Organization enumerating any agreement reached as the result of meeting and conferring on matters within the scope of representation, and the same signed by the parties involved and ratified by the majority of the relevant bargaining unit and approved by the City Council.

3.20 "Municipal Employee Relations Representative" or "MERR" means the City's principal representative in all matters of employer-employee relations with authority to meet and confer on matters within the scope of representation. The City Council hereby designates the City Manager as the MERR who is hereby authorized to delegate such duties and responsibilities.

3.21 "Professional Employee" means any employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction.

3.22 "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, provided that the card has not been subsequently revoked in writing by the employee (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as Proof of Employee Support for any employee organization. The only authorization which shall be considered as Proof of Employee Support hereunder shall be the authorization most recently signed by an employee within ninety (90) days prior to the filing of a petition.

3.23 "Recognized Employee Organization" means an Employee Organization that has been acknowledged by the Municipal Employee Relations Representative as an Employee Organization that represents employees of the City. The rights accompanying recognition include the right to consultation in good faith by all Recognized Employee Organizations.

3.24 "Scope of Representation" means all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order, as set forth in Section 5.

3.25 "Supervisory Employee" means any employee who has authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline employees, or the responsibility to assign work and direct them, adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Section 4. Employee Rights

4.1 Subject to the requirements of the law and Section 5 below, employees shall have the following rights:

4.1.1 To form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on matters within the scope of representation, in accordance with this Resolution.

4.1.2 To refuse to join or participate in the activities of employee organizations and to represent themselves individually in their employment relations with the City.

4.1.3 To be free from the interference, intimidation, restraint, coercion, or discrimination by the City, any employee organization, or any other employee because of the exercise of these rights.

4.2 Professional Employees shall not be denied the right to be represented separately from non-professional employees by an employee organization consisting of such Professional Employees.

4.3 No Supervisory, Management, or Confidential Employee may represent any employee organization, which represents other non-Supervisory, non-Management, or non-Confidential employees of the City, on matters within the scope of representation, unless as permitted by the City of Morro Bay Personnel Rules, and no Supervisory, Management, or Confidential Employee may engage in any activity with or on behalf of any employee organization which would result in an actual or apparent conflict of interest, as determined by the MERR.

Section 5. City Responsibilities and Rights

5.1 To ensure that the City is able to carry out its functions and responsibilities imposed by law, the City has and will retain the exclusive right to manage and direct the performance of City operations and the work force performing such operations. Among the rights which are reserved to the City are the following:

5.1.1 To determine the merits, necessity, organization, expansion, or diminishment of any operation, service, or activity conducted by the City;

5.1.2 To determine and change the facilities, methods, means, and personnel by which City operations are to be conducted;

5.1.3 To determine and change the number of locations, relocations, and types of City operations and the processes and materials to be employed in carrying out said operations, including but not limited to, the right to subcontract any work or operation;

5.1.4 To determine the size, assignments, and composition of the employee work force, to determine employee job classifications and contents thereof, and to assign work to employees in accordance with requirements as determined by the City;

5.1.5 To relieve employees from duty because of lack of work, lack of financial resources, or other non-disciplinary reasons;

5.1.6 To hire, transfer, promote, and discipline employees in accordance with the City's Personnel Rules;

5.1.7 To determine policies, procedures and standards for the selection, training and promotion of employees;

5.1.8 To establish employee performance standards including, but not limited to, quality and quantity standards;

5.1.9 To maintain the efficiency of governmental operations;

5.1.10 To take any and all necessary actions to carry out the City's operations in emergencies;

5.1.11 To exercise complete control and discretion over the City's organization and the technology of performing its work and services; and

5.1.12 To establish reasonable work and safety rules and regulations to maintain the efficiency and economy desirable in the performance of City operations.

5.2 The City, in exercising these rights and operations, will not discriminate against any employee because of membership or non-membership in any employee organization.

Section 6. Meeting and Confering

6.1 The City, through its representative(s), shall meet and confer in good faith with Employee Representative(s) of any Recognized Employee Organization or Exclusively Recognized Employee Organization regarding matters within the scope of representation for its members or for all employees, whichever applies, in the unit for which such organization is recognized.

6.2 Where a Recognized Employee Organization or Exclusively Recognized Employee Organization desires to meet and confer with the City, through its Employee Representative(s), on matters within the scope of representation, said organization shall make a request in writing and specify the subjects to be discussed.

6.3 The Recognized Employee Organization or Exclusively Recognized Employee Organization shall submit any and all request(s) to meet and confer on matters within the scope of representation that have a fiscal impact and are not currently accounted for in the current budget in the manner specified below:

6.3.1 By March 15th if it intends to have the requested item(s) considered for the budget for the next fiscal year, or, if there is a Memorandum of Understanding in existence between the parties, for the fiscal year following the expiration date of the Memorandum of Understanding, where March 15th immediately precedes the commencement of said fiscal year.

6.3.2 If a Recognized Employee Organization or Exclusively Recognized Employee Organization fails to submit, or to request a reasonable extension of time to submit, written requests by March 15th, the City shall send written notice requesting said employee organization to submit its written requests. If said employee organization fails

to deliver to the City its written request(s) within seven (7) days after receipt of the notice given by the City, said employee organization shall be deemed conclusively to have waived any right to meet and confer as to the subjects to be discussed.

6.3.3 Written requests submitted by the Recognized Employee Organization or the Exclusively Recognized Employee Organization may be changed during the meet and confer process so long as the total cost of the requests as changed does not exceed the cost of the requests made as of March 15th, or as of any other extension of time agreed upon by the parties.

6.3.4 Promptly after such written requests have been made, a meeting shall be arranged at a time and place mutually satisfactory to the parties involved.

6.3.5 The meet and confer process discussed in this Section 6.2 shall be completed by May 31st immediately preceding the commencement of the fiscal year in which the changes and/or requests are to become effective, or by any other extension of time as agreed upon by the parties in writing. If a Recognized Employee Organization or Exclusively Recognized Employee Organization fails to deliver to the City a written request for a meeting within seven (7) days after receipt of the notice given by the City, or within such other noticed time as specified by the City, said employee organization(s) shall be deemed conclusively to have waived any right to meet and confer as to any matter noticed by the City pursuant to this Section. In the event the meet and confer process has not been completed or an agreement is not reached within the time period(s) set forth in this Section 6, either party may declare an Impasse and initiate Impasse procedures in accordance with Article IV.

6.4 Where the City proposes to take action on matters regarding wages, hours, and other terms and conditions of employment within the scope of representation, whether such action be by ordinance, resolution, rule, or regulations, reasonable written notice shall be given to each Recognized Employee Organization and each Exclusively Recognized Employee Organization affected thereby, and each shall be given the opportunity to meet and confer with the City, through its representative(s), prior to the adoption of same. In cases of emergency when the City Council determines that an ordinance, resolution, rule or regulation must be adopted immediately without prior notice or meeting with any Recognized Employee Organization or Exclusively Recognized Employee Organization, the City shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of same.

6.4.1 In the event the City gives notice of an anticipated action pursuant to this Section, the City may specify in said notice a reasonable period of time within which the meet and confer process must be completed.

6.4.2 If a Recognized Employee Organization or Exclusively Recognized Employee Organization fails to deliver to the City a written request for a meeting within seven (7) days after receipt of the notice given by the City, or within such other noticed time as specified by the City due to an emergency, said employee organization(s) shall be deemed conclusively to have waived any right to meet and confer as to any matter noticed by the City pursuant to this Section.

6.5 If a tentative agreement is reached by the authorized representatives of the City and Employee Organization and ratified by the Employee Organization, the City Council shall vote to accept or reject the tentative agreement within thirty (30) days of the date it is first

considered at a duly noticed public meeting. If the City Council accepts the tentative agreement, the parties shall jointly prepare a written Memorandum of Understanding, signed by the City's representatives and the duly authorized Employee Representatives, which shall be brought back for approval by the City Council. Said Memorandum of Understanding shall not be binding until approved by the City Council.

6.6 If an agreement is reached by the representatives of the City and the employee representatives, all agreed matters shall be incorporated as joint recommendations to the City Council in a written Memorandum of Understanding signed by the City's representatives, and the duly authorized employee representatives. Said Memorandum of Understanding shall not be binding until approved by the City Council.

6.7 In the event the meet and confer process has not been completed or an agreement is not reached within the time period(s) set forth in this Section 6, either party may declare an Impasse and initiate Impasse procedures in accordance with Article IV.

Section 7. Consult or Consultation in Good Faith

The City, through its representatives, shall consult in good faith with representatives of recognized and exclusively recognized employee organizations prior to the modification of any rules and regulations for the administration of employer-employee relations, including any amendments to this Resolution.

ARTICLE II. REPRESENTATION PROCEEDINGS

Section 8. Employee Unit of Representation

8.1 The City has investigated and considered the services performed by its employees, their working conditions, and job duties, and the City's need to maintain an efficient operation while providing sound employer-employee relations and the units of representation historically recognized by the City. The City recognized the Service Employees International Union Local No. 620 ("Union"), the Morro Bay Peace Officers Association ("POA"), and the Morro Bay Firefighters Association, IAFF Local 3725 ("MBFFA) as the exclusive employee organizations for the designated non-management employees of the City for purposes of employer-employee relations under the MMBA and regulations of the Public Employment Relations Board ("PERB") (Cal Code Reg. Section 31001-32997).

8.2 Additional, different or modified employee units of representation may be created by action of the City Council as it deems appropriate, upon the City's own written notice given to the appropriate employee organization or upon a petition filed by an employee organization pursuant to Section 9 of this Resolution. In making its determination, the City Council will investigate and consider the following factors:

8.2.1 Whether and which employees share a similar community of interests, kinds of work performed, types of qualifications required, and general working conditions;

8.2.2 The City's needs to maintain an efficient operation;

8.2.3 The units of representation historically recognized by the City, except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized;

8.2.4 Consistency with the organizational patterns of the City;

8.2.5 Effect of differing legally mandated impasse resolution procedures;

8.2.6 Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units; and

8.2.7 Other matters considered relevant by the City to promoting sound employer-employee relations and efficient operation of the City.

Section 9. Requirements For and Process of Becoming an Exclusively Recognized Employee Organization

9.1 Only one employee organization shall be recognized as an employee organization representing employees in a unit and, after the effective date of this Resolution, only exclusive recognition on behalf of a unit established in accordance with this Resolution or amendment hereto shall be conferred.

9.2 An employee organization which was a Recognized Employee Organization immediately prior to the effective date of this Resolution shall continue to be so recognized under this Resolution in the unit for which it had been recognized, subject to this Article II, Section 9, and Sections 14 through 16 herein, and provided that said organization, sixty (60) days after the effective date of this Resolution, submits current information listed in Sections 9.3.1 through 9.3.9 and acknowledges in writing within said time limit that it consents to the definition of said unit or units set forth in Section 8.

9.3 Process of Becoming Recognized. An employee organization seeking to become certified as the Exclusively Recognized Employee Organization representing employees in an appropriate unit shall file a petition ("Recognition Petition") with the MERR during the Filing Period. The Recognition Petition shall contain all of the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete:

9.3.1 Name and address of the employee organization;

9.3.2 Names and titles of its officers;

9.3.3 Names of employee organization representatives who are authorized to speak on behalf of the organization;

9.3.4 Names and addresses of no more than two (2) employee representatives to whom notices, if sent pursuant to this Resolution, will be deemed sufficient notice to the employee organization for any purpose;

9.3.5 A copy of the employee organization's current Constitution and Bylaws, which shall contain a statement that the employee organization has, as one of its

primary purposes, the representation of employees in their employment relations with the City;

9.3.6 A statement whether the employee organization is a subordinate body of, or affiliated directly or indirectly in any manner with, any regional or state or international organization and, if so, the name and address of each such regional, state, national, or international organization;

9.3.7 A statement that the employee organization has no restriction on membership based on race, religious creed, color, national origin, ancestry, genetic material, age, mental or physical disability, medical condition, marital status, sex, sexual orientation, or gender expression;

9.3.8 The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein;

9.3.9 A statement that the employee organization has in its possession Proof of Employee Support to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the MERR or to a representative of the California State Mediation and Conciliation Service; and a request that the MERR formally acknowledge the employee organization as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

Section 10. City Response to Recognition Petition for an Exclusively Recognized Employee Organization

10.1 Upon receipt of the Recognition Petition, the MERR shall determine whether:

10.1.1 There has been compliance with the requirements of the Recognition Petition, in accordance with Section 9, and

10.1.2 The proposed representation unit is an appropriate unit, in accordance with Section 8.

10.2 If an affirmative determination is made by the MERR on the foregoing matters listed in Section 10.1, the MERR shall inform the petitioning employee organization, give written notice of the Recognition Petition to all the employees in the unit and any other employee organization(s) representing any employee in the same unit, and take no action on said request for thirty (30) days thereafter.

10.3 If either of the foregoing matters listed in Section 10.1 are not affirmatively determined, the MERR shall deny the Recognition Petition and inform the petitioning employee organization of the reasons therefor in writing. The petitioning employee organization shall have seven (7) days to cure any defects in the Recognition Petition. All defaults must be cured, and a valid Recognition Petition must be submitted by the end of the Filing Period, unless the submission deadline is extended by the MERR, who shall not extend the cure period more than fifteen (15) days beyond the end of the Filing Period. Neither the MERR nor the City is

obligated to assist the petitioning employee organization in curing the alleged defects to the Recognition Petition.

10.4 The petitioning employee organization may appeal such determination in accordance with Section 18.

Section 11. Open Period for Filing Challenging Petition to an Exclusively Recognized Employee Organization

Within thirty (30) days of the date written notice was given to affected employees that a valid Recognition Petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the Exclusively Recognized Employee Organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the Recognition Petition being challenged), by filing a petition evidencing Proof of Employee Support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Section 9.3. If such challenging petition seeks establishment of an overlapping unit, the MERR shall call for a meeting on such overlapping Recognition Petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the MERR shall determine the appropriate unit or units in accordance with the standards in Section 8.2. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the MERR to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 18.

Section 12. Granting Recognition to an Exclusively Recognized Employee Organization Without an Election

If the Proof of Employee Support shows that a majority of the employees in the appropriate unit have designated the petitioning employee organization to represent them, and if no other employee organization files a challenging petition, the petitioning employee organization and the MERR shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy, and propriety of the Proof of Employee Support. If the neutral third party makes an affirmative determination, the MERR shall certify the petitioning employee organization as the Exclusively Recognized Employee Organization for the appropriate unit.

Section 13. Granting Recognition to an Exclusively Recognized Employee Organization Through an Election Process

13.1 Upon the submission of valid Recognition Petitions of more than one employee organization for employees in the same or overlapping units, the MERR shall arrange for a secret ballot election to be conducted by the City Clerk or such other third party agreed to by the MERR and the concerned employee organization(s), in accordance with such party's rules and procedures, subject to the provisions of this Resolution. All employee organizations who have duly submitted Recognition Petitions which have been determined to be in conformance with this Resolution shall be included on the ballot. The ballot shall also reserve to employees the choice of representing themselves individually in their employment relations with the City. Employees entitled to vote in such election shall be those persons employed in regular, permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the

election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election, if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast. The rules governing an initial election are applicable to a run-off election.

13.2 There shall be no more than one valid election under this Resolution pursuant to any Recognition Petition in a twelve (12) month period affecting the same unit.

13.3 In the event that the parties are unable to agree on a third party to conduct the election, the election shall be conducted by the California State Mediation and Conciliation Service. If a third party conducts the election, costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

13.4 A Recognized Employee Organization or Exclusively Recognized Employee Organization of the unit for which a decertification election is being conducted shall also appear on the ballot, unless within fourteen (14) days of receipt of the notice of the Decertification or Recognition Petition, or notice of the unit determined by the City Council, whichever is later, said employee organization provides written notice to the MERR that it does not intend to participate in the election. Notice of the intention not to participate in the election shall constitute withdrawal from representation of the unit effective the date the notice of intention not to participate in the election is received by the MERR.

13.5 The MERR shall announce the date of the election and the voting location or locations at least twenty-eight (28) days before the date of such election. Employees shall vote in person.

Section 14. Procedure for Decertification of Exclusively Recognized Employee Organization

14.1 A decertification petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit ("Decertification Petition") may be filed with the MERR only during the Filing Period or the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect for three (3) years or less, provided that a Decertification Petition may not be filed within twelve (12) months of initial recognition of an Exclusively Recognized Employee Organization. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete:

14.1.1 The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.

14.1.2 The name of the established appropriate unit and the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.

14.1.3 An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.

14.1.4 Proof of Employee Support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the MERR or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section. An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a petition under this Section in the form of a Recognition Petition that evidences Proof of Employee Support of at least thirty (30) percent, that includes the allegation and information required under paragraph 14.1.3 of this Section, and otherwise conforms to the requirements of Section 9.

14.2 The MERR shall initially determine whether the Decertification Petition has been filed in compliance with the applicable provisions of this Resolution.

14.2.1 If the foregoing matters listed in Section 14.1 are not affirmatively determined, the MERR shall deny the Decertification Petition and inform the petitioning employee organization of the reasons therefor in writing. The petitioning employee organization shall have seven (7) days to cure any defects in the Decertification Petition. Neither the MERR nor the City is obligated to assist the petitioning employee organization in curing the alleged defects to the Decertification Petition.

14.2.2 If the foregoing matters listed in Section 14.1 are affirmatively determined by the MERR, or if his/her negative determination is reversed on appeal, the MERR shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees. The MERR shall thereupon arrange for a secret ballot election to be held to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted within the same timeframe and under the same procedures as set forth in Section 13.

14.2.3 The petitioning employee organization may appeal such determination in accordance with Section 18.

14.3 During the Filing Period or the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been for three (3) years or less, the MERR may give written notice of the city's specific intent to the affected employee organization, when the MERR has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to said organization and all unit employees that an election will be arranged and held by the MERR to determine that issue. In such event, any other employee organization may, within fifteen (15) days of such notice, file a Recognition Petition in accordance with Section 9.3, which the MERR shall act on in accordance with this Section.

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

Section 15. Procedure for Modification of Established Appropriate Units

15.1 Requests by employee organizations for modifications of established appropriate units ("Modification Petition") may be considered by the MERR. The Modification Petition shall be submitted during the Filing Period or the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect for three (3) years or less, whichever occurs later, shall be in the form of a Recognition Petition, and, in addition to the requirements set forth in Section 9.3, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 8. The MERR shall process the Modification Petition as any other Recognition Petition under this Resolution.

15.2 Proof of Support: When an employee organization requests the addition of classifications or positions to its established unit, and the addition of the positions would increase the existing unit size by ten (10) percent or more, the MERR will require proof of majority support of persons employed in the classifications or positions to be added. The MERR will require proof of at least thirty (30) percent support among the affected employees if a pending representation petition by another employee organization overlaps the positions at issue in the unit modification petition.

15.3 At any time, the MERR may, by giving written notice of City's intent to the affected employee organization, propose that an established unit be modified. The MERR shall give written notice of the proposed modification(s) to any affected employee organization(s), and each employee within said affected unit or units, and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the MERR shall determine the composition of the appropriate unit or units in accordance with Section 8, and shall give written notice of such determination to the affected employee organizations.

15.3.1 The MERR's determination may be appealed in accordance with Section 18.

15.3.2 If a unit is modified pursuant to the written notice of the MERR hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Section 9.

Section 16. Procedure for Processing Severance Requests

16.1 An employee organization may file a request to become the Recognized Employee Organization of a unit alleged to be appropriate that consists of a group of employees who are already a part of a larger established unit represented by another Recognized Employee Organization ("Severance Request"). The timing, form, and processing of the Severance Request shall be as specified in Section 15 for a Modification Petition.

16.2 Proof of Support: When an employee organization requests severance of classifications or positions to its established unit, and the severance of the positions would decrease the existing unit size by ten (10) percent or more, the MERR will require proof of majority support of persons employed in the classifications or positions to be severed. The MERR may require proof of at least thirty (30) percent support among the affected employees. The MERR's determination may be appealed in accordance with Section 18.

Section 17. Amendment of Certification

17.1 Employee Organization Petition

17.1.1 A Recognized Employee Organization shall file with the MERR a petition to amend its certification or recognition ("Amendment Petition") in the event of a merger, change in affiliation, or transfer of jurisdiction.

17.1.2 The Amendment Petition shall be in writing, signed by an authorized agent of the employee organization, and contain the following information:

(a) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(b) A brief description and the title of the established unit;

(c) A clear and concise statement of the nature of the merger, amalgamation, affiliation, or other change in jurisdiction, and the new name of the employee organization. The statement shall include the following information:

(1) Whether the new organization has the same structure as the former organization (e.g., eligibility for membership, dues/fees structure, continuation of the manner in which contract negotiations, administration and grievance processing will be effectuated), and if not, an explanation of the change(s) in structure;

(2) Whether the officers and representatives of the new organization are the same as the former organization, and if not, a specification of the changes in officers and/or representatives;

(3) Whether the power of the members to control the organization's agents is the same as it was in the former organization (e.g., input into contract proposals, contract ratification, frequency of membership meetings, preservation of the (former) organization's physical facilities, books, and assets, choosing/oversight of executive board members), and if not, a specification of what changes have been made; and

(4) Whether the organization's members were given an opportunity to vote on the change in status, and if so, a description of the voting process and results.

17.2 Review Process

17.2.1 Upon receipt of a petition filed pursuant to Section 17.1 above, the MERR shall conduct such inquiries and investigations, and hold such meetings as deemed necessary and/or conduct a representation election in order to decide the questions raised by the Amendment Petition.

17.2.2 The MERR may dismiss the Amendment Petition if the petitioner has no standing to petition for the action requested or if the Amendment Petition is improperly filed.

17.2.3 In determining whether to grant the Amendment Petition, the MERR will examine the following issues:

(a) Whether the new organization has the same or similar structure as the former organization;

(b) Whether the officers and representatives of the new organization are substantially the same as the former organization;

(c) Whether the power of the members to control the organization's agents are substantially the same; and

(d) Whether the organization's members were given an opportunity to vote on the change in status.

17.3 Determination

17.3.1 Unless the MERR finds that there is no substantial continuity of identity and representation between the former and new organizations, the MERR will issue an amendment of certification reflecting the new identity of the Exclusive Recognized Employee Organization. Such certification shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 14. The terms and conditions of a Memorandum of Understanding then in effect shall remain in effect until said Memorandum of Understanding expires.

17.3.2 If the MERR determines that there is no substantial continuity of identity and representation between the former and new organizations, the MERR shall order an election in conformance with Section 14.

17.3.3 The MERR's determination may be appealed in accordance with Section 18.

Section 18. Appeals

18.1 Within fifteen (15) days of a final decision of the MERR, (i) an employee organization aggrieved by a determination of an appropriate unit or that a Recognition Petition (Sec. 9), Challenging Petition (Sec. 11), Decertification Petition (Sec. 14), Modification Petition (Sec. 15), Severance Request (Sec. 16), or Amendment Petition (Sec. 17) has not been filed in compliance with Article II; or (ii) employees aggrieved by a determination that a Decertification Petition (Sec. 14) or Severance Request (Sec. 16) has not been filed in compliance with

Article II, may request to submit the matter to mediation by the State Mediation and Conciliation Service. In lieu thereof, or fifteen (15) days after such mediation proceedings, said employee organization or employees may appeal such determination to the City Council for final decision.

18.2 Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the MERR. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any decision of the City Council on the use of such procedure, and/or any decision of the City Council determining the substance of the dispute, shall be final and binding. Any costs for the appeal shall be borne equally by the City and the employee organization.

ARTICLE III. ADMINISTRATION

Section 19. Submission of Current Information by Recognized Employee Organizations

All Recognized Employee Organizations and Exclusively Recognized Employee Organizations shall advise the MERR in writing immediately of any changes in the information enumerated in Sections 9.3.1 through 9.3.9 within fourteen (14) days of such change.

Exclusively Recognized Employee Organizations that are party to an agency shop provision shall provide annually to the Employee Relations Officer and to unit members within 60 days after the end of its fiscal year the financial report required under Government Code Section 3502.5 (f) of the Meyers-Milias Brown Act.

Section 20. Employee Organization Activities – Use of City Resources

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

ARTICLE IV. IMPASSE PROCEDURES

Section 21. Initiation of Impasse Procedures

If the meet and confer process has reached an Impasse, either party may initiate the Impasse procedures by filing with the other party a written request for an Impasse meeting, together with a statement declaring an Impasse and its position on all issues. An Impasse meeting shall then be scheduled promptly by the MERR. The purpose of such meeting shall be:

21.1.1 To review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding; and

21.1.2 If the Impasse is not resolved, to discuss arrangements for the utilization of the Impasse procedures provided herein.

Section 22. Impasse Procedures

Impasse procedures are as follows:

22.1 If the parties agree to submit the dispute to mediation, mediation will be conducted by a mediator from the California State Mediation and Conciliation Service, unless the parties agree to use another mediator. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues. If there is a cost for the services of a mediator, such costs shall be borne equally by the City and the employee organization.

22.2 If the parties, having so agreed to mediation, fail to resolve the dispute within thirty (30) days after the appointment of the mediator, the employee organization thereafter may request to submit the Impasse to fact-finding, as provided in Section 23 below.

22.3 If the parties do not agree to mediation, the employee organization may request to submit the Impasse to fact-finding, as provided in Section 23 below.

22.4 If the Impasse has not been resolved through fact-finding, or the employee organization fails to request fact-finding, the Impasse will be sent to the City Council, which shall then hold a public hearing on the impasse and take such action regarding the Impasse as it, in its discretion, deems appropriate as in the public interest, including but not limited to unilaterally implementing its last, best, and final offer, but shall not implement a memorandum of understanding. Any legislative action by the City Council on the Impasse shall be final and binding.

Section 23. Fact-Finding Procedures

23.1 Upon failure to agree to, or upon failure to reach an agreement through, mediation, the employee organization may submit a written request to the MERR and the Public Employment Relations Board for a fact-finding panel as follows:

23.1.1 If the dispute was submitted to mediation, not sooner than thirty (30) days, but not more than forty-five (45) days, after the appointment of the mediator.

23.1.2 If the dispute was not submitted to mediation, not later than thirty (30) days following the date that either party provided the other with a written notice of an Impasse and request for an Impasse meeting.

23.2 The request for fact-finding shall be filed with the Public Employment Relations Board, Sacramento Regional Office 1031 18th Street, Sacramento, CA 95811-4124, with a proof of service, containing a declaration signed under penalty of perjury with the following information: (1) the name of the declarant; (2) the county and state in which the declarant is employed or resides; (3) a statement that the declarant is over the age of 18 years and not a party to the case; (4) the address of the declarant; (5) a description of the documents served; (6) the method of service and a statement that any postage or other costs were prepaid; (7) the name(s), address(es) and, if applicable, fax number(s) used for service on the party(ies); and (8) the date of service. The Public Employment Relations Board shall approve or disapprove all requests for fact-finding.

23.3 Within five (5) working days after notification from the Public Employment Relations Board that the fact-finding request is approved, (i) each party shall select a person to serve as its member of the fact-finding panel and notify the Public Employment Relations Board of its selection; and (ii) the Public Employment Relations Board shall provide the names of seven persons that may serve as chairperson, and will designate one of the seven as the chairperson of the fact-finding panel. Within five (5) working days after a chairperson is selected, the parties may mutually agree upon another person to serve as chairperson in lieu of the person selected by the Board. If permitted by PERB, the parties shall then select the chairperson by utilizing a strike procedure whereby each side strikes a member of a list provided by PERB until one is selected. The strike procedure will be initiated by a coin toss by a member of the City witnessed by the employee organization. Otherwise, PERB shall select the chairperson. The costs for the services of the chairperson, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be divided equally between the parties. Any other mutually incurred costs shall be divided equally between the parties. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

23.4 Within ten (10) days of its appointment, the fact-finding panel shall meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate, including issuance of subpoenas requiring attendance and testimony and production of evidence.

23.5 Within thirty (30) days of its appointment, or upon agreement by the parties for a longer period, and if the dispute is not settled by the parties within said time period, the fact-finding panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. In making its findings and recommendations, the fact-finding panel shall consider the following criteria:

23.5.1 State and federal laws that are applicable to the City;

23.5.2 Local rules, regulations, or ordinances;

23.5.3 Stipulations of the parties;

23.5.4 The interests and welfare of the public and the financial ability of the City;

23.5.5 Comparison of the wages, hours, and conditions of employment to employees performing similar services in comparable public agencies;

23.5.6 The consumer price index for goods and services, commonly known as the cost of living;

23.5.7 The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received; and

23.5.8 Any other facts which are normally or traditionally taken into consideration in making the findings and recommendations.

23.6 The fact-finding panel shall submit its findings and recommendations in writing to the parties prior to making them available to the public for the purpose of resolving the impasse. The City shall make the findings and recommendations available to the public within ten (10) calendar days after its receipt. If the Impasse has not been resolved within ten (10) calendar days after the City's receipt of the fact-finding panel findings and recommendations, then the Impasse shall be sent to the City Council, which shall then hold a public hearing on the Impasse and take such action regarding the Impasse as it, in its discretion, deems appropriate as in the public interest, including but not limited to unilaterally implementing its last, best, and final offer, but shall not implement a Memorandum of Understanding. Any legislative action by the City Council on the Impasse shall be final and binding, including but not limited to unilaterally implementing its last, best, and final offer.

ARTICLE V. MISCELLANEOUS PROVISIONS

Section 24. Construction

The City may adopt such rules, regulations and/or procedures necessary or convenient to implement the provisions of this Resolution and of the MMBA after consultation with affected Recognized Employee Organizations. Nothing in this Resolution shall be construed to deny any person or employee any rights granted by Federal or State laws. The rights, powers, and authority of the City in all matters, including the right to maintain any legal actions, shall not be modified or restricted by this Resolution.

Section 25. No Strike Clause

Nothing in this Resolution shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike during the term of a Memorandum of Understanding, or participate in a sickout or other partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions by them are in violation of their conditions of employment except as expressly otherwise provided by legally preemptive state or contrary local law. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination, and may be replaced, to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit rights accorded them under City law or contract.

Section 26. Severability

If any provision or portion thereof contained in this Resolution, or the application thereof, to any person or circumstances is held to be unconstitutional, invalid, or unenforceable, the remainder of this Resolution and the application of such provision, or portion thereof, to other persons or circumstances, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

Section 27. Notice

Wherever written notice to either party is required by this Resolution, it shall be given by email and if to the City at 595 Harbor Street, Morro Bay, California 93442, and to any employee organization at its last address furnished in writing to the City, by first class registered or

certified mail, postage prepaid and shall be deemed to have been received on the third day immediately following the day it was mailed (excluding Saturdays, Sundays and holidays on which the offices of the City are closed). Service of notice by mail at the sender's option, may be given by hand delivery.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of March, 2017.

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk

RESOLUTION NO. 09-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ESTABLISHING POLICY PROHIBITING HARASSMENT, DISCRIMINATION
AND RETALIATION AND RESCINDING RESOLUTION NO. 21-04**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, Morro Bay Municipal Code (“MBMC”) Section 2.32.050 authorizes the City Council to adopt and amend Personnel Rules and Regulations governing the City of Morro Bay personnel system; and

WHEREAS, the Policy Prohibiting Harassment, Discrimination and Retaliation have not been comprehensively reviewed or modified since 2004, and the procedure for reporting harassment requires updating and clarification; and

WHEREAS, the Personnel Rules and Regulations should be updated and clarified; and

WHEREAS, the City’s recognized bargaining units, the Service Employees International Union (“SEIU”), the Police Officers Association (“POA”), and the Morro Bay Fire Fighters Association (“MBFFA”) were provided copies of the proposed revisions, with the offer to meet and confer; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morro Bay does hereby adopt the attached Policy Prohibiting Harassment, Discrimination and Retaliation to provide for a safe and efficient workplace free of prohibited harassment, discrimination and retaliation, and setting forth an updated reporting procedure; and

BE IT FURTHER RESOLVED that Resolution No. 21-04 is hereby rescinded.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of March, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk



CITY OF MORRO BAY POLICY PROHIBITING HARASSMENT, DISCRIMINATION, AND RETALIATION

I. GENERAL POLICY

The City is committed to providing a work environment that is free of discrimination, harassment, and retaliation. In keeping with this commitment, the City maintains a strict policy prohibiting harassment, including sexual harassment and takes steps to promptly correct discriminatory, harassing, and retaliatory conduct. This policy prohibits harassment in any form, including verbal, physical and visual harassment by or against any employee, intern, volunteer, applicant for employment, or vendor, independent contractor, elected or appointed officials or guest. This policy applies to all of the City's activities, wages, reviews, leaves, training, benefits, and all other conditions and terms of employment.

As a general guideline, harassment can be avoided if employees act professionally and treat each other with respect.

II. PURPOSE OF POLICY

Federal and state law expressly prohibit discrimination and harassment of employees or applicants based upon race, color, national origin, religious creed, ancestry, physical or mental disability, medical condition, breast-feeding, pregnancy, childbirth or related medical condition, age (40 and over), sexual orientation, sex, gender identity, gender expression, genetic information, military or veteran status, marital status, or any other basis protected by applicable state or federal law, including association with individuals with these protected characteristics or perception that an individual has one or more of these protected characteristics.

The purpose of this policy is to establish a means to protect employees, applicants for employment, or guests from harassment. Discrimination, harassment, and retaliation constitute misconduct that can decrease work productivity, decrease morale and cause emotional and physical damage. Incidents of discrimination, harassment, or retaliation can result in serious economic implications such as high turnover, ineffective use of time during working hours, costly salaries paid for nonproductive work hours, and employee absences due to hearings and meetings related to discrimination, harassment, and retaliation complaints.

The further purpose of this Policy is to define and forbid discriminatory, harassing, and retaliatory conduct, to prohibit the condoning or perpetuating of such conduct, and to provide an efficient means for reporting and resolving complaints of discrimination, harassment, or retaliation against any individual who reports discrimination, harassment, or retaliation or who participates in an investigation of such reports.

III. DEFINITION OF TERMS

A. Employee. Any individual under the direction and control of the City under any appointment or contract of hire or apprenticeship, express or implied, oral or written. For purposes of this Policy only, the term "employee" includes any

individual who is an unpaid intern or volunteer of the City. The inclusion of any individual, including but not limited to unpaid interns and volunteers, in the definition of “employee” for purposes of this policy should not be interpreted to affect the applicability of any other policy or procedure of the City.

B. Legally Protected Category/Legally Protected Characteristic. Race, color, national origin, ancestry, religious creed, sex, sexual orientation, gender identity, gender expression, marital status, religion, age (over 40), physical or mental disability, medical condition, breast-feeding, pregnancy, childbirth or related medical condition, physical or mental disability, medical condition, genetic characteristics or information, military or veteran status, or any other protected basis under state or federal law, including association with individuals with these protected characteristics or perception that an individual has one or more of these protected characteristics.

C. Discrimination. Discrimination is any action or conduct by which an employee is treated differently or less favorably than other employees similarly situated for the sole reason that the employee is a member of a Legally Protected Category.

D. Harassment. Harassment is any verbal, visual, or physical conduct based on an employee’s membership in a Legally Protected Category that creates an intimidating, hostile or otherwise offensive working environment. Such conduct constitutes harassment when:

1. Submission to the conduct is made either an explicit or implicit condition of employment;
2. Submission to or rejection of the conduct is used as the basis for an employment decision; or
3. The harassment unreasonably interferes with an employee’s work performance.

Harassing conduct can take many forms and includes, but is not limited to, slurs, jokes, statements, gestures, pictures, computer images, or cartoons regarding an employee’s Legally Protected Characteristic.

Harassment on the job is prohibited whether it involves co-worker harassment, harassment by a supervisor or manager, or harassment by third parties doing business with or for the City.

E. Sexual Harassment.

Unwelcome sexual advances, requests for sexual favors, or visual, verbal, or physical conduct of a sexual nature all may constitute sexual harassment when: (1) submission to such conduct is made a term or condition of employment; or (2) submission to or rejection of such conduct is used as basis for employment decisions affecting the individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an employee’s work performance or creating an intimidating, hostile or offensive working environment.

This definition includes potential forms of offensive behavior, such as the following:

1. Unwanted sexual advances.
2. Visual conduct, such as leering, making sexual gestures, displaying of sexually explicit jokes, derogatory images, and comments about an employee's body or dress.
3. Verbal sexual advances or propositions.
4. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes, or invitations.
5. Physical conduct, such as touching, assault, impeding, or blocking movements.
6. Retaliation for reporting harassment or threatening to report harassment.

Sexual harassment includes many forms of offensive behavior and may include harassment of a person of the same or opposite sex as the harasser.

Sexual harassment need not be motivated by sexual desire. Sexual harassment on the job is prohibited whether it involves co-worker harassment, harassment by a supervisor or manager, harassment by a subordinate, or harassment by third parties doing business with or for the City.

F. Retaliation.

Taking adverse action against any employee because of (1) the employee's opposition to a practice the employee reasonably believes to constitute employment discrimination, harassment, or retaliation or (2) because of the employee's participation in an employment discrimination, harassment, or retaliation investigation, proceeding, or hearing. or (3) because of such opposition or participation by a family member or close associate of the employee.

1. Protected Opposition.

Protected opposition to perceived discrimination, harassment, or retaliation includes, but is not limited to, threatening to file a discrimination, harassment, or retaliation complaint with any federal or state agency, or court, or complaining or protesting about alleged discrimination, harassment, or retaliation to a supervisor, manager, co-worker, or other official. Protected opposition also includes a complaint or protest made on behalf of another employee or made by the employee's representative. The City also prohibits retaliation against somebody closely related to or associated with the employee exercising such rights. Opposition not made in good faith, or made in a manner which disrupts the workplace, or which constitutes an unlawful activity, or

which includes badgering or threatening of employees or supervisors is not protected.

2. Protected Participation.

Protected participation includes, but is not limited to, filing a charge, testifying, assisting, or participating in any manner in an investigation under this Policy, or in a proceeding, hearing or litigation under federal or state discrimination, harassment, or retaliation statutes, at other hearings regarding protected employee rights, such as unemployment compensation proceedings, and making requests for reasonable accommodation of a Legally Protected Characteristic.

3. Adverse Action.

Adverse actions include, but are not limited to, the following acts: disciplinary actions, negative performance evaluations, undesirable transfer, undesirable assignments, negative comments, unwarranted criticism, actions that harm the employee outside the workplace, undesirable change in benefits, undesirable change in work schedule, unwarranted exclusion from meetings trainings, or events, or undesirable change in work duties.

G. Supervisor.

Any individual having the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or the responsibility to direct other employees, or to adjust their grievances, or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

Employees who have questions regarding these definitions or are uncertain what constitutes discrimination, harassment, sexual harassment, retaliation, or other prohibited conduct under the City's policy should contact the Personnel Officer, Human Resources, or a Department Head.

IV. MAKING DISCRIMINATION, HARASSMENT, OR RETALIATION COMPLAINTS

A. In General.

The City's complaint procedure provides for an immediate, thorough, impartial, and objective investigation of every discrimination, harassment, or retaliation claim, appropriate disciplinary action against one found to have engaged in prohibited discrimination, harassment, or retaliation, and appropriate remedies to any victim of discrimination, harassment, or retaliation. The City encourages reporting of all perceived incidents of discrimination, harassment, or retaliation.

B. Complaint Procedure.

The City cannot resolve discrimination, harassment, or retaliation unless the City is aware of the situation. The City relies upon its employees to bring those

concerns to the attention of the City so that the necessary steps can be taken to correct the situation, and all employees are encouraged to do so. Accordingly, any employee who believes he or she has been harassed, discriminated or retaliated against should promptly report the facts of the incident/incidents and the name(s) of the individual(s) involved to his/her immediate supervisor, any supervisor, the Personnel Officer, or Human Resources.

The complaint should be as detailed as possible, and must include details of the incident(s), names of individuals involved, and the names of any witnesses. Any supporting documentary evidence should be attached to the complaint. Notification to the City is essential. Employees may be assured that they will not be penalized in any way for filing a good faith complaint of potential discrimination, harassment, or retaliation.

ALL EMPLOYEES SHOULD NOTE THAT THE FAILURE TO USE THE CITY'S COMPLAINT PROCEDURE MAY HAVE AN ADVERSE EFFECT ON ANY CLAIM UNDER THIS POLICY IF SUCH CLAIMS ARE LITIGATED.

C. Reporting Obligations.

1. Supervisory Employees.

Any supervisor who receives a complaint of discrimination, harassment, or retaliation; witnesses discrimination, harassment, or retaliation; or has any reason to believe that discrimination, harassment, or retaliation may have occurred in the workplace is required to report the conduct immediately to Human Resources. A supervisor will be subject to discipline for failing to report offensive conduct that potentially constitutes discrimination, harassment, or retaliation if the supervisor knew or should have known of the offensive conduct.

2. Non-Supervisory Employees.

All other employees who observe or are advised about the discrimination, harassment, or retaliation involving another employee are encouraged to report the conduct to a supervisor or to Human Resources.

D. The City's Response to Reports or Complaints.

1. Investigation of Complaints.

All incidents of discrimination, harassment, or retaliation that are reported must be investigated appropriately by the City so that corrective and preventive actions can be promptly taken if warranted. The City will promptly undertake or direct an effective, thorough, impartial, and objective investigation of the allegations, which will be conducted by qualified personnel.

2. **Intermediary Measures.**

Employees may be placed on a leave of absence, or subject to other intermediary measures, until the conclusion of the investigation.

3. **Cooperation with the Investigation.**

All employees involved in a workplace investigation into alleged harassment, discrimination, or retaliation are required to fully and truthfully cooperate with the investigation. Failure to fully and truthfully cooperate with the investigation is grounds for disciplinary action, up to and including termination.

4. **Prohibition Against Retaliation.**

The City prohibits retaliation against any employee because of the employee's opposition to a practice the employee reasonably believes to constitute employment discrimination or harassment or because of the employee's participation in an employment discrimination investigation, proceeding, or hearing. Any retaliatory adverse action because of such opposition or participation will not be tolerated, and may also be unlawful.

5. **City Determination and Corrective Action.**

a. The City will make its determination based on the findings of the investigation and communicate that determination to the complaining employee, and to the accused. Except where required by law or court order, parties are not entitled to copies of any notes or other written materials regarding the investigation, as these are considered to be confidential documents.

b. If the City determines that discrimination, harassment, or retaliation has occurred, the City will take effective remedial action commensurate with the circumstances. Appropriate action will also be taken to deter any future discrimination, harassment, or retaliation. If a complaint of discrimination, harassment, or retaliation is substantiated, appropriate disciplinary action, up to and including discharge, will be taken. The City will also take appropriate action to remedy improper adverse action, if any, to the employee resulting from the discrimination, harassment, or retaliation. In addition, as part of the City's efforts to remedy the complaining employee's concerns, the complaining employee may be informed in general terms regarding any remedial measures and disciplinary actions imposed against the violator.

c. The information and definitions set forth in Section III, above, are based on the legal definitions of discrimination, harassment, and retaliation. In light of the City's duty to prevent the unlawful conduct defined in Section III, and in light of the City's desire to have a professional and productive work environment, the City reserves the right to take appropriate corrective action when an

employee engages in inappropriate conduct that does not fully rise to the legal standards or definitions set forth in Section III of this Policy. For example, the City may take appropriate corrective action for inappropriate conduct, even if such conduct was not subjectively unwelcome or offensive to another employee of the City, or did not involve a legally protected characteristic.

E. Evidence and Finding of Intentionally False Complaints.

While the City vigorously defends its employees' right to work in an environment free of discrimination, harassment, and retaliation it also recognizes that false accusations of discrimination, harassment, or retaliation can have serious consequences. Accordingly, any employee who is found, through the City's investigation, to have deliberately and falsely accused another person of discrimination, harassment, or retaliation may be subject to appropriate disciplinary action, up to and including termination.

F. Anonymity and Confidentiality.

1. While the City will investigate anonymous complaints, the City strongly discourages anonymous complaints. **EMPLOYEES CHOOSING TO FILE A COMPLAINT ANONYMOUSLY MUST BE AWARE THAT ANONYMITY IN THE COMPLAINT PROCEDURE MAY COMPROMISE THE CITY'S ABILITY TO COMPLETE A THOROUGH INVESTIGATION.** Employees should also be aware that should the City learn of the identity of an anonymous complainant, the City cannot guarantee that his/her identity will remain confidential, if the City determines in its discretion that disclosure is necessary to complete the investigation.
2. The City will take all reasonable steps available to maintain the confidentiality of all complaints of discrimination, harassment, or retaliation, as well as all information gathered during an investigation. However, the City retains sole discretion to determine whether disclosure of information is necessary to complete the investigation.
3. All employees involved in the investigation of discrimination, harassment, or retaliation complaints as either investigator(s), complainant(s), witness(es), or accused are required to keep all information related to the investigation confidential. Revealing such information is grounds for disciplinary action, except as expressly permitted by law, such as in discussion with a legal or labor union representative.

V. EMPLOYEE'S DUTY TO DISCLOSE BENEFITS RECEIVED

Employees are hereby informed that no supervisor, manager, or officer of the City, or other person or entity doing business with the City, is authorized to expressly or impliedly condition the receipt or denial of any benefit, compensation, or other term or condition of employment on an employee's acquiescence to any sexual demand.

To the contrary, all employees are instructed to refuse such demands and report them promptly either to their immediate supervisor or to Human Resources. Any employee

who is found to have accepted any benefit from the City because he/she submitted to an unreported sexual demand will be disciplined appropriately. If such employee received a gift of public funds, the City shall be entitled to immediate reimbursement. Any employee making such a demand will be similarly disciplined, up to and including termination.

VI. ADDITIONAL ENFORCEMENT INFORMATION

In addition to the City’s internal complaint procedure, employees should also be aware that the Equal Employment Opportunity Commission (“EEOC”) and the Department of Fair Employment and Housing (“DFEH”) investigate and prosecute complaints of discrimination, harassment, and/or retaliation in employment.

Employees can contact the EEOC and the DFEH as follows:

EEOC

800-669-4000 | 800-669-6820 (TTY)
www.eeoc.gov

San Francisco District Office
450 Golden Gate Avenue
5 West, P.O Box 36025
San Francisco, CA 94102-3661

Los Angeles District Office
255 East Temple Street, 4th Floor
Los Angeles, CA 90012

Fresno Local Office
2300 Tulare Street, Suite 215
Fresno, CA 93721

DFEH

800-884-1684 | 800-700-2320 (TTY)
www.dfeh.ca.gov

Bay Area Regional Office
39141 Civic Center Drive, Suite 250
Fremont, CA 94538

Los Angeles Regional Office
320 West 4th Street, 10th Floor
Los Angeles, CA 90013

Fresno Regional Office
1277 East Alluvial Avenue, Suite 101
Fresno, CA 93720

VII. TRAINING AND POLICY DISSEMINATION

All employees who are hired by the City will be given a copy of this Policy, and will receive guidance from the City on its provisions and the City’s commitment to provide a workplace free from discrimination, harassment, and retaliation. In addition, all supervisors will be trained in accordance with applicable requirements of the Fair Employment and Housing Act (Government Code § 12950.1) and implementing regulations. Non-supervisory employees may also receive training, at the discretion of the City.

**CITY OF MORRO BAY
POLICY PROHIBITING HARASSMENT, DISCRIMINATION, AND RETALIATION
ACKNOWLEDGEMENT OF RECEIPT**

By my signature below, I acknowledge that I have received, read, and understood the City of Morro Bay's Policy Prohibiting Harassment, Discrimination, and Retaliation, and I will abide by its terms. I understand that failure to fully comply with all terms set forth in the Policy may lead to disciplinary action, up to and including termination.

Employee's Name (PLEASE PRINT)

Employee's Signature

Date

RESOLUTION NO. 10-17

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
ESTABLISHING A DRUG-FREE WORKPLACE POLICY**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, Morro Bay Municipal Code (“MBMC”) Section 2.32.050 authorizes the City Council to adopt and amend Personnel Rules and Regulations governing the City of Morro Bay personnel system; and

WHEREAS, drug and alcohol use in the workplace can impact safety and efficiency; and

WHEREAS, a Drug-Free Workplace Policy was implemented administratively in 2012, but not adopted by the City Council; and

WHEREAS, the Drug-Free Workplace Policy should be updated to reflect changes in the law since 2012; and

WHEREAS, the City’s recognized bargaining units, the Service Employees International Union (“SEIU”), the Police Officers Association (“POA”), and the Morro Bay Fire Fighters Association (“MBFFA”) were provided copies of the proposed revisions, with the offer to meet and confer; and

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morro Bay does hereby adopt the attached Drug-Free Workplace Policy to establish workplace policies prohibiting substance abuse, alcohol and illegal drug use while performing work or volunteer activities for the City, and establishing drug test policies; and

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 14th day of March, 2017, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

JAMIE L. IRONS, Mayor

ATTEST:

DANA SWANSON, City Clerk



CITY OF MORRO BAY

DRUG-FREE WORKPLACE POLICY

I. PURPOSE

The purpose of this policy is to maintain a workplace that is free of drugs and alcohol and to discourage drug and alcohol abuse by employees and volunteers. There is a vital interest in maintaining safe and efficient working conditions for employees and volunteers. Substance abuse is incompatible with health, safety, efficiency, and success. Employees, who are under the influence of alcohol, or who have any illegal drugs in their system, or who misuse and abuse legal drugs, as defined in this policy, while conducting or performing business, endanger their own health and safety, and the health and safety of others, and can cause a number of other work-related problems, including absenteeism and tardiness, substandard job performance, increased workloads for coworkers, behavior that disrupts other employees, delays in the completion of work, inferior quality in service and disruption of resident relations. Employees and volunteers shall not work with any detectible level of illegal drugs, alcohol or marijuana in their systems.

It is important for employees to understand that this policy governs not only the abuse of alcohol and illegal drugs, but also the use and abuse of legal drugs in the workplace. Certain classes of employees, described in this policy, who find the need to use impairing legal drugs, including prescription and over-the counter drugs, should consult, and must comply with, those provisions set forth in this policy that address such use.

To further its interest in avoiding accidents, to promote and maintain safe and efficient working conditions for its employees, to protect its business, property, equipment and operations, and to comply with all federal and state requirements, this policy has been established, concerning employee use of alcohol and drugs. As a condition of continued employment, each employee must abide by this policy.

II. GENERAL DEFINITIONS

A. **Illegal or Prohibited Drugs or Other Controlled Substances:** Illegal drugs, or other controlled substance, means any drug or substance that (i) is not legally obtainable; or (ii) is legally obtainable but has not been legally obtained; or (iii) has been legally obtained, but is being sold or distributed unlawfully; or (iv) a legal drug which is being used in a manner for which it was not prescribed. Illegal

Drugs include marijuana, cocaine, opiates, amphetamines, or phencyclidine at levels above the minimum thresholds specified in 49 CFR Part 40, as amended.

- B. Legal Drugs: Legal drugs means any drug, including prescription drugs and over-the-counter drugs, that has been legally obtained, and is not unlawfully sold or distributed.
- C. Abuse of any Legal Drug: Abuse of any legal drug means the use of any legal drug (i) for any purpose, other than the purpose for which it was prescribed or manufactured; or (ii) in a quantity, frequency, or manner that is contrary to the instructions or recommendations of the prescribing physician.
- D. Reasonable Suspicion: Reasonable suspicion means a suspicion that is based on (i) specific contemporaneous and articulable personal observations, such as an employee's manner, disposition, muscular movement, appearance, behavior, performance, speech or odor; or (ii) information provided to management by an employee, by law enforcement officials, by a security service, or by other persons where the Employer has a reasonable belief the information is reliable. Examples of reasonable suspicion factors include but are not limited to the following:
 - 1. Slurred speech or bloodshot eyes;
 - 2. Odor of intoxicants on breath or clothing;
 - 3. Unsteady standing, walking or movement;
 - 4. Substandard performance whether in quantity or quality that cannot otherwise be explained;
 - 5. Mood swings, increased inattentiveness, and changes in appearance;
 - 6. Physical or verbal altercations;
 - 7. A preventable accident generally of a reckless nature while on City time or involving City property or resources;
 - 8. Information from a reliable person with knowledge of the drug or alcohol use; or
 - 9. Actual observation of the possession or use of alcohol or drugs.
- E. "Marijuana," as used in this policy includes cannabis, synthetic or herbal marijuana, constituents of cannabis, such as tetrahydrocannabinol (THC) and cannabidiol, whether prescribed by a physician or not.
- F. Possession: Possession means that an employee has the substance on his or her person or otherwise under his or her control.

G. Safety-Sensitive Employees: safety-sensitive employees include part-time and full-time employees who perform, or may be called upon to perform, the following safety-sensitive functions:

1. Operating a revenue service vehicle, a vehicle operated for revenue, even when it is not in revenue service, including floating and rolling stock used in providing transit revenue service for passengers, when the vehicle is available to the general public and there is a reasonable expectation of carrying passengers that directly pay fares, are subsidized by public policy, or provide payment through a contractual arrangement;
2. Operating a non-revenue service vehicle when required to be operated by a Commercial Driver's License (CDL) holder;
3. Controlling dispatch or movement of a revenue service vehicle;
4. Maintaining (including inspection, repairs, overhaul and rebuilding) a revenue service vehicle or equipment used in revenue service;
5. Carrying a firearm for security purposes; or
6. Operating commercial motor vehicles of 26,001 lbs. or greater or
7. Operating a vehicle carrying 16 passengers including the driver, or vehicles required to display a Department of Transportation (DOT) placard for hazardous material.

Supervisors are considered safety-sensitive only if they perform, or may be called upon to perform, any of the above safety-sensitive functions.

III. DEFINITIONS – TESTING TERMINOLOGY

A. Adulterated specimen: A specimen that has been altered, as evidenced by test results showing either a substance that is not a normal constituent for that type of specimen or showing an abnormal concentration of an endogenous substance.

B. Alcohol Concentration: Expressed in terms of grams of alcohol per 210 liters of breath as indicated by a breath test under 49 CFR Part 40.

C. Aliquot: A fractional part of a specimen used for testing, It is taken as a sample representing the whole specimen.

D. Dilute specimen: A urine specimen with creatinine and specific gravity values that are lower than expected for human urine.

E. Evidentiary Breath Testing Device (EBT): A Device approved by the National Highway Traffic Safety Administration (NHTSA) for the evidential testing of breath at the 0.02 and the 0.04 alcohol concentrations. Approved devices are listed on the NHTSA conforming products list.

F. Initial Drug Test: (Screening Drug Test) The test used to differentiate a negative specimen from one that requires further testing for drugs or drug metabolites.

G. Initial Specimen Validity Test: The first test used to determine if a urine specimen is adulterated, diluted, substituted, or invalid

H. Invalid Result: The result reported by an Health and Human Services (HHS)-certified laboratory in accordance with the criteria established by the HHS Mandatory Guidelines when a positive, negative, adulterated, or substituted result cannot be established for a specific drug or specimen validity test.

I. Medical Review Officer (MRO): A licensed physician (medical doctor or doctor of osteopathy) responsible for receiving laboratory results generated by the drug testing program who has knowledge of substance abuse disorders, and has appropriate medical training to interpret and evaluate an individual's confirmed positive test result, together with his/her medical history, and any other relevant bio-medical information.

J. Negative Dilute: A drug test result which is negative for the five drug/drug metabolites but has a specific gravity value lower than expected for human urine.

K. Negative result: The result reported by an HHS-certified laboratory to an MRO when a specimen contains no drug or the concentration of the drug is less than the cutoff concentration for the drug or drug class and the specimen is a valid specimen.

L. Non-negative test result: A urine specimen that is reported as adulterated, substituted, invalid, or positive for drug/drug metabolites.

M. Substance Abuse Professional (SAP): A licensed physician (medical doctor or doctor of osteopathy) or licensed or certified psychologist, social worker, employee assistance professional, state-licensed or certified marriage and family therapist, or drug and alcohol counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission or by the International Certification Reciprocity Consortium/Alcohol and other Drug Abuse (ICRC) or by the National Board for Certified Counselors, Inc. and Affiliates/Master Addictions Counselor (NBCC)) with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol related disorders.

N. Substituted specimen: A urine specimen with creatinine and specific gravity values that are so diminished or so divergent that they are not consistent with normal human urine.

IV. THE CITY OF MORRO BAY'S CONSENT FOR USE OF LEGAL DRUGS

A. Use of Legal Drugs: The City recognizes that it may be necessary for employees to use legal drugs from time to time. For purposes of these policies, "marijuana" is not considered a legal drug. The City also recognizes that an employee who is using legal drugs might become impaired by the drug such that the employee's ability to adequately or safely perform is compromised. In order to accommodate

employees who might be required to use legal drugs, and to help assure that no serious adverse consequences in the workplace result from such drug use, certain classes of employees, identified in this policy, are required to obtain the City consent and comply with certain disclosure and work-restriction requirements under the following circumstances.

1. The classes of employees who must obtain City consent to work while using a potentially impairing legal prescribed drug are those classifications defined as "safety sensitive" in these policies; those who work or volunteer with children while the guardians of such children are absent; water well workers; those who operate heavy equipment; and those who operate City vehicles.
- B. When Consent is Required: Employees and volunteers who know or should know that their use of legal drugs might endanger their own safety or the safety of another person, are obligated to report such drug use to the Human Resources prior to reporting to work on such medicine, and to obtain the City's consent to continue working. If the use of such medicine is temporary, the employee may be afforded the use of accrued time off. If the medicine is used for a disability, the employee should schedule a reasonable accommodation meeting in accordance with the City's reasonable accommodation policy. The City reserves the right to ask the employee to obtain a certification that the employee may safely perform duties, and to identify possible reasonable accommodations to safely perform essential job functions. If such certification is not received after requested, is produced by a an inappropriately qualified physician, or appears incomplete or fraudulent, then they City may have a City-paid physician determine whether the employee can safely perform essential job functions and recommend reasonable accommodations which would allow such employee to safely perform essential job functions.
- C. Duty to Disclose: Employees and volunteers who operate or who are responsible in any way for the operation, custody or care of the City's property, or for the safety of other employees or other persons, have a duty to disclose the nature of their job duties to any prescribing physician or pharmacist, or to a City physician or pharmacist if examined by one as set forth in Section B, and to inquire of the physician(s) or pharmacist whether their use of the drugs prescribed might result in the dangers, risks or impairment that this Policy is intended to prevent.
- D. Restrictions on Work and Volunteer Activity: The City reserves the right to restrict the work activities of any employee or volunteer who is using impairing legal drugs, that pose a threat to the safety of the employee or others, or prohibit any employee from working entirely while he or she is using impairing legal drugs that pose a threat to the safety of the employee or others.
- E. Duty to Refrain from Working and Performing Volunteer Activities: Each employee and volunteer using impairing legal drugs has a duty to not report for work while impaired by the drug if such impairment might result in serious harm or damage or might interfere with his or her job performance. Accordingly, even if an employee

has obtained the City's consent to continue working while taking legal impairing drugs, the employee will not be authorized to work while impaired by the use of such drug if the employee knows or has reason to know that working while impaired might endanger the safety of the employee or some other person, pose a risk of significant damage to the City's property, or substantially interfere with the employee's job performance or the efficient operation of the City's business.

V. PROHIBITED CONDUCT

- A. Scope: The prohibitions of this section apply whenever the interests of the City may be adversely affected, including any time the employee is:
1. On City premises;
 2. Conducting or performing City business, regardless of location;
 3. Operating or responsible for the operation, custody, or care of City equipment or other property; or
 4. Responsible in any way for the safety of other individuals associated with City, including, but not limited to, co-employees, management, visitors, residents and vendors.
- B. Alcohol: The following acts are prohibited and subject an employee to discipline, up to and including discharge:
1. The unauthorized use, possession, purchase, sale, manufacture, distribution, transportation or dispensation of alcohol; or
 2. Being under the influence of alcohol defined as having a .04 blood alcohol content or above.
 3. If an on-call employee has consumed alcohol, he or she must notify management. If he or she claims the ability to perform safety-sensitive functions, he or she may not test at a result of 0.02 or higher.
- C. Illegal Drugs: The following acts are prohibited and subject an employee to discipline, up to and including discharge:
1. The use, possession, purchase, sale, manufacture, distribution, transportation, or dispensation of any illegal drug or other prohibited controlled substance; or
 2. Having any illegal drug or other prohibited controlled substance in your system.
- D. Legal Drugs: The following acts are prohibited and subject an employee to discipline, up to and including discharge:

1. The misuse or abuse of any legal drug; or
 2. The purchase, sale, manufacture, distribution, transportation, dispensation, or possession of any legal prescription or over-the counter drug in a manner inconsistent with law; or
 3. Working while impaired by the use of a legal drug in violation of Section IV above; or
 4. Working without obtaining the required consent in violation of Section IV, above; or
 5. Failure to make proper disclosure in violation of Section IV, above.
- E. Marijuana: For purposes of these policies, marijuana possession on or in City property is strictly prohibited. Marijuana use prior to or during working hours or while on call is strictly prohibited.
- F. Conviction of any criminal drug statute for a violation occurring in the workplace.
- G. Failure to notify the City within five (5) days of any conviction of any criminal drug statute for a violation occurring in the workplace.

VI. SUBSTANCE SCREENING

- A. Job Applicants: Job applicants, holding a conditional offer of employment, may be required to undergo drug and alcohol testing as a condition of employment with the City. Classifications for which applicants will be tested are those classifications defined as "safety sensitive" in these policies; those applicants holding a conditional offer and and volunteers holding a conditional offer of volunteer work who work with children while the parents, care-givers or guardians of such children are absent; water well workers; those who operate heavy equipment; and those who operate City vehicles.
- B. Employees: Current employees will be subject to testing if they:
1. Report to work or, while conducting or performing City business regardless of location, are reasonably suspected of being intoxicated or exhibiting abnormal behavior or performance difficulties associated with substance abuse; reasonable suspicion testing may also be required of volunteers;
 2. Are involved in a work-related accident and exhibit indicators of substance abuse;
 3. Are subject to federal or state regulatory requirements for random drug or alcohol testing, as set forth in Section C.2 below; or
 4. Post-accident testing as described in Section C below may be required of employees and volunteers.

C. Testing: The City may utilize each or all of the following testing methods:

1. Pre-employment testing of applicants to certain classifications while such applicants are holding a conditional offer of employment;
2. Random testing for employees in the following safety-sensitive positions (hereafter "DOT Safety Sensitive"): operating commercial motor vehicles of 26,001 lbs. or greater or operating a vehicle carrying 16 passengers including the driver, or vehicles required to display a Department of Transportation placard for hazardous material and those who carry a firearm for security;

(a) Such random testing may occur anytime an employee is on duty so long as the employee is notified prior to the end of the shift. Employees who provide advance, verifiable notice of scheduled medical or child care commitments will be random drug tested no later than 3 hours before the end of their shift and random alcohol tested no later than 30 minutes before the end of their shift.
3. Reasonable suspicion testing;
4. Post-accident testing, within 8 hours for alcohol and within 32 hours for drugs, following accidents in which the employee was operating a vehicle for the City (where the employee exhibits indicators of substance abuse or one that involves significant property damage of \$10,000 or more, or any medical injury requiring treatment away from the scene, or fatality);

For safety-sensitive employees, in addition to the above circumstances, they will also be subject to post-accident testing (within 8 hours for alcohol and within 32 hours for drugs) in the following situations:

- a. One or more vehicles incurs disabling damage and must be towed away from the scene, unless the covered employee can be completely discounted as a contributing factor to the accident, or the vehicle is a rail car, trolley car or bus, or vessel, and is removed from operation, unless the covered employee can be completely discounted as a contributing factor to the accident;
 - b. The covered employee must remain available post-accident for testing, but necessary medical attention shall not be delayed under any circumstances;
 - c. Any other safety-sensitive employee whose performance could have contributed to the accident, as determined by management using the best information available at the time, will be tested; and
5. Testing authorized or required by federal or state regulations, including Department of Transportation regulations.

VII. DISCIPLINARY ACTION

Violation of this Policy by any employee may result in discipline, up to and including discharge, depending on the circumstances and at the discretion of the City. At a minimum, referral to an SAP and disciplinary mandates for safety-sensitive positions, as required under Title 13 of the California Code of Regulations and Title 49 of the Code of Federal Regulations, will be followed for those individuals in safety-sensitive positions.

- A. Effect of Criminal Conviction: An employee who is convicted under a criminal drug statute for a violation occurring in the workplace, while conducting or performing City business regardless of location, or during any City-related activity or event will be deemed to have violated this Policy.
- B. An employee, who violates drug and alcohol regulations, cannot again perform any safety-sensitive duties for the City until and unless the employee completes the SAP evaluation, referral, and education/treatment process set forth in this subpart and in applicable DOT agency regulations and return-to-work follow-up testing required by federal regulations.
- C. Refusal to Test: Includes circumstances or behaviors such as:
 - 1. Failure to appear at the collection site in the time allotted;
 - 2. Leaving the collection site before the testing process is completed;
 - 3. Failure to provide a urine, breath, or saliva specimen as required by CFR, Part 40;
 - 4. Failure to permit the observation or monitoring of specimen collection when it is required by law;
 - 5. Failure to provide a sufficient amount of urine or breath specimen without a valid medical explanation;
 - 6. Failure or refusal to take a second test when required;
 - 7. Failure to undergo a fitness for duty medical evaluation when required;
 - 8. Failure to cooperate with any part of the testing process. (Example: refusal to sign the testing form when required);
 - 9. Leaving the scene of an accident without just cause prior to submitting to a test; or,

10. If the Medical Review Officer (MRO) reports a verified adulterated or substituted test result.
11. Possession or wearing a prosthetic or other device used to tamper with the collection process.
12. Admitting to the adulteration or substitution of a specimen to the collector or MRO.
13. Refusal to sign the certification at Step 2 of the Alcohol Testing Form (ATF).
14. As a covered employee, if the MRO reports that you have a verified adulterated or substituted test result, you have refused to take a drug test.

Note: A refusal to test shall be treated as a positive test result for the purposes of administration of this Policy and any resulting disciplinary action.

VIII. CRIMINAL CONVICTIONS

Employees are required by this Policy to notify the City of any conviction under a criminal drug statute for a violation occurring in the workplace, while conducting or performing City business regardless of location, or during any City-related activity or event, not later than five (5) days after any such conviction. When required by applicable law, the City will notify agencies under contract of any employee who has been convicted under a criminal drug statute for a violation occurring while conducting or performing City business, regardless of location.

IX. UNREGULATED OR AUTHORIZED CONDUCT

- A. Customary Use of Over-the-Counter Drugs: Nothing in this Policy is intended to prohibit the customary and ordinary purchase, sale, use, possession, or dispensation of over-the-counter drugs, so long as such activity does not violate any law or result in an employee being impaired by the use of such drugs in violation of this Policy.
- B. Off-the-Job Conduct: Nothing in this Policy is intended to regulate off-the-job conduct, so long as the employee's off-the-job use of alcohol or legal drugs does not result in the employee being under the influence of or impaired by the use of alcohol or drugs in violation of this Policy.
- C. Use of Alcohol or Legal Drugs: Human Resources will maintain a list of circumstances in which the use or possession of certain legal drugs or alcohol is authorized (such as certain medicine or drugs maintained in company first-aid cabinets or alcoholic beverages served during certain business meetings or social functions) and will communicate the authorization as appropriate. Changes to the authorization require the prior written approval of the Human Resources. Except as otherwise provided in this policy, no employee may assume that his or her possession, use, purchase, sale, manufacture, distribution, transportation, or dispensation of alcohol or drugs is authorized unless the employee has been notified in writing by Human Resources.

X. QUALIFIED DISABLED EMPLOYEES

- A. Commitment to Employ Disabled Individuals: Nothing in this Policy is intended to diminish the City's commitment to employ qualified disabled individuals or to provide reasonable accommodation to such individuals consistent with all federal, state and local laws.
- B. Reasonable Accommodation: If an employee's use of a legal drug is related to a disability and the employee voluntarily self-identifies as a disabled individual to the City in connection with an effort to determine whether it is advisable to continue working despite the use of the drug, and if it is determined that the employee should not continue to work in his or her regular job while using the legal drug, an effort will be made to reasonably accommodate that employee.

XI. CONFIDENTIALITY

Disclosures made by employees or volunteers to Human Resources, concerning their use of legal drugs, will be treated confidentially, and will not be revealed to managers or supervisors, unless there is an important work-related reason to do so. Disclosures made by employees or volunteers to Human Resources, concerning their participation in any drug or alcohol rehabilitation program, will be treated confidentially.

Managers and supervisors should restrict communications concerning possible violations of this Policy to persons who have an important work-related reason to know. In addition, managers and supervisors should not disclose the fact of an employee's participation in any drug or alcohol counseling or rehabilitation program. Although the City does not allow marijuana use or possession in the workplace, any manager receiving information that an employee has a medical marijuana card or prescription must treat such information with the same level of confidentiality of medical information received.

Under the federal and state Drug-free Workplace Acts, if an employee is performing work on a project funded in whole or in part by a state or federal grant, a report may be required to state or federal funding agencies upon a finding that an employee violated these policies. In addition, criminal conduct may be reported to law enforcement.

XII. COUNSELING

Employees who suspect they may have alcohol or drug problems, even in the early stages, are encouraged to voluntarily seek diagnosis and to follow through with the treatment as prescribed by qualified professionals. Employees who voluntarily disclose that they wish to enter and participate in an alcohol or drug rehabilitation program are encouraged to contact Human Resources, who will hold an interactive meeting with the employee to determine the reasonable accommodation(s) of the efforts to seek treatment, including possibly providing unpaid leave for the time necessary to complete participation in the program.

Employees who voluntarily self-identify as having a drug or alcohol problem for which they seek treatment will not be discharged for such disclosure provided the self-identification is not made (1) to avoid testing, or (2) after being selected for reasonable suspicion, random or post-accident testing, or (3) after refusing a test, and provided the self-identification is made prior to performing any safety sensitive functions (reporting for duty for a safety sensitive function). Such employee will be referred to a SAP and evaluation, education and/or treatment to establish control over the drug or alcohol problem. Any safety-sensitive employee who self-reports will be removed from safety-sensitive functions until successful completion of a rehabilitation program. Prior to resuming any safety-sensitive functions, the employee must undergo a DOT return-to-duty drug test with a verified negative result and/or return-to-duty alcohol test with a result indicating an alcohol concentration of less than 0.02.

XIII. PROCEDURES

- A. A Medical Review Officer (MRO), a licensed physician, will be responsible for receiving and reviewing laboratory results generated by an employer's drug testing program and evaluating medical explanations for certain drug results. A MRO may have a designee who is a licensed physician.
- B. Employees will be asked to submit to testing and sign a consent to test immediately upon arrival at the site. If an insufficient sample is provided when requested, employees will be allotted up to forty ounces of water within three hours (or a timeframe consistent with current Federal Guidelines) to provide a sample.
- C. A MRO or MRO designee must verify all drug test results. Employees will be afforded the opportunity to discuss all prescription and non-prescription drugs they have used with the MRO or designee. Marijuana will not be recognized as a prescription drug. The use of the information on prescription and non-prescription information by the MRO will be limited to verification of the employee's drug test results;
- D. A positive drug test is a result reported by a Department of Health and Human Services-certified laboratory when a specimen contains a drug or drug metabolite equal to or greater than the cutoff concentrations and confirmed positive by the MRO or a Refusal to Test.
- E. An employee whose drug test results are positive may, within 30 days, submit a written request for a retest of the split sample. The retest will be conducted at another National Institute on Drug Abuse Certified Laboratory approved by the City's Health Officer. The retest will be conducted at the employee's expense. If the results of the retest are not consistent with the original, the process shall be considered inconclusive and shall not be used as the basis for subsequent action.
- F. If an employee produces a negative dilute specimen, he/she must undergo a second test. A second negative-dilute specimen (with a creatinine concentration

greater than or equal to 2 mg/dL, but less than or equal to 5 mg/dL) will be considered a refusal to test.

- G. All employees shall receive a copy of the City's Drug-Free Workplace Policy and Conditions of Employment form; employees must sign a statement that they have received and read the policy.
- H. For any aspect of the testing procedures of the testing laboratory or receipt and review procedures of the MRO, not set forth herein, the Federal Department of Transportation guidelines will be followed.
- I. In the event of a verified positive test result or a verified adulterated or substituted result, the employee may request that a split specimen be tested at a second laboratory.

XIV. INFORMATION DISCLOSURE

- A. Drug/alcohol testing records shall be maintained by the Morro Bay Drug and Alcohol Program Manager, and, except as provided below or by law, the results of any drug/alcohol test shall not be disclosed without express written consent of the tested employee.
- B. The employee, upon written request, is entitled to obtain copies of any records pertaining to their use of prohibited drugs or misuse of alcohol including any drug or alcohol testing records. Covered employees have the right to gain access to any pertinent records such as equipment calibration records, and records of laboratory certifications. Employees may not have access to SAP follow-up testing plans.
- C. Records of a verified positive drug/alcohol test result shall be released to the Drug and Alcohol Program Manager, and other transit system management personnel on a need to know basis.
- D. Records will be released to a subsequent employer only upon receipt of a written request from the employee, or as required by law.
- E. Records of an employee's drug/alcohol tests shall be released to the adjudicator in a grievance, lawsuit, or other proceeding initiated by or on behalf of the tested individual arising from the results of the drug/alcohol test. The records will be released to the decision maker in the proceeding.
- F. Records will be released to the National Transportation Safety Board during an accident investigation.
- G. Information will be released in a criminal or civil action resulting from an employee's performance of safety-sensitive duties, in which a court of competent jurisdiction determines that the drug or alcohol test information is relevant to the case and issues an order to the employer to release the information.

- H. Records will be released to the DOT or any DOT agency with regulatory authority over the employer or any of its employees.
- I. Records will be released if requested by a Federal, state or local safety agency with regulatory authority over any department of Morro Bay or the employee.
- J. If a party seeks a court order to release a specimen or **part** of a specimen contrary to any provision of Part 40 as amended, necessary legal steps to contest the issuance of the order will be taken.
- K. In cases of a contractor or sub-recipient of a state department of transportation, records will be released when requested by such agencies that must certify compliance with the regulation to the Federal Transit Administration.

REFERENCES

California Code Of Regulations (CCR), Title 13

California Government Code Section 8350, "Drug-Free Workplace Act of 1988"

Code of Federal Regulations (CFR), Title 49 Parts 40, 382, and 391

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AGENDA NO: C-2

MEETING DATE: March 14, 2017

Staff Report

TO: Honorable Mayor and Council Members **DATE:** March 8, 2017

FROM: Craig Schmollinger, Finance Director

SUBJECT: Council Guidance for Fiscal Year 2017-18 Budget Compilation

RECOMMENDATION

Staff recommends Council provide direction in developing the Fiscal Year 2017-18 Budget, given the fiscal constraints identified during the February 28th 10-year budget forecast special meeting.

DISCUSSION

On February 28, 2017, staff and Bob Leland, from Management Partners Inc., presented an updated 10-year financial forecast for the City based on current updated information. This presentation was an update from the February 2016 10-year forecast, and several key changes took place that significantly affect the projected financial health of the City.

While the primary purpose of this Council action item is to get Council guidance specifically directed at the development of the FY18 budget which staff must begin to prepare in mid-March, a brief summary of the broader 10-year budget forecast and its implications for the city is appropriate.

The primary challenge identified in the 10-year forecast is precipitously increasing CALPERS contributions (the California Public Employee Retirement System). Also affecting the forecast in the near term is a projected recession beginning in 2019.

The February 2017 forecast demonstrates that the City will not have adequate available General Fund revenues to meet some important community objectives in the years ahead. Chief among these is street work, a top Council and community goal. The city requires \$2M of spending on streets, and only ~\$500-\$600K of revenue is currently allocated to streets. A further need that is not funded in the years ahead is replacement of aging facilities such as park bathrooms or needs further in the future like replacement of the Harbor Office or the Police Station. Additionally, there is no funding available for new capital projects such as intersection improvements at 41 and Main Street.

While working through the 2017 forecast model, several revenue enhancing scenarios were modeled to better understand how the City might make funds available for the needs noted above. It became clear, after exploring potential sales and property tax revenue enhancing economic development scenarios, that these two revenue streams are very unlikely to fix the shortfall in discretionary funding needed to “fill the gap”. Transient Occupancy Tax, however, indicated the greatest potential for identifying such shortfalls (TOT – tax included on hotel/motel/vacation home rentals based on 10% of total “rent” paid per night for stays of less than 30 days). Even if the City is able to increase TOT through new or revitalized hotels (e.g. new rooms added to existing stock, and more expensive per night costs yielding more TOT), this process will take at least several years before associated revenues begin being produced. Therefore, the City should begin taking action now to stabilize our out-year budgets.

Prepared By: <u>CS</u>	Dept Review: <u>CS</u>
City Manager Review: <u>DWB</u>	City Attorney Review: _____

The February 2017 agenda item stated the following:

“This 10-year forecast will show two things. First, that we do not have the resources, to do many of the things that our community would like the City to do. Second, that in the few years ahead, we will have some hard choices to make by either; a. cutting some existing services, or b. improving our fiscal condition (through a managed level of revitalization, control of costs and perhaps certain tax increases) that will allow us to provide the basic service improvements noted above.”

Given the noted areas of concern in addressing immediate revenue shortfalls from economic development activities, coupled with the decision to wait until at least the November 2018 Election to consider an increased tax measure, the logical method for addressing these financial concerns in the near term is to cut costs. Based on the February 2017 10-year forecast model results, staff has identified sustained budget cuts of \$650K are needed in the General Fund simply to ensure financial solvency into the future. This is an important note, as the \$650K in cuts will not fill the mentioned gap in annual available funding for the services noted above (see Attachment 1 for some options for the budget cuts, along with the General Fund Emergency Reserve impacts from such scenarios).

Staff is seeking direction on how to address these needed budget cuts, and is asking for either confirmation or direction on how to proceed with the Fiscal Year 2017/18 budget that begins July 1, 2017. Clarity is sought on the following items:

1. Confirm sustained budget cut amount(s) are needed to address the financial concerns identified in the recent 10-year budget forecast.
 - a. Recommendation: confirm \$650K in sustained General Fund budget cuts are needed
 - b. Alternative: confirm that an alternate amount of budget cuts is needed, or that no cuts are needed
2. Timeline for implementing the budget cuts.
 - a. Recommendation: Implement cuts on a three-year basis, as follows;
 - i. FY2017/18: \$250K in cuts
 - ii. FY2018/19: \$200K in cuts
 - iii. FY2019/20: \$200K in cuts
 - b. Alternative: confirm an alternate cut schedule, such as a one year \$650K cut, five year incremental cuts, or a different schedule (including no cuts)
3. Areas staff should recommend such cuts.
 - a. Recommendation: Cut \$150K in Projection Accumulation and \$100K in Capital Replacement set asides for FY 2017/18 (Year 1), and direct staff to explore proposals for addressing year 2 and 3 cuts of \$200K each
 - b. Alternative: Cut specific programs, across the board reductions, or other cut methodologies

Following Council direction, staff will begin to prepare the recommend FY 2017/18 budget for future consideration.

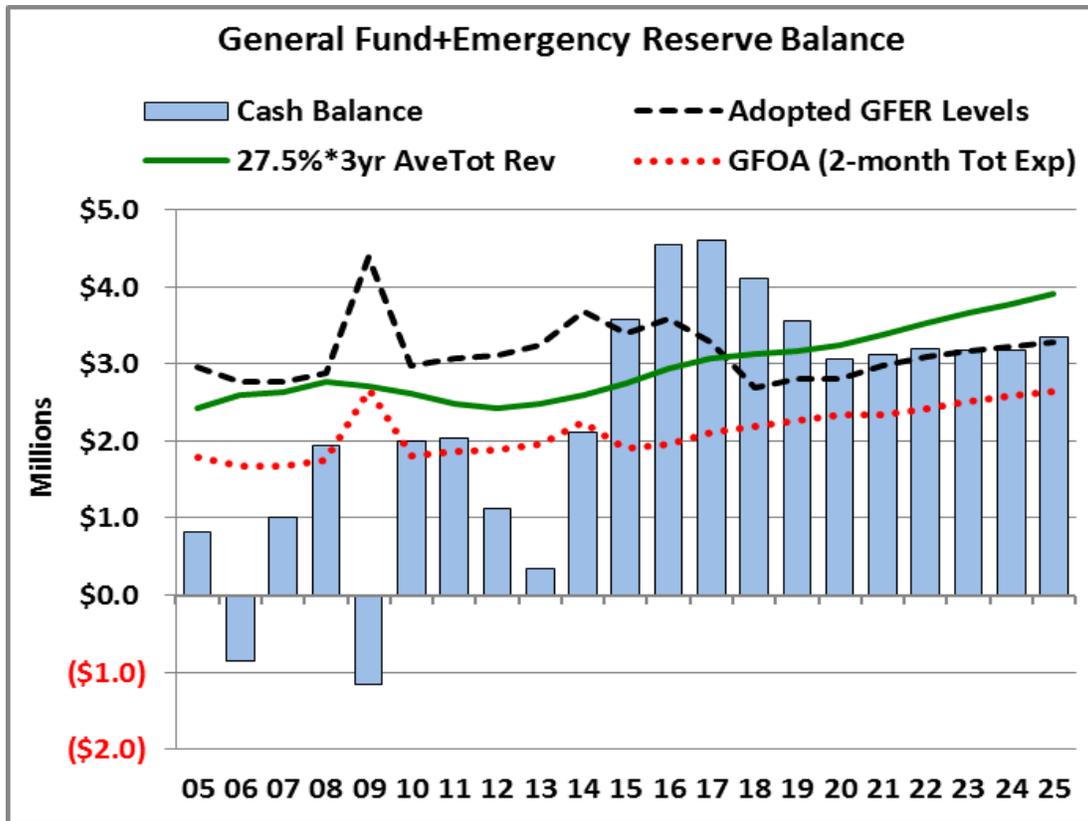
ATTACHMENT:

1. Potential Cost Cutting Scenarios with General Fund Emergency Reserve Impacts

Potential Cost Cutting Scenarios with General Fund Emergency Reserve (GFER) Impacts

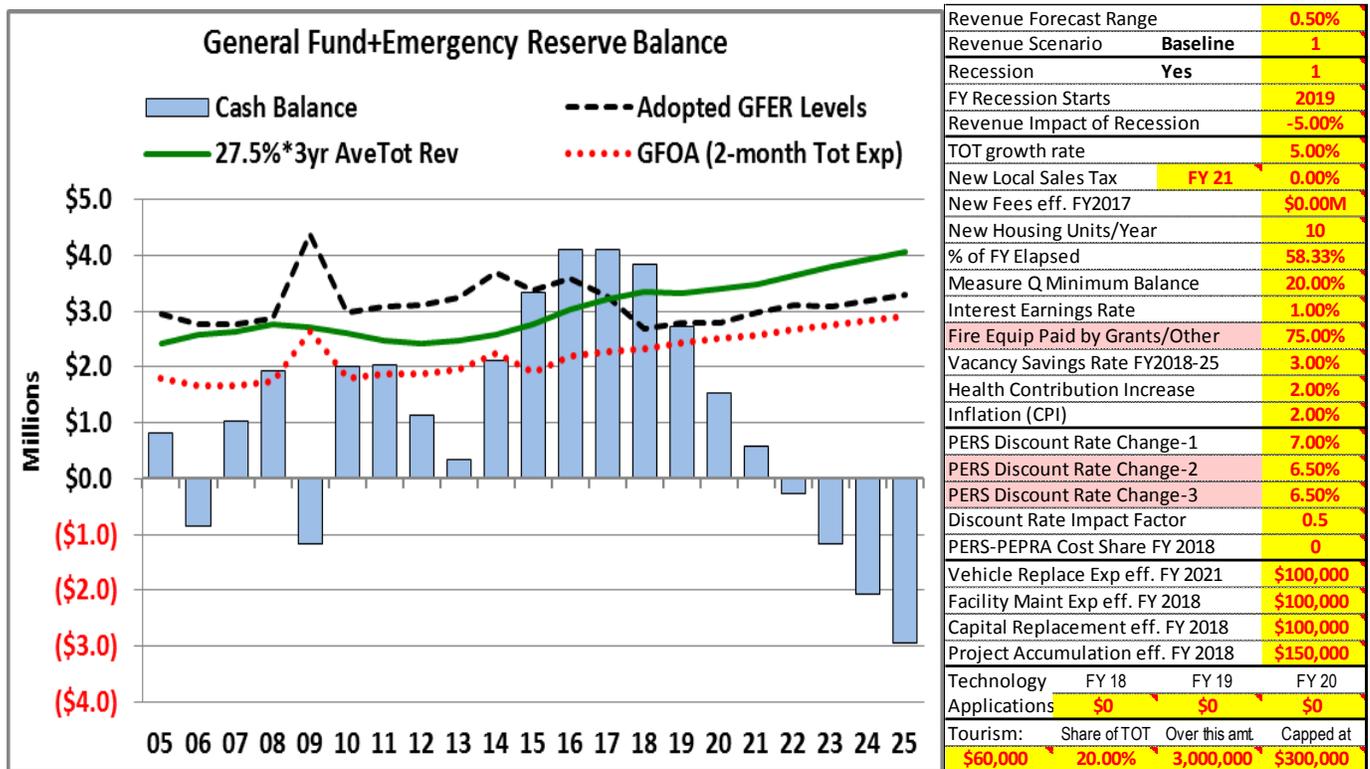
As noted in the staff report for Agenda Item C-2, this attachment is intended to provide a snapshot of some options for making the recommended sustained General Fund expenditure cuts over the short term (3-5 year) to ensure the financial health of the City in the “out years”. Also included are some alternative scenarios presented for discussion and direction purposes, along with February 2016 vs 2017 10-year forecast of GFER levels and CalPERS increases cost breakdowns.

Figure 1: February 2016 GFER 10-year forecast



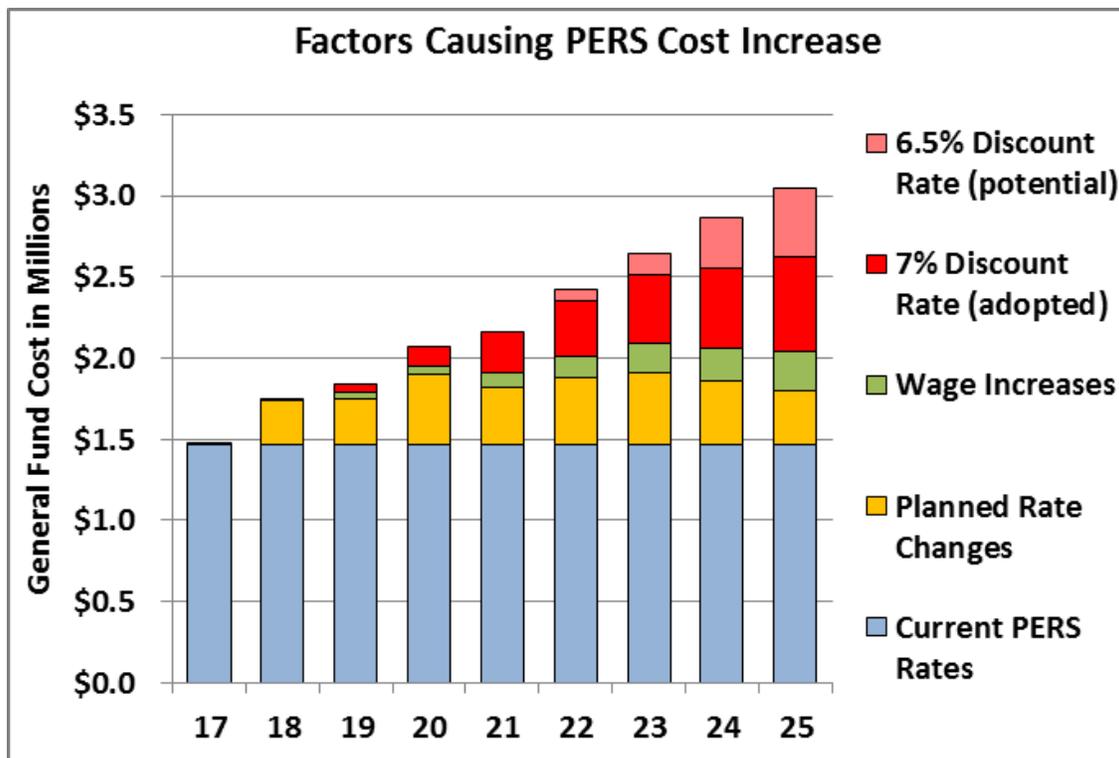
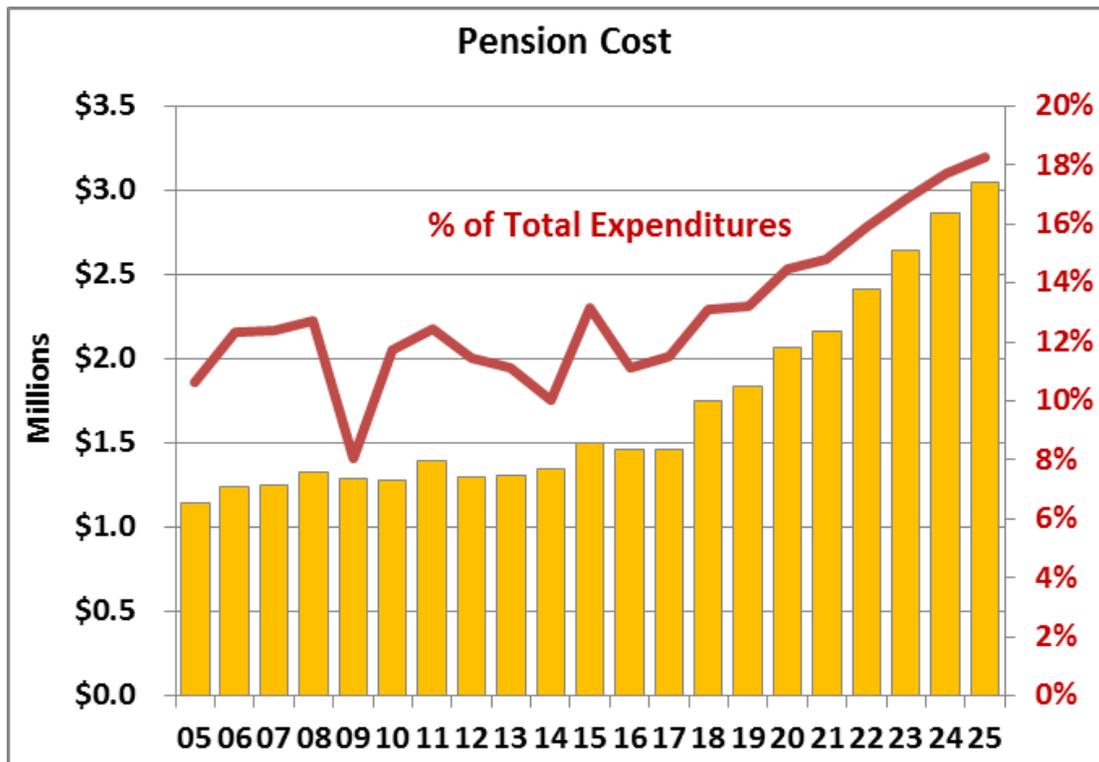
Above is the 10-year forecast presented in February 2016. As indicated, the GFER had a planned use of fund balance (dipping into reserves strategically) during FY’s 18,19 and 20 to sustain a planned CalPERS contribution increase (see Figure 4); however, from FY21 forward the GFER grew at a steady level and never fell below the Council Adopted GFER levels.

Figure 2: February 2017 GFER 10-year forecast without action (including assumptions)



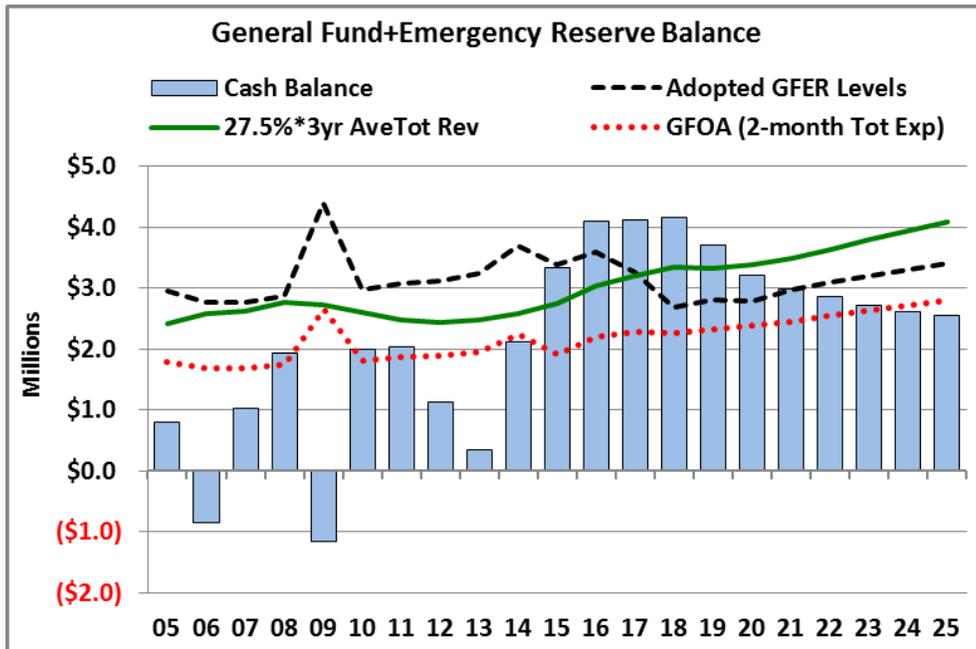
Contrary to Figure 1, Figure 2 above shows how updated information on both revenues and expenditures impact the forecasted GFER levels. The main contributor that drives the GFER projections downward relate to an increase in CalPERS contributions from the “discount rate” reductions made by CalPERS. The discount rate ties to the investment returns assumed by CalPERS, and with a reduction from 7.5% to 7.0% in the discount rate, the City can assume much larger CalPERS pension payments. Based on this forecast, if nothing is done as a course correction, the City can assume needed to obtain outside funding (i.e. loan or bond proceeds) simply to maintain baseline operations beginning in FY21 (where the blue GFER bar dips below the “\$0.0” black line).

Figure 3 & 4: CalPERS Discount Rate Reduction Impacts



Figures 3 & 4 above show the increase in CalPERS costs, including the discount rate changes.

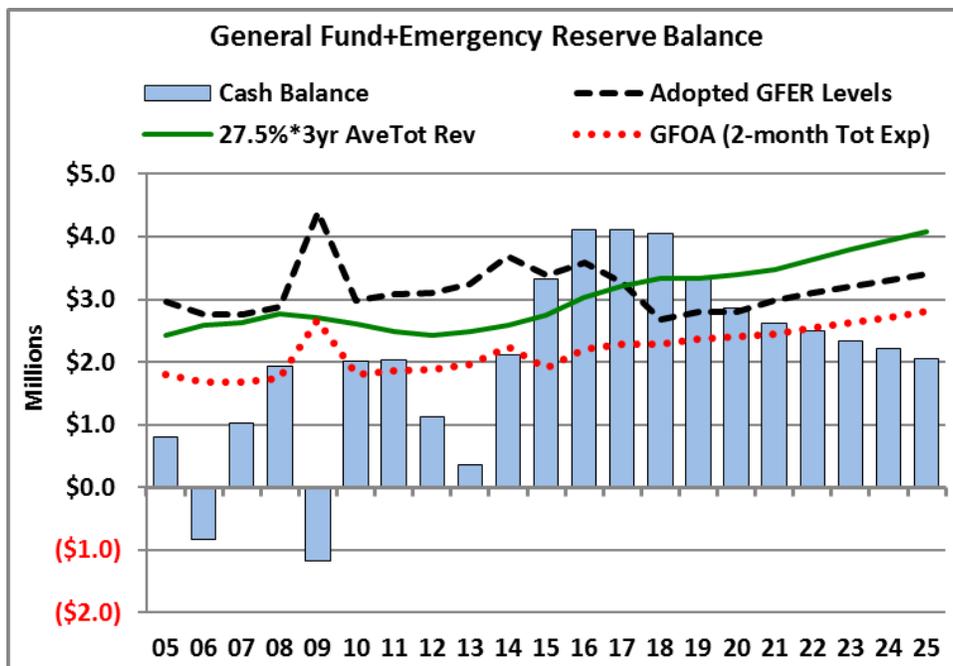
Figure 5: GFER impact of \$650K in one-year cuts



As noted in the staff report, staff has identified \$650K in sustained General Fund cuts over the short term (3-5 years) needed simply to ensure the financial health of the City (not increased spending). Figure 5 above represents how \$650K in cuts in one year (i.e. all in FY 2017/18) impacts the projected GFER.

It should be noted that staff is recommending taking a “smoothed” three-year approach towards the \$650K in cuts, as identified below.

Figure 6: GFER impact of \$650K in cuts over a three-year period



Agenda Item C-2 Attachment 1 - 3/14/2017 City Council Meeting

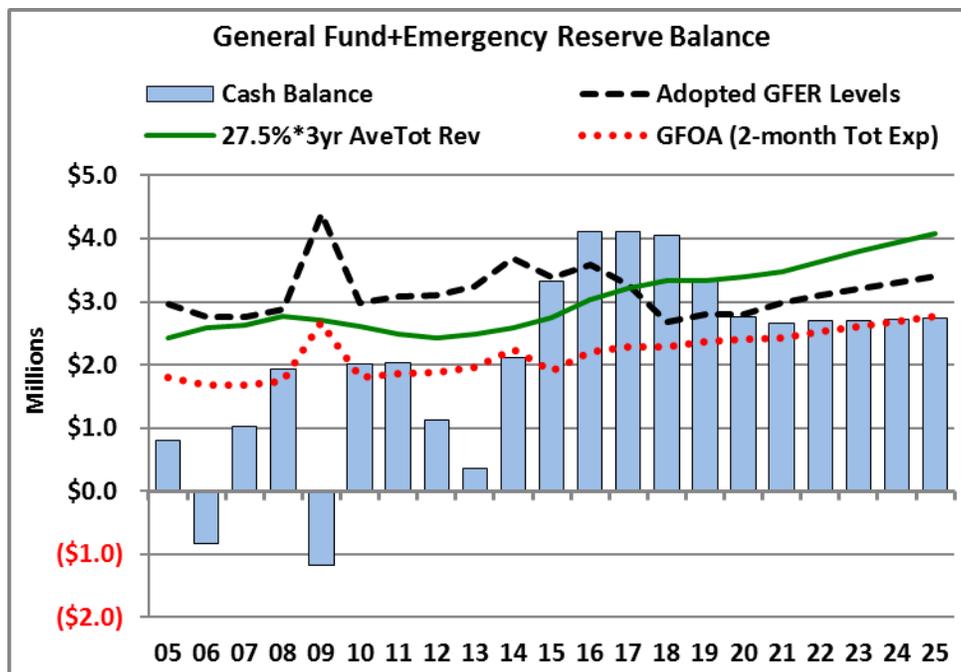
Staff is recommending Council give direction to make the required \$650K in sustained cuts over a three-year period, with GFER impacts noted above with Figure 6. There are numerous ways to approach such cuts, with the recommended approach as follows:

- a. Year 1 (FY2017/18): \$250K total - \$150K in project accumulation and \$100K in Capital replacement set asides.
- b. Years 2 and 3 (FY2018/19 and FY 2019/20): Direct staff to identify options for \$200K in sustained cuts each year, for Council direction prior to compiling the recommended budgets for the respective years.

As shown, even with \$650K in sustained cuts over a three-year period, the GFER does not level out in the “out years”. Rather, the GFER declines for the duration of the forecast period. Further “out year” cuts would likely be needed, but there would be time for course corrections to stabilize the GFER level through systematic cuts or potential revenue enhancements.

Alternatives could include total cuts at variable timelines (e.g. one or five years), various total amounts (e.g. \$400K or \$800K), and cuts to different sources (e.g. programmatic cuts, position elimination). For example, a more aggressive total sustained cut of \$800K, spread over a four-year period at \$200K per year, is shown through the GFER impact in Figure 7 below.

Figure 7: GFER impact of \$800K in cuts over a four-year period.



For the Figure 7 scenario of \$800K in sustained cuts over a four-year period (\$200K per year), cutting best practice set asides, such as the project accumulation and capital reserve set asides, will not be enough to reach these cut totals meaning programmatic and position cuts will likely be necessary to get to this level (set asides total \$450K annually as noted on the “assumption” chart to the right of Figure 2). Areas that would likely be presented for inclusion in such supplemental cuts, could include the Council authorized contribution to Tourism (\$60K minimum annually, with an additional 20% share of TOT revenue capped at \$300K annually), cutting out \$100K by closing the Teen center, cutting 3 general fund positions at \$125K each, or reducing/eliminating Cost of Living Adjustment wage increases for employees.

The examples denoted above are not intended to be exhaustive; rather some broad strategies towards reaching financial sustainability given the lack of new projected “near term” revenue streams.

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