

LIVERMORE-PLEASANTON FIRE DEPARTMENT
JOINT POWERS AUTHORITY

ALAMEDA COUNTY, CALIFORNIA

RESOLUTION NO. LPFD 97-01

**RESOLUTION ADOPTING CERTAIN PERSONNEL
ACTIONS FOR THE LIVERMORE-PLEASANTON
FIRE DEPARTMENT JOINT POWERS AUTHORITY**

WHEREAS, the cities of Livermore and Pleasanton formed a Joint Powers Authority to operate fire services; and

WHEREAS, the Joint Powers Authority Agreement delegated certain personnel duties to the Authority Board; and

WHEREAS, the delegated personnel functions include adopting an Employer-Employee Relations Policy, Personnel Rules, Management Compensation Plan, and designation of a Municipal Employee Relations Officer.

NOW, THEREFORE, THE LIVERMORE-PLEASANTON FIRE DEPARTMENT JOINT POWERS AUTHORITY BOARD RESOLVES AS FOLLOWS:

Section 1: The Board hereby adopts the following items to provide personnel administration functions for the JPA's fire department:

- A. Employer-Employee Relations Policy, attached as Exhibit 1; and
- B. Personnel Rules, attached as Exhibit 2.

Section 2: The Board hereby designates the City of Pleasanton Personnel Director as the JPA's Municipal Employee Relations Officer.


Section 3: This resolution shall become effective immediately upon its passage and adoption.

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I HEREBY CERTIFY THAT THE FOREGOING WAS DULY AND
REGULARLY ADOPTED BY THE LIVERMORE-PLEASANTON FIRE
DEPARTMENT JOINT POWERS AUTHORITY BOARD, AT A MEETING HELD ON
NOVEMBER 21, 1997 BY THE FOLLOWING VOTE:

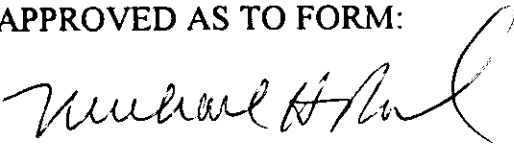
AYES: Boardmembers - Ayala, Brown, Weiskamp, and Chair Tarver
NOES: None
ABSENT: None
ABSTAIN: None

ATTEST:



Peggy L. Ezidro, Secretary of the Board

APPROVED AS TO FORM:



Michael H. Roush, Board Counsel

LIVERMORE-PLEASANTON FIRE DEPARTMENT
COUNTY OF ALAMEDA, STATE OF CALIFORNIA

EMPLOYER-EMPLOYEE RELATIONS PROCEDURES

ARTICLE I -- GENERAL PROVISIONS

Section 1. Title of Resolution.

This Resolution shall be known as the Employer-Employee Relations Resolution of the Livermore-Pleasanton Fire Department Joint Powers Authorization (JPA).

Section 2. Statement of Purpose.

The purpose of this Resolution is to implement Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.) captioned "Local Public Employee Organizations", by providing orderly procedures for the administration of employer-employee relations between the JPA and its employee organizations. It is the purpose of this Resolution to promote full communication between the JPA and its employees by providing procedures for meeting and conferring in good faith with Exclusively Recognized Employee Organizations regarding wages, hours, and other terms and conditions of employment, and to promote the improvement of personnel management and employer-employee relations by providing a uniform basis for recognizing the right of public employees to join organizations of their own choice and be represented by such organizations in their employment relationships with the JPA. However, nothing contained herein shall be deemed to supersede the provisions of State law, City ordinances, resolutions, rules, policies and procedures, or other provisions which establish and regulate the merit system, or which provide for other methods of administering employer-employee relations. This Resolution is intended, instead, to strengthen merit, civil service, and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations, and the JPA.

Section 3. Definitions.

As used in this Resolution, the following terms shall have the meanings indicated:

- a. "Appropriate Unit" means a unit of employee classes or positions established for representation purposes pursuant to Article II hereof.
- b. "Certification" means formal recognition by the City that an employee organization is the "Exclusively Recognized" bargaining representative of an appropriate bargaining unit.

c. "JPA" means the Livermore-Pleasanton Fire Department Joint Powers Authority and where appropriate herein. "JPA" refers to the Authority Board, the governing body of said JPA, or any duly authorized management employee as herein defined.

d. "Confidential Employee" means an employee who, in the course of his or her duties, has access to information, or is privy to decisions of JPA management relating to the JPA's administration of employer-employee relations.

e. "Consult/Consultation in Good Faith" means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counter-proposals with an Exclusively Recognized Employee Organization in an endeavor to reach agreement, nor is it subject to Article IV hereto.

f. "Day" means a calendar day unless expressly stated otherwise.

g. "Decertification" means the process whereby the JPA formally withdraws the exclusively recognized status of an employee organization after a vote of the employees in the bargaining unit that the organization has represented and as further specified in this Resolution.

h. "Employee" means a person occupying a full or part time position in JPA service and excludes persons elected by popular vote or appointed to serve on boards and commissions by the JPA.

i. "Employee, Management" means any employee having responsibility for formulating, administering, or managing the implementation of JPA policies and programs.

j. "Employee Organization" means any organization which includes employees of the JPA and which has as one of its primary purposes representing those employees in their employment relations with the JPA.

k. "Employee, Professional" means any employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to, attorneys, engineers, and architects.

l. "Employee, Supervisor" means any employee having authority, in the interest of the JPA, to do any of the following: hire, transfer, suspend, lay off, recall, promote, evaluate, discharge, assign, direct, reward, or discipline other employees, or adjust their grievances, or to effectively 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.

m. "Employer-Employee Relations" means the relationship between the JPA and its employees and their employee organization, or when used in a general sense, the relationship between JPA management and employees or employee organizations.

n. "Exclusively Recognized Employee Organization" means an organization which has been formally certified by the JPA, after a representation election, as the sole employee organization representing the employees in an appropriate representation unit pursuant to Article II of this Resolution. Exclusively Recognized Employee Organizations have the exclusive right to meet and confer in good faith with JPA representatives concerning statutorily required subjects pertaining to the unit they represent.

o. "Impasse" means when representatives of either the JPA or representatives of an Exclusively Recognized Employee Organization declare that they have reached a point in their meeting and conferring in good faith where their differences remain so substantial, or have been so prolonged, that future meeting and conferring would be futile.

p. "Mediation" means the efforts of an impartial third person, or persons, functioning as intermediaries, to (1) assist the parties in reaching a voluntary resolution to an impasse, through interpretation, suggestion, and advice; or (2) hear disputes on unit determinations for the purpose of making a recommendation to the Joint Executive Directors.

q. "Meet and Confer in Good Faith" (sometimes referred to herein as "meet and confer" or "meeting and conferring") means the mutual obligation of the designated representative of the JPA and the representatives of an Exclusively Recognized Employee Organization, personally to meet and confer promptly upon request by either party and continue for a reasonable period of time in order to exchange freely information, opinions, and proposals, and to endeavor to reach agreement on matters within the scope of representation. The JPA has no duty to meet and confer with employee organizations that do not have exclusively recognized status.

r. "Municipal Employee Relations Officer" means the JPA's principal representative in all matters of employer-employee relations designated pursuant to Section 26, or his or her duly authorized representative.

s. "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee; (2) a verified authorization petition or petitions recently signed and personally dated by one or more employees; or (3) employee dues deduction authorization in current effect. In the event that an employee has signed authorizations for more than one employee organization, only the most recently signed authorization shall be considered as proof of support. The words "recently signed" shall mean within one hundred eighty (180) days prior to the filing of a petition.

t. "Resolution" means, unless the context indicates otherwise, the Employer-Employee Relations Resolution of the JPA.

u. "Scope of Representation" means all matters relating to employment conditions and employer-employee relations except those excluded as JPA Rights set forth in Section 5.

ARTICLE II -- REPRESENTATION PROCEEDINGS

Section 4. Employee Rights.

Subject to the requirements of the law, JPA employees shall:

a. Have the right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations, including but not limited to wages, hours, and other terms and conditions of employment;

b. Have the right to refuse to join or participate in the activities of employee organizations;

c. Have the right to represent themselves individually in their employment relations with the JPA except that an individual JPA employee's right to self-representation does not confer the right to meet and confer with the JPA representatives regarding the terms and conditions of employment; and

d. Have the right to be free from intimidation, restraint, coercion, interference, discrimination, or reprisal because of their exercise of any of the rights herein enumerated or granted by law.

Section 5. JPA Rights.

Subject to the requirements of the Government Code, the JPA retains its rights:

a. To determine the mission of each of its constituent departments, commissions, and boards.

b. To set levels and standards of service;

c. To establish levels of staffing required to deliver services;

d. To determine the procedures and standards of selection for employment and promotion;

e. To direct its employees, take disciplinary action, determine the content of job classifications and specifications, relieve its employees of duty because of lack of work or for other legitimate reasons, and to contract out JPA services;

f. To maintain the efficiency of governmental operations, determine the methods, means, and personnel by which JPA operations are to be conducted and/or JPA services provided; and

g. To take all necessary actions to carry out its mission in emergencies and to exercise complete control and discretion over its organization and the technology of performing its work. However, the exercise of such JPA rights shall not conflict with the express provisions of a written Memorandum of Understanding between the JPA and an Exclusively Recognized Employee Organization.

Section 6. Meet and Confer in Good Faith -- Scope of Representation.

a. The JPA, through its representatives, shall meet and confer in good faith with representatives of Exclusively Recognized Employee Organizations. The scope of representation shall include all matters relating to employment conditions and employer-employee relations regarding 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.

b. Notwithstanding any provision of this Resolution to the contrary, the JPA shall not be required to meet and confer on any subject preempted by Federal, State, or local law, nor shall it be required to meet and confer in good faith on Employee or JPA Rights as defined in Sections 4 and 5. Proposed amendments to this Resolution are excluded from the scope of meeting and conferring.

Section 7. Scope of Consultation.

All matters affecting employer-employee relations, including those that are not subject to meeting and conferring, are subject to consultation. Upon request, the JPA, through its representatives, shall consult in good faith with representatives of all Exclusively Recognized Employee Organizations on employer-employee relations matters which affect them. Advance notice on matters subject to consultation, but outside the scope of representation, is desirable, but not mandatory.

Section 8. Advance Notice.

a. Except in cases of emergency, reasonable advance written notice shall be given to each Exclusively Recognized Employee Organization whose members may be affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the JPA Board, and each shall be given the opportunity to meet with the JPA prior to adoption.

b. In cases of emergency when the JPA determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with an Exclusively Recognized Employee Organization, the JPA shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation.

Section 9. Filing of Recognition Petition by Employee Organization.

Exclusive Formal Recognition -- the Right to Meet and Confer in Good Faith as Majority Representative: An employee organization that seeks recognition as the Exclusively Recognized Employee Organization for purposes of meeting and conferring in good faith as the majority representative of employees in an appropriate unit shall file a petition with the Municipal Employee Relations Officer containing the following information and documentation:

1. Name and address of the employee organization.
2. Names and titles of its officers.
3. Names of employee organization representatives who are authorized to speak on behalf of the organization.
4. A statement that one of the primary purposes of the employee organization is to represent employees in their employment with the JPA.
5. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national, or international organization, and, if so, the name and address of each such regional, state, or international organization.
6. Certified copies of the employee organization's constitution and by-laws, or, if none exist, of any writing adopted by the organization setting forth its internal rules, regulations, or procedures.
7. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
8. A statement that the employee organization has no restriction on membership based on race, color, creed, sex, national origin, age, sexual orientation, or physical or mental disability.
9. The job classifications or titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.

10. A statement that the employee organization has in its possession written proof, dated within six months of the date upon which the petition is filed, of employee support as herein defined 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 JPA. Such written proof shall be submitted for confirmation to the Municipal Employee Relations Officer or to a mutually agreed-upon disinterested third party.

11. A request that the Municipal Employee Relations Officer formally acknowledge the employee organization as the "Exclusively Recognized Employee Organization" for the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith on all matters within the scope of representation.

12. The petition, including all accompanying documents, shall be verified, under oath, by the Executive Officer and Secretary of the organization that the statements are true. All changes in such information shall be filed forthwith in like manner.

13. No employee may be represented by more than one Exclusively Recognized Employee Organization for the purposes of this Resolution.

Section 10. JPA Response to Recognition Petition.

Upon receipt of the Petition, the Municipal Employee Relations Officer shall determine whether:

- a. There has been compliance with the requirements of the Recognition Petition, and
- b. The proposed representation unit is an appropriate unit in accordance with Section 14 of this Article II.

If an affirmative determination is made by the Municipal Employee Relations Officer on the foregoing two matters, he/she shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit, and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Municipal Employee Relations Officer shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefor in writing. The petitioning employee organization may appeal such determination in accordance with Section 18 of this Resolution.

Section 11. Open Period for Filing Intervening Petition.

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 percent (30%) and otherwise in the same form and manner as set forth in Section 9 of this Article II. If such intervening petition seeks establishment of an overlapping unit, the Municipal Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Municipal Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 14 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Municipal Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 18 of this Article II.

Section 12. Election Procedure.

When an employee organization in the unit found to be appropriate submits written proof that it represents at least thirty percent (30%) of the employees in such unit, the Municipal Employee Relations Officer shall arrange for a secret ballot election to be conducted by the City Clerk (or such other method normally used by the JPA to conduct an election), the California State Conciliation Service, the American Arbitrator Association, or some agreed-upon third party. All employee organizations who have duly submitted petitions which have been determined to be in conformance with this Article II shall be included on the ballot. The ballot shall also reserve to employees the choice of selecting no employee organization to represent them in their employment relations with the JPA. 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 JPA 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:

a. that employee organization has received the vote of a numerical majority of all the employees eligible to vote in the unit in which the election is held (i.e., fifty percent (50%) plus 1 of the votes of all eligible employees); or

b. at least 60% of the total number of employees in the unit eligible to vote have voted in the election or run-off election, and an employee organization receives a numerical majority of all votes cast in the election (i.e., fifty percent (50%) of the votes cast plus 1).

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 shall be applicable to a run-off election.

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

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

Section 13. Procedure of Decertification of Recognized Employee Organization.

A Petition for Decertification alleging that an employee organization granted formal recognition is no longer the exclusive representative of the employees in an appropriate unit may be filed with the Municipal Employee Relations Officer only during the period between one hundred eighty (180) and one hundred twenty (120) days prior to the expiration date of a Memorandum of Understanding covering the classifications of the employees in the Unit. In addition, a decertification petition may be filed when there is no current Memorandum of Understanding in place except that no decertification petition may be filed while representatives of an Exclusively Recognized Employee Organization and the JPA are involved in impasse procedures in an effort to reach agreement over the terms and conditions of a Memorandum of Understanding.

The Petition for Decertification may be filed by an employee, a group of employees or their representative, or an employee organization. The Petition, including all accompanying documents, shall be verified, under oath, by the person signing it, that its contents are true. It may be accompanied by a Petition for Recognition by a challenging organization. The Petition for Decertification shall contain the following information:

- a. The name, address, and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- b. The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as the representative of that unit.
- c. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
- d. Written proof of employee support that at least thirty percent (30%) 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 dated within six (6) months of the date upon which the petition is filed and shall be submitted for confirmation to the Municipal Employee Relations Officer 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 percent (30%) and otherwise conforms to the requirements of Section 9 of this Article.

The Municipal Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If his/her determination is in the negative, he/she shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefor in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 18 of this Article II. If the determination of the Municipal Employee Relations Officer is in the affirmative, or if his/her negative determination is reversed on appeal, he/she shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.

In the event that the Decertification Petition complies with the request set forth herein, the Municipal Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 12 of this Article II.

During the "open period" specified in the first paragraph of this Section 13, the Employee Relations Officer may on his/her own motion, when he/she 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 that organization and all unit employees that he/she will arrange for an election to determine that issue. In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this Section 13, which the Municipal Employee Relations Officer shall act on in accordance with this Section 13.

If, pursuant to this Section 13, 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 14. Policy and Standards for Determination of Appropriate Units.

The Municipal Employee Relations Officer, after reviewing the petition filed by an employee organization seeking formal recognition as the Exclusively Recognized Employee Organization for a proposed unit shall determine whether the proposed unit is an appropriate unit. The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the JPA and its compatibility with the primary

responsibility of the JPA and its employees to effectively and economically serve the public; and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered shall be:

- a. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- b. The history of employee relations: (i) in the unit; (ii) among other employees of the JPA; and (iii) in similar public employment.
- c. Consistency with the organizational patterns of the JPA.
- d. 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.
- e. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.
- f. Unit determination, provided, 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.

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

In the establishment of appropriate units, professional employees shall not be denied the right to be represented separately from non-professional employees.

Notwithstanding the foregoing provisions of this section, managerial and confidential responsibilities, as defined in Section 3 of this Resolution, are determining factors in establishing appropriate units hereunder, and therefore such managerial and confidential employees may only be included in units that do not include non-managerial, non-supervisory, and non-confidential employees. Managerial, supervisory, and confidential employees may not represent any employee organization which represents other employees.

Section 15. Procedure for Modification of Established Appropriate Units.

Requests by employee organizations for modifications of established appropriate units may be considered by the Municipal Employee Relations Officer only during the period specified in Section 13 of this Article II. Such requests shall be submitted in the form of a

Recognition Petition, and, in addition to the requirements set forth in Section 9 of this Article, 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 14 hereof. The Municipal Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Municipal Employee Relations Officer may on his/her own motion propose during the period specified in Section 13 of this Article that an established unit be modified. The Municipal Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Municipal Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 14 of this Article II, and shall give written notice of such determination to the affected employee organizations. The Municipal Employee Relations Officer's determination may be appealed as provided in Section 18 of this Article.

Section 16. Newly Established Job Classifications. Representation Units.

Each newly established job classification shall be assigned to an appropriate representation unit by the Municipal Employee Relations Officer, after providing notice and opportunity to consult to Exclusively Recognized Employee Organizations, if he/she finds that there is an appropriate unit to which such job classification may be assigned.

Section 17. Designation of Confidential and Management Employees. Representation Units.

The Municipal Employee Relations Officer is authorized to designate, from time to time, confidential employees, and after providing notice and an opportunity to consult to Exclusively Recognized Employee Organizations, to designate from time to time management and supervisory employees, as defined in Section 3 of this Resolution, and may at any time revoke such designations. Upon such designation being made the Municipal Employee Relations Officer shall assign such employee to an appropriate representation unit. Upon revocation of such designation as a confidential, supervisory, or management employee, the Municipal Employee Relations Officer shall assign the affected employee to an appropriate representation unit.

Section 18. Appeals.

An employee organization aggrieved by a determination of appropriate unit, or appropriate unit assignment, may, within fifteen (15) days of notice of the Municipal Employee Relations Officer's determination, request in writing the services of the California State Mediation and Conciliation Service to mediate the dispute, issue a recommendation for resolving the dispute, and submit that recommendation to the Joint Executive Directors for a final decision. The Joint Executive Directors shall render a finding as soon as possible after receiving the recommendation.

An employee or employee organization aggrieved by a determination of the Municipal Employee Relations Officer that any Petition has not been filed in compliance with the applicable provisions of this Article, may, within fifteen (15) days of notice of such determination, appeal in writing to the Joint Executive Directors. The Joint Executive Directors will consider the written materials from the affected parties and the Municipal Employee Relations Officer. The Joint Executive Directors will render a written finding within thirty (30) days of receipt of the appeal. The Joint Executive Directors' decision regarding the appeal of the Municipal Employee Relations Officer will be final.

ARTICLE III -- ADMINISTRATION

Section 19. Submission of Current Information by Exclusively Recognized Employee Organizations.

All changes in the information filed with the JPA by an Exclusively Recognized Employee Organization under items (a) through (h) of its recognition petition under Section 9 of this Resolution shall be submitted in writing to the Municipal Employee Relations Officer within fourteen (14) days of such change.

Section 20. Employee Organization Activities -- Use of City Resources.

Access to JPA work locations and the use of JPA paid time, facilities, equipment, and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in 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 such internal employee organization business as soliciting membership, campaigning for office, and organization of meetings and elections, and shall not interfere with the efficiency, safety, and security of JPA operations.

Section 21. Administrative Rules and Procedures.

The Municipal Employee Relations Officer is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Resolution after affording notice and opportunity to consult to affected employee organizations.

ARTICLE IV -- IMPASSE PROCEDURES

Section 22. Initiation of Impasse Procedures.

If the meet and confer process has reached an impasse as defined in this Resolution, either party may initiate the impasse procedures by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the Municipal Employee Relations Officer. The purpose of such a meeting shall be:

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

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

Section 23. Impasse Procedures.

Impasse procedures are as follows:

a. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.

b. If the parties did not agree on mediation or having utilized mediation, the impasse has not been resolved, the Municipal Employee Relations Officer may submit the matter to the City Councils of both respective cities which must take action regarding the impasse as it, in its discretion, deems appropriate as in the public interest. Any action by the City Councils on the impasse shall be final and binding.

c. The fees and expenses, if any, of mediators or of any other impasse procedure, shall be payable one-half by the JPA and one-half by the employee organization or employee organizations.

ARTICLE V -- MISCELLANEOUS PROVISIONS

Section 24. Construction.

This Resolution shall be administered and construed as follows:

a. Nothing in this Resolution shall be construed to deny any person or employee the rights granted by Federal and State laws.

b. The rights, powers, and authority of the JPA Board in all matters, including the right to maintain any legal action, shall not be modified or restricted by this Resolution.

c. The provisions of this Resolution are not intended to conflict with the provisions of Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.).

d. This Resolution shall be interpreted so as to carry out its purposes as set forth in Article I.

Section 25. Severability.

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

Section 26. Designation of Municipal Employee Relations Officer.

The JPA Board shall designate, by Resolution, a Municipal Employee Relations Officer who shall be the JPA's principal representative in all matters of employer-employee relations, with authority to meet and confer in good faith on matters within the scope of representation including wages, hours, and other terms and conditions of employment.

The Municipal Employee Relations Officer so designated is authorized to delegate these duties and responsibilities upon written notice to the JPA Board.

Section 27. Memorandum of Understanding.

When the meeting and conferring process is concluded between the JPA and an Exclusively Recognized Employee Organization representing a majority of the employees in an appropriate unit, all agreed-upon matters shall be incorporated in a written Memorandum of Understanding signed by the duly authorized JPA and majority representatives.

As to those matters within the authority of the JPA Board, the Memorandum of Understanding shall be submitted to the JPA Board and respective City Councils for determination.

LIVERMORE - PLEASANTON FIRE DEPARTMENT
PERSONNEL RULES AND REGULATIONS

CHAPTER 1 - GENERAL

1.01 Purpose

The purpose of these rules is to facilitate effective and economical services to the public by providing for a comprehensive system of personnel management for the Livermore-Pleasanton Fire Department (the "Department") and its employees. These rules define the obligations, rights and privileges, benefits and prohibitions placed upon the Department and its employees.

1.02 Personnel policy

The personnel policy of the Department is as follows.

- a. The Department shall seek the best applicants for employment, and based on relative qualifications, provide equal opportunity for all persons who compete for employment.
- b. The Department will not discriminate in its employment practice in regard to race, color, ancestry, national origin, religious creed, sex, sexual orientation, age, physical or mental disability, marital status, or political opinion or affiliation, except if there exists a lawful bona fide occupational qualification. (See §15.06)
- c. The Department condemns and prohibits harassment of an individual because of that individual's sex, sexual orientation, race, color, age, religious creed, national origin, ancestry, marital status or physical or mental disability. (See chapter 15)
- d. The Department will not discriminate in its employment practices against a qualified individual with a disability who can perform the essential functions of the job with reasonable accommodations.
- e. The tenure of an employee covered by the rules is subject to proper behavior, satisfactory work performance, necessity for the work and the availability of funds.

- f. The Fire Chief may create regulations more specific to the Department's operation. None of the Department rules, regulations or directives shall conflict or supersede these rules, and in the event of a conflict, it shall be resolved in favor of these rules. The Personnel Director shall maintain a copy of the Department's rules and regulations.
- g. In accepting employment with the Department each employee agrees to be governed by and to comply with these rules, administrative rules and procedures established by the Fire Chief and Joint Executive Directors
- h. Each employee of the Department shall cooperate with Joint Executive Directors, the Fire Chief and the Personnel Director in order to fulfill the objectives of these rules.

1.03 Applicability

These rules apply to all Department employees represented by IAFF Local 1974 and all management employees. Chapters 11 (Attendance; Leave) and 12 (Employee training and education) apply only to regular, probationary and limited duration employees.

The rules do not apply to elected officers; positions on appointed boards, commissions and committees; persons under contract to supply expert, professional or technical service; or volunteer personnel who receive no regular compensation.

1.04 Conflict of rules

If there is a conflict between these rules and the terms of a then-current memorandum of understanding, the term of the memorandum of understanding prevails. If there is a conflict between these rules and a state or federal law, that law prevails. If there is a conflict between these rules and an administrative regulation, these rules prevail.

1.05 Amendments

The Board may amend these rules by resolution. The Joint Executive Directors and/or the Fire Chief may propose amendments to the Board for its consideration. Any employee or employee organization may suggest amendments in writing to the Fire Chief.

A copy of any proposed change shall be given to each recognized employee organization before submittal to the Board. A copy of the Board's agenda and agenda materials will be on file in the Fire Chief's office, and available during regular office hours for review.

Nothing in these rules shall be construed to require meeting and conferring in good faith concerning additions, deletions, or changes to these rules or their administration, if such is not required under applicable state or federal law.

1.06 Implementation by the Joint Executive Directors

The Joint Executive Directors shall appoint the Fire Chief and the Personnel Director.
The Fire Chief shall appoint all other positions in the Department.

1.07 Violation of the rules

Violation of the rules constitutes grounds for disciplinary action.

CHAPTER 2 - DEFINITIONS

In these rules, the following terms are defined as follows:

Administrative leave: leave with pay, granted by the Joint Executive Directors.

Advancement: a salary increase within the limits of a pay range established for a class.

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

Anniversary date: the dates from which service time, leave accrual and seniority are computed, usually measured either from the beginning (1) of service with the cities of Pleasanton or Livermore or the Joint Powers Authority or (2) of service in a particular position. The anniversary dates may differ for an employee depending upon the purpose for which the date is used. (See Review date.)

Appointing authority: the Fire Chief or the Joint Executive Directors who have the final authority to make the appointment to the position to be filled.

Appointment: the hiring of an individual as a Department employee. Types of appointments:

- (a) Regular: appointment in an authorized regular position, either full-time or part-time.
- (b) Temporary: appointment in a position which is not an authorized regular position or to a regular position for a limited period of time, either full-time or part-time. Temporary employment is limited to not more than 1000 hours in any fiscal year unless the Personnel Director grants a waiver. The Fire Chief may make a temporary appointment to an authorized regular position, but such an appointment may not exceed one year.
- (c) Limited duration: an appointment made to fill a need due to a special project, sick leave, vacation, extended absence or a vacant position, if the limited duration position is first authorized by the Fire Chief. If the Fire Chief authorizes the position, he or she shall also determine whether leave and insurance benefits will apply to that position. Such appointments are not used for suppression positions under constant staffing.
- (d) Special funded: appointment to a position funded 50% or more from a grant or other special funding sources. A person appointed to a special funded position is subject to these rules, except that the person does not have a property right in employment, right of appeal of a disciplinary decision or the right to re-employment. See §1.03(d).
- (e) Provisional appointment: the appointment of a person who possesses the minimum qualifications established for a particular class and who has been appointed to a

position in that class in the absence of available eligibles. In no instance shall a provisional appointment exceed six months. A provisional employee accrues the same benefits as a probationary employee. If a provisional employee is selected for a regular position, the time served is counted as time toward the fulfillment of the probationary period.

- (f) **Emergency:** appointment on a temporary basis for a short period of time to a non-budgeted position or a vacant budgeted position to meet an emergency. The position must first be authorized by the Fire Chief.

Board: the Governing Board of the Livermore-Pleasanton Fire Department.

Class or classification: a position or group of positions with duties, authority and responsibility so similar that the same descriptive title, example of duties, recruiting standards and salary can be applied with equity.

Class specification: a written description and definition of a class, including the title and a listing of illustrative examples of duties to be performed and the qualifications necessary.

Class title: the official designation of an individual position or group of positions sufficiently similar to be grouped together as a class.

Classification plan: consists of classes of positions in the competitive service defined by class specifications, including the title. The classification plan shall be so developed and maintained that all positions substantially similar with respect to duties, responsibilities, authority, and character of work are included within the same class.

Classified service or competitive service: all positions of employment in the service of the Department except those specifically excluded under section 1.03.

Days: calendar days unless otherwise stated.

Demotion: the movement of an employee from one class to another class having a lower maximum base rate of pay.

Department: the Livermore-Pleasanton Fire Department.

Disciplinary action: actions including counseling, verbal warning, written reprimand, disciplinary probation, demotion, reduction in pay, suspension, discharge or other action of a regular employee for punitive reasons and not for any non-punitive reasons.

Disciplinary probation: a type of disciplinary action whereby an employee's performance is evaluated more frequently than usual.

Dismissal or discharge: the termination of an employee from the classified service by the appointing authority for just cause.

Eligible: a person whose name is on an employment eligibility list.

Eligibility list or employment list: an official list of persons eligible for appointment to a regular position in an authorized classification.

Employee: see Appointment, types of appointments.

Examination: the selection technique used to measure the relative capabilities and fitness of the persons applying for positions with the Department.

- (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 which is open only to probationary, regular employees meeting the qualifications for the class.
- (c) Continuous examination: an open competitive examination which is administered periodically and results in the creation of one eligible list.

Fire Chief: the Fire Chief of the Livermore-Pleasanton Fire Department or his or her designee.

Joint Executive Directors: the City Managers of the City of Livermore and City of Pleasanton or their designees.

Layoff: the separation of an employee from the active work force due to lack of work or funds, to the abolition of a position, or to organizational changes.

Line employee: those positions represented by International Association of Firefighters, Local 1974.

Management Compensation Plan: the pay plan for management employees which is adopted by the Board

Management employee: an employee having significant responsibilities for formulating or administering Departmental policies and programs. Management employees include the Fire Chief, deputy fire chiefs, division chiefs, division managers and the CAD-records manager.

Memorandum of Understanding: the Memorandum of Understanding entered into between the Department and the International Association of Firefighters, Local 1974, as amended.

Part-time employee: an employee appointed to a position which requires services on the average of at least half of the regularly scheduled hours per week, but less than the regular hourly work week for other employees in similar classifications.

Personnel Director: the personnel director of either the City of Livermore or the City of Pleasanton as appointed by the Joint Executive Directors.

Position: a group of duties and responsibilities requiring the full-time or part-time employment of one person. (See types of Appointments.)

Probationary period: a working test period during which an employee is required to demonstrate fitness for the duties by actual performance of the duties of the position.

Promotion: the movement of an employee from one class to another class having a higher maximum base rate of pay.

Reclassification: a change in allocation for a position from an existing class to another existing class or to a new class or class title.

Reduction in pay: the movement of the pay of an employee from one rate to a lower rate within the established pay range for that employee's classification.

Regular employee or permanent employee: an employee in the classified service who has successfully completed the initial probationary period.

Re-employment: re-employment after a layoff.

Reinstatement: the reinstatement without examination of a former regular employee to the employee's former classification within one year following his or her resignation from the Department.

Rejection: the separation of an employee from the service during the probationary period.

Relief of duty: the temporary assignment of an employee to a status of leave with pay.

Resignation: the termination of employment of an employee made at the employee's request.

Review date: the date upon which an employee's performance evaluation is due and/or the date the employee is eligible for consideration of either a salary step increase or a growth increase. (See Anniversary date.)

Suppression Positions: those line assignments working a 56-hour work week.

Suspension: temporary removal of an employee from assigned duties, normally without pay, for disciplinary purposes or pending investigation of charges.

Transfer: the reassignment of an employee from one position to another position in the same class.

Working day: each day the Department offices are open, or, regarding an individual employee, each day that employee is scheduled to or actually works.

"Y" Rated salary: maintaining an employee's salary at the same rate when the employee is reclassified to a classification with a lesser salary range. (See §10.08.)

CHAPTER 3 - CLASSIFICATION PLAN

3.01 Preparation of plan; revisions

The Personnel Director shall prepare and maintain the classification plan and recommend the allocation of positions to a class. Each position in the Department shall be assigned to a class.

The classification plan may be amended from time to time.

It is the responsibility of the Personnel Director to recommend the establishment of new classes, or the combination, alteration or abolishment of existing classes to insure the efficient and equitable operation of the classification plan. Any interested party, including any recognized employee organization may suggest revisions to the plan by submitting suggestions in writing to the Joint Executive Directors.

3.02 Adoption of classification plan and amendments

The classification plan, and any amendments to it, become effective when adopted by the Joint Executive Directors.

3.03 Reclassification

Upon the recommendation of the Personnel Director, the Joint Executive Directors shall allocate a position to a more appropriate class when the assigned duties of a position have been materially changed so as to necessitate reclassification. A reclassification shall not be used for the purpose of avoiding restrictions concerning demotions and promotions, nor to effect a change in salary in the absence of a significant change in assigned duties and responsibilities.

The Fire Chief, or an employee through the Fire Chief, may request that a position be reclassified. The Fire Chief shall forward such requests to the Personnel Director along with his/her recommendation. The Personnel Director shall recommend to the Joint Executive Directors the reclassification of any position determined to be improperly classified.

When an incumbent occupies a position which is reclassified, the employee occupying the position may be retained in the position if the Fire Chief determines that: (a) the reclassification results from an official recognition of a change in duties or responsibilities which has already occurred; (b) the incumbent has the knowledge, skills and abilities, or other qualifications, of the new class; (c) the incumbent has demonstrated a high level of performance in the changed duties and responsibilities; and (d) the incumbent has had regular status in the former position.

When an employee is retained in a position which is reclassified to a higher salary range, the employee is subject to a probationary period the same as if the employee had been promoted.

3.04 New positions

A new position shall not be created and filled until the classification plan has been amended to provide for it, a salary range has been established, and an appropriate employment list is established for the position.

3.05 Temporary class

Whenever a position is required for the efficient and economical operation of the Department and in the absence of an appropriate class, the Joint Executive Directors may authorize a temporary class and appropriate salary for a period of up to three months.

CHAPTER 4 - APPLICATIONS, EXAMINATIONS AND ELIGIBILITY LISTS

4.01 Job announcements

All examinations for classes in the classified service shall be publicized by such methods as determined by the Personnel Director. Examination announcements shall include the title and pay rate, nature of the work, preparation or qualifications needed to perform the work, the manner of making application, the probationary period and other pertinent information.

4.02 Applications

Applications shall be made on forms prescribed by the Personnel Director and shall require information covering training, experience, and other pertinent information. Each application must be complete and signed by the person applying.

4.03 Disqualification

The Personnel Director may reject an application which indicates that the applicant does not possess sufficient qualifications required for the position. An application may be rejected or the applicant may be disqualified from the examination if the application is not complete or if the application indicates facts showing that the applicant is physically or psychologically unable to perform the job applied for and no reasonable accommodation can be made for such disability; uses illegal drugs or alcohol habitually and excessively; has been convicted of a crime that will affect ability to perform the job; or has made any false statement of a material fact, or practiced any deception or fraud in an application.

Whenever an application is rejected, the Personnel Director shall mail notice of the rejection to the applicant. A defective or incomplete application may be returned to the applicant with notice to amend it, if the time limit for receiving applications has not expired.

4.04 Disqualification for criminal conduct

A conviction of a felony, including a plea of guilty or nolo contendere, is prima facie disqualification of an applicant; provided, however, that the appointing authority may disregard the conviction if it is determined that mitigating circumstances exist. In making the determination, the appointing authority shall consider the following factors:

- a. the classification, including sensitivity, to which the person is applying or being certified and whether the classification is unrelated to the conviction;
- b. the nature and seriousness of the offense;
- c. the circumstances surrounding the conviction;
- d. the length of time elapsed since the conviction;
- e. the age of the person at the time of conviction;
- f. the presence or absence of rehabilitation or efforts at rehabilitation;
- g. contributing social or environmental conditions.

An applicant who is disqualified for employment under this section may appeal the determination of disqualification. The appeal shall be in writing and filed with the Fire Chief within ten days of the date of the notice of disqualification. The Fire Chief shall hear and determine the appeal within 90 days after it is filed. The determination of the Fire Chief is final.

4.05 Nature of examinations

The selection techniques used in the examination process shall be impartial and relate to those subjects which, in the opinion of the Personnel Director after consultation with the Fire Chief, fairly measure the relative capacities of the persons examined to execute the duties and responsibilities of the class in which they seek to be appointed. Examinations shall consist of selection techniques which attempt to test fairly the qualifications of the candidates such as, but not necessarily limited to, written tests, personal interviews, performance tests, physical agility tests, evaluation of daily work performance, work samples, evaluation of qualifications, medical and psychological tests, successful completion of prescribed training, or any combination of these or other tests. Reference checks, background investigations, medical and psychological tests, and the probationary period are considered an extension of and a part of the examination process.

4.06 Types of examinations

The types of tests or examinations administered shall be determined by the Personnel Director as the needs of the Department require. They may include but are not limited to the following:

- a. open examination
- b. promotional examination
- c. continuous examination
- d. examinations for entry level and training classes (and such other classes as determined by the Personnel Director), may be competitive among the candidates or the competition of a candidate against certain standards.

The Personnel Director may delegate or contract for the preparation and/or administration of examinations.

4.07 Scoring of examinations

The Personnel Director shall establish the scoring of any test and the minimum rating for qualifying on an examination, or any part of it. The failure of a candidate on an examination, or any part of it, is grounds for the candidate's failure and/or disqualification from further parts of that examination.

4.08 Notification of examination results

Each candidate in an examination shall be given notice of his or her success or disqualification.

4.09 Review of examination papers

Each candidate has the right to inspect his or her own written test answer sheet, unless the test is a standardized form or if such inspection may violate the security of the test. Any error in computation shall be corrected if called to the attention of the Personnel Director within seven calendar days of the postmark date on the notification. However, such a correction shall not invalidate an appointment previously made.

A candidate is allowed no other review or reconsideration of an examination, unless so specified in the announcement of that examination.

4.10 Establishment of eligibility lists

After completion of an examination, the Personnel Director shall prepare and keep available an eligibility list consisting of the names of candidates who qualified in the examination. Names shall be listed by final examination score, tie scores given equal ranking, or alphabetically if the examination was qualifying only.

4.11 Duration of lists

Upon certification by the Personnel Director, an eligibility list remains in effect for one year unless exhausted or abolished. The Fire Chief, after consultation with the Personnel Director, may extend a list for a period up to one year.

A list established as the result of a continuous testing remains in effect for one year from the date of the examination unless sooner exhausted or abolished. Names placed on such lists may be merged with any others in order to establish one pool of qualified eligibles.

The Personnel Director may abolish a list for reasons consistent with principles of merit or the needs of the Department when there are fewer than three qualified and available eligibles or when a new list is established.

4.12 Removal of names from eligibility list

The Personnel Director may remove the name of any eligible from a list. Cause for removal includes, but is not limited to, the request of the eligible, failure to respond to any notice from the Department, failure to maintain qualifications, rejection of an offer of employment, or if a report of background investigation, reference check, polygraph, medical or psychiatric examination is unsatisfactory. The name of a person on a promotional eligibility list who resigns from the service is automatically dropped from the list.

The person whose name is removed shall be notified in writing of the removal by a mailing to the last known address. An eligible so removed may present extenuating or mitigating circumstances to the Personnel Director and request replacement on the eligible list. The decision of the Personnel Director on such requests is final.

CHAPTER 5 - METHOD OF FILLING VACANCIES

5.01 Appointments

All vacancies in the classified service shall be filled by re-employment, transfer, demotion, reinstatement, or appointment from eligibles certified by the Personnel Director from an appropriate employment list. In the absence of persons eligible for appointment, the Joint Executive Directors may authorize a provisional appointment, except for line suppression positions covered by constant staffing.

5.02 Notice to Personnel Director

Whenever a vacancy to a position is to be filled, the Fire Chief shall notify the Personnel Director.

5.03 Certification of eligibles

The Personnel Director will advise the Fire Chief of requests for transfer, demotions, reinstatement, or the availability of eligibles. The Fire Chief shall indicate whether it is desirable to fill a vacancy by transfer, demotion, reinstatement or from an eligibility list. All persons whose names are on a certified eligibility list are eligible for appointment. Whenever there are fewer than three names on an open or promotional eligibility list willing to accept appointment, the Fire Chief may make an appointment from among such eligibles or may request the Personnel Director to establish a new list.

An eligible on a re-employment list shall be considered before an eligible from an open list or an individual requesting reinstatement.

5.04 Types of appointments

The types of appointments are defined in the Definitions section, Chapter 2. They include:

- a. regular
- b. temporary
- c. limited duration
- d. special funded
- e. provisional
- f. emergency

For temporary, limited duration, special funded, provisional or emergency appointments, no special credit is allowed for service rendered in meeting qualifications or in the taking of any test. Credit for service time in such appointments does not apply to a subsequent regular appointment.

5.05 Employment of relatives

- a. General rule. The following policies apply to the employment of a member of the immediate family of any official or employee of the Department. As used in this section, "member of the immediate family" means the employee's mother, father, spouse, child, step-child, brother or sister.
 1. A member of the immediate family of an elected official, appointed official, the city manager, assistant city manager, city attorney, assistant city attorney, or a department head may not be appointed to employment with the Department.
 2. Members of an immediate family may not be appointed, transferred, promoted or demoted to a position where one member is placed in a position to supervise or influence the salary of the other.
(Government Code §87100)
- b. Marriage. If two employees marry: (1) subsection a.1 above does not apply to their continued employment; and (2) as to subsection a.2 above, the married employees shall within twelve months of marriage seek and obtain a change for one of them to another position (within or outside the Department) such that neither remains in a position to supervise or influence the salary of the other.
- c. Exceptions. This section does not apply to an appointment in a special employment program, work training or similar program.

CHAPTER 6 - PROBATIONARY PERIOD

6.01 General

Each original appointment and promotion to a regular classified position is tentative and subject to a probationary period as follows:

- a. Line employees: Eighteen (18) months actual service for original appointments, twelve (12) months actual service for promotional appointments. The probationary period may be extended once by the Fire Chief for a period not to exceed ninety (90) days in order to further evaluate the performance of the probationary employee by notifying the employee in writing before the end of the initial probationary period. The probationary period can be extended longer than 90 days, equal to the time of a sustained injury or illness, preventing completion of probation.
- b. Management employees: Twelve (12) months actual service. The probationary period may be extended by the Fire Chief for up to an additional six (6) months by notifying the employee in writing before the end of the initial probationary period.

6.02 Objective of probationary period

The probationary period is regarded as part of the selection process and is utilized for closely observing the employee's work, for securing the most effective adjustment of a new employee to the position, and for rejecting a probationary employee who does not meet required standards.

6.03 Evaluation

The Personnel Director shall notify the Fire Chief before the end of any probationary period. The Fire Chief shall then file with the Personnel Director a written recommendation stating whether the employee should be retained, have the probationary period extended, returned to his/her former position, or be terminated. Regarding a management employee, the Fire Chief shall first submit the recommendation to the Joint Executive Directors for their review.

6.04 Rejection

During the probationary period, an employee may be rejected at any time without cause and without the right of appeal (except under the unusual circumstance set forth below). The Personnel Director or the Fire Chief shall notify the affected employee in writing.

Where the person's good name, reputation, honor or integrity is at stake, the employee is entitled to notice and an opportunity to respond before the action becomes final. In such cases, the employee must make a written request for a hearing, and must do so before the action becomes final or within 10 calendar days after written notification.

6.05 Rejection following promotion

An employee rejected during the probationary period following a promotional appointment shall be reinstated to the position from which promoted unless discharged in the manner provided in chapter 11 of these rules. If no vacancy exists in such position or like-position, the employee may request to be placed on a re-employment list.

CHAPTER 7 - EMPLOYEE EVALUATIONS; PERSONNEL RECORDS

7.01 Evaluation purpose and policy

The purpose of the evaluation process is to communicate with the employee regarding job standards and performance, responsibilities, and to document those activities. The Department shall measure and record the employee's performance, identify strengths and weaknesses, specify courses of action for correction and improvement, and note progress and outstanding achievement. The supervisor who does the evaluation is also responsible for promptly informing an employee of deficiencies in performance and identifying areas of improvement. Notices of superior performance shall also be promptly provided.

Each probationary and regular line employee shall have his/her performance evaluation completed at the time intervals specified in the Department's Career Development Plan, or more often if necessary. Each management employee shall have his/her performance evaluation completed at one-year intervals, or more often if necessary. The evaluation of other employees occurs at intervals established by the Fire Chief.

7.02 Standards and reporting

The Department shall establish and maintain standards of performance for authorized classes of employment for the purpose of measuring job performance as objectively as possible. The evaluation should include the measurement of both the quality and quantity of work, the manner in which the service is rendered, the observance of regulations and procedures, the understanding of how the employee is a part of the organization, and the responsibilities to the job, and the Department, and other relevant factors. The evaluation should also take into account length of service; performance record; additional training and efforts at self-improvement; attitude toward job; personal conduct; conscientious attendance; safety alertness; continued improvement and growth in the position; efficient and effective service; and other factors of individual achievement as appropriate to the particular position.

The evaluation shall be reported in writing to and in a form approved by the Personnel Director. Each evaluation shall be signed by the supervisor and Fire Chief. The employee shall also sign in acknowledgment that the evaluation has been reviewed with her/him, and that the employee received a copy.

A performance evaluation is not subject to appeal, but the employee is allowed to respond in writing to an evaluation he/she does not agree with, and have the response attached to the evaluation and placed in the personnel file.

7.03 Personnel record

The Personnel Director shall maintain a service record for each employee of the Department, showing the name, job classification, division to which assigned, salary, changes in employment status, address and phone number and such other information as determined necessary.

7.04 Personnel file

The personnel file contains the name, address, telephone number, marital status, number of dependents, beneficiaries, education, job classification, employment history and current status, employee evaluations and other pertinent information.

The Fire Chief shall report to the Personnel Director each appointment, transfer, promotion, demotion, change in salary, resignation, disciplinary action, any other temporary or permanent change in status of employment.

7.05 Employee's access to personnel file

An employee may inspect his or her personnel files at any reasonable time, except that the employee may not inspect documents relating to the investigation of a possible criminal offense, to letters of reference, or to pre-employment records.

7.06 Notification by employee

Each employee shall within one week notify the Department and the Personnel Director of any change of address, telephone number, marital status, group life insurance beneficiary, number of dependents and education. The suspension, loss or non-renewal of a required license shall be reported before the resumption of duty.

7.07 Confidentiality

All personnel records shall be maintained in a manner which will preserve their confidentiality. The City Attorneys for the City of Livermore and the City of Pleasanton, the Personnel Director or their designees, have access to all departmental records and documents pertaining to employees for Departmental business purposes.

CHAPTER 8 - PERSONNEL ACTIONS: TRANSFER, PROMOTION, DEMOTION,
SUSPENSION, REINSTATEMENT, REJECTION, DISCHARGE,
TERMINATION, RESIGNATION, RETIREMENT, LAYOFF

8.01 Scope: Disciplinary actions

This chapter outlines the personnel actions which apply to employees after employment.

Criteria to be considered in issuing discipline shall include but not be limited to the severity of the offense, number of previous offenses and actions, effectiveness of previous discipline, and the general concept of progressive discipline unless more severe action is necessary.

When any personnel action is taken for disciplinary reasons, the Fire Chief shall follow the disciplinary action procedures set forth in Chapter 13. The Fire Chief shall confer with the Personnel Director before taking any such action and shall promptly report the action to the Personnel Director.

8.02 Transfer

- a. The Fire Chief may transfer an employee from one assignment to another at any time, provided the re-assignment is within the same classification. However, for line employees, work schedules, shift and station assignments and transfers are as provided for in the Memorandum of Understanding.
- b. The Fire Chief may transfer an employee from one position to another position in a comparable class.
- c. No employee may be transferred to a position for which he/she does not have the minimum qualifications. A transfer may not be used to effectuate a promotion, demotion, advancement, or reduction.

8.03 Promotion

- a. A vacancy in the classified service may be filled by promotion from within, after a promotional examination has been given and a promotional eligibility list established; or
- b. If the Fire Chief determines that a vacancy in a class could be better filled by an open competitive, rather than a promotional examination, an open competitive examination shall be given and the eligibility list so established will be used to fill the vacancy.
- c. An employee rejected during or at the end of the probationary period following promotion shall be demoted to a position in the classification and the salary from which promoted, unless discharged for disciplinary reasons. If no vacancy exists in such a position, the employee may request to be placed on a re-employment list.

8.04 Demotion

- a. The Fire Chief may demote an employee whose ability to perform the required duties for the position falls below required standards as evaluated, or for disciplinary purposes. (See Chapter 13, Disciplinary Action.) Upon request of the employee, with the consent of the Fire Chief, a voluntary demotion may be made to a vacant position. A probationary period is required unless the employee has previously completed a probationary period in that class.

Demotion from one class to a lower class shall not be made when the employee does not reasonably possess the minimum qualifications of the lower class.

- b. An employee promoted may request and, upon approval of the Fire Chief, be returned to a vacant position in any class the employee previously held and for which the employee meets the minimum qualifications.

8.05 Suspension

Suspension may be with or without pay, for disciplinary purposes or pending investigation of charges. A supervisor may suspend an employee for up to five days pending investigation of charges. The authority to suspend an employee with pay pending an investigation of charges for longer periods, as well as the authority to suspend an employee without pay for disciplinary purposes, rests with the Fire Chief. Suspension without pay shall be made in conformance with Chapter 13 of these rules.

8.06 Rejection, Discharge, or Termination

- a. Rejection. The Fire Chief may reject a probationer at any time without right of appeal. Notification of rejection in writing shall be served on the probationer, and a copy filed with the Personnel Director. (See Chapter 6, Probationary Period.)
- b. Discharge for Cause. The Fire Chief may discharge an employee for cause. The Fire Chief shall notify the employee in writing and the discharge is effective on the date set by the Fire Chief. (See Chapter 13, Disciplinary Action.)
- c. Termination: regular employee. The Fire Chief may terminate a regular employee when the employee is no longer able to satisfactorily perform or carry-out the duties of the position, regardless of reason. The Fire Chief shall notify the employee in writing of the termination and its effective date.
- d. Termination: other employee. The Fire Chief may terminate an employee (other than a regular employee) by notifying the employee in writing of the termination and its effective date.

8.07 Resignation

An employee wishing to leave the service in good standing shall file a written resignation stating the effective date, reason for leaving and any other information the employee wishes to include. The written resignation must be submitted at least two weeks in advance for the employee to be considered to have resigned in good standing, unless the failure to submit advanced notice was beyond the reasonable control of the employee.

The failure of an employee to resign in good standing is entered in the employee's personnel record and may be cause for denying future employment with the Department.

Upon the employee's submittal of a written or verbal notice of resignation to the Fire Chief, the Personnel Director, or the Joint Executive Directors, the action of the employee may not be rescinded without the approval of the Joint Executive Directors, whose decision is final.

8.08 Reinstatement

A regular employee who had resigned with a good record may, within two years of the effective date of resignation, be considered for appointment to a vacant position of the same or comparable class as was vacated. Upon reinstatement, the employee is subject to the probationary period required for the class. No credit for former employment is granted in computing vacation, sick leave, other benefits, or prior service credit. An employee being reinstated shall be credited with prior service time for purposes of determining departmental seniority and shall be assigned the same salary step as held at the time of resignation.

8.09 Retirement

Retirement shall be in accordance with the provisions of the Public Employees Retirement System (PERS), State and Federal law, and such procedures or policies as established by the Board.

8.10 Layoff

(See Layoff Procedure, Chapter 9.)

8.11 Disciplinary probation

The Fire Chief may place a regular employee on disciplinary probation for disciplinary purposes. The Fire Chief determines the duration of disciplinary probation and the frequency of evaluations and other terms of the probation on a case by case basis. (See Chapter 13, Disciplinary Action.)

CHAPTER 9 - LAYOFF POLICY AND PROCEDURE

9.01 Layoff policy

Whenever the city manager in consultation with the Fire Chief determines it necessary to abolish any position of employment, the employee holding that position may be laid off, transferred, or demoted without disciplinary action and without the right of appeal.

9.02 Notification

An employee being laid off shall be given at least 14 calendar days prior notice. Whenever possible, the employee shall be given 30 calendar days prior notice.

9.03 Employment status

In each class, employees shall be laid off according to employment status in the following order: temporary, provisional, special funded, limited duration, probationary, and regular. In this chapter, probationary status means the probationary period required upon the initial employment with the Department leading to a regular position.

Temporary, provisional, special funded, limited duration, and probationary employees may be laid off according to the needs of the service as determined by the Fire Chief.

9.04 Vacancy and demotion

Whenever there is a reduction in force, the Fire Chief shall first demote an employee to a vacancy, if any, in a lower class for which the employee who is to be laid off is qualified. All persons so demoted shall have their names placed on a re-employment list for a period of one year.

9.05 Seniority

An employee affected by layoff has the right to displace an employee in the same division who has less seniority in a lower class in the same class series, or in a lower classification in which the affected employee once had permanent status.

In order to retreat to a lower or similar class, an employee must have more seniority than at least one of the incumbents in the retreat class and request displacement action in writing to the Fire Chief within five working days of receipt of notice of layoff.

An employee retreating to a lower or similar class shall be placed at the salary step representing the least loss of pay. In no case shall the salary be increased above that received in the class from which the employee was laid off.

An employee retreating to a lower or similar class shall serve a probationary period in the new class unless the employee has previously successfully completed a probationary period in the class or a class in the class series.

Seniority includes time accrued in regular full-time and regular part-time service in the classified service. In this chapter, length of service for part-time employment is calculated on a pro-rata basis. Employment in emergency, temporary, limited duration, or special funded status does not count in calculating seniority.

9.06 Re-employment list

The names of all regular and probationary employees laid off shall be placed on a re-employment list for one year, provided their performance has been satisfactory.

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

Failure to promptly respond to and accept a re-employment offer within 14 calendar days shall result in removal from the re-employment list.

Re-employment will result in removal from the re-employment list except when re-employment is in a lower class.

9.07 Re-employment

A former employee appointed from a re-employment list shall have the following benefits restored:

- a. accrued but unused sick leave.
- b. seniority at the time of layoff for vacation accrual, future reduction in force, and intra-department purposes.
- c. compensation at the step or placement within the range in effect at the time of layoff. If re-employment is to a lower class, compensation will be set at the step or rate closest, but not above, the step or rate the employee would be entitled to in the class from which the layoff occurred.

d. benefits and seniority do not accrue during the period of layoff.

Re-employment is subject to the employee's ability to satisfactorily meet the standards and perform the duties of the position. The normal original probationary period for the class is required upon re-employment.

CHAPTER 10 - COMPENSATION

10.01 Pay plan

A pay plan includes salary and wage rates for classes of positions. They are adopted by the Board.

10.02 Preparation and adoption of plan

The Personnel Director shall prepare pay plans for all classes of positions in the classified service and such other classes of positions as are authorized by the Board or the Joint Executive Directors. The Joint Executive Directors shall submit the proposed pay plans to the Board which shall adopt the plan as submitted or amended.

The adopted plan shall be applied to all positions. No position may be assigned a rate either lower or higher than the minimum or maximum established by the adopted plan.

10.03 Administration

The Personnel Director shall implement the pay plan.

The Joint Executive Directors establish pay periods and the method and time of distributing payroll.

Deductions from employees' wages are made in accordance with prevailing laws, contracts, rules and regulations. Certain deductions are made on the written authorization of each employee (for example, group health, credit union, recognized employee organizations). Changes in deductions or in salary take effect during the next pay period unless otherwise authorized by the Personnel Director.

10.04 Review dates

The review date for considering salary advancement is in accordance with the Department's Career Development Plan for line employees and with the Management Compensation Plan.

10.05 Initial salary: Standards for advancement

All initial employment shall be at the minimum of the salary range, unless the Fire Chief specifically authorizes appointment at a higher salary within the range.

The Fire Chief must authorize each advancement. In order to properly compensate an employee, an advancement in salary is based on merit. Advancement is not automatic, but depends upon the employee evaluation of the factors set forth in section 7.02.

Each supervisor will establish realistic achievement levels for each step within a salary range. The Fire Chief will review these achievement levels to maintain uniformity of standards and of their application throughout the Department.

10.06 Salary following promotion, demotion or transfer

When an employee is promoted to a position allocated to a class with a higher salary range, the employee is entitled to the lowest step in the higher salary range that provides an increase over the salary received by the employee immediately before the promotion.

When an employee is demoted, the employee is assigned to a salary step in the new class.

When an employee is transferred from one position to another in the same class or to another class to which the same salary range is applicable, the employee remains at the same pay step.

10.07 Revision of salary ranges

When a salary range with steps for a given class is revised upward or downward, the incumbent of a position in the affected class shall have his or her salary adjusted to the same relative step in the new salary range and the review date is not changed.

For management employees, salary revisions are made per the provisions of the Management Compensation Plan.

10.08 Salary on reallocation of position

If a position is reallocated to a class having the same maximum salary, the salary and the review date of the incumbent do not change.

If a position is reallocated to a class which has a higher maximum salary, the salary shall be adjusted in accordance with Section 10.06, salary following promotion.

If a position is reallocated to a class with a lower salary range, the salary of the incumbent shall be "Y" rated and the review date of the incumbent does not change. A "Y" rated salary remains in effect until the salary step of the lower range to which the incumbent is entitled equals or exceeds the amount of the "Y" rated salary.

10.09 Overtime policy: Approval

For the purpose of calculating overtime, time worked does not include any paid or unpaid leave.

In order to earn compensation for overtime, an employee must have prior departmental approval. (Overtime work required to meet an emergency situation does not require advance approval, but must be certified by the immediate supervisor before being credited to the employee's record.)

10.10 Overtime compensation and computation

Authorized overtime is compensated at the rate of one and one-half times the straight time hourly rate (or hourly equivalent of the monthly salary) or by allowing compensatory time off at the ratio of one and one-half hours off for each hour worked, at the Department's determination, consistent with applicable Fair Labor Standards Act (FLSA) regulations.

For line employees, overtime compensation shall be paid as per the Memorandum of Understanding.

10.11 Overtime not applicable

Overtime compensation provisions do not apply to exempt employees under the Fair Labor Standards Act.

10.12 Retirement system

Eligible employees participate in the Public Employees' Retirement System (PERS).

10.13 Health and dental insurance

Eligible employees shall become members of a health plan and a dental plan sponsored by the City of Livermore or the City of Pleasanton (as appropriate).

CHAPTER 11 - ATTENDANCE; LEAVE

11.01 Attendance; Hours of work

Each employee shall be in attendance at work in accordance with the rules regarding hours of work, holidays, and leaves. The Department shall keep daily attendance records of employees.

Each employee is required to maintain a regular work schedule which provides for an average of 2080 scheduled hours of work per year, except that 24-hour shift employees shall maintain a regular work schedule which provides for an average of 2912 scheduled hours of work per year. An employee is normally required to work eight hours per day for five days per week. An employee who requires a different schedule, shall work according to the regulations prepared by the Fire Chief. The Fire Chief may establish alternative schedules or flexible time schedules.

All business offices shall be kept open for business on all days of the year except Saturdays, Sundays, and holidays, continuously from 8:00 a.m. to 5:00 p.m.

During the employee's scheduled hours of work, each employee shall devote his or her full time, attention and efforts to the Departmental business.

11.02 Sick leave policy; Eligibility; Accrual

- a. Policy. Sick leave may be used only in cases of actual personal sickness or disability, medical or dental treatment, or for family death or illness as authorized in the Memorandum of Understanding. There is no vested right to sick leave until the happening of one of these contingencies.
- b. Eligibility. Regular, special funded and probationary employees are eligible to accrue sick leave.
- c. Accrual. Sick leave is accrued per the provisions of the Memorandum of Understanding and the Management Compensation Plan.

11.03 Sick leave notification and reporting

An employee requesting unscheduled sick leave shall notify (or cause to have notified) the Scheduling Office within one hour of scheduled reporting. The Fire Chief may establish an earlier time for such notification based upon department or division needs. The employee shall report his/her continuing absence to the department. All other requests for sick leave must be made in advance.

Sick leave with pay is not allowed unless the employee has met and complied with these and any departmental rules, and the Fire Chief has approved such payment.

The department may require a verified or certified written statement from the employee, attending physician or dentist, or from a Department-approved physician or dentist, and the Department may take any other reasonable action to verify: (1) that the employee is or was incapacitated and unable to perform his/her duties; and (2) that the employee is capable of and released to return to the performance of all the duties of his/her position.

An employee requesting paid sick leave shall specify the dates of leave, the number of hours of absence per day, and whether the absence is for personal illness, medical or dental treatment, family death or family illness. This information shall be recorded on the timecard or on a form approved by the Personnel Director.

An employee who is absent from work on sick leave shall not engage at any time in work or other activities which would be in conflict with the inability to report for work or which would be detrimental to the ability to return to work.

11.04 Use of sick leave

Sick leave will be charged in increments of one-tenth of an hour.

An employee shall be granted time off chargeable to sick leave for any of the following reasons:

- a. the employee's sickness or disability;
- b. a visit to a doctor or dentist;
- c. the illness or injury of a member of the employee's immediate family which requires the presence of the employee as authorized by the provisions of the Memorandum of Understanding and the Management Compensation Plan. (See also §11.16, Family Care Leave);
- d. the death of a member of the employee's immediate family as authorized by the provisions of the Memorandum of Understanding and the Management Compensation Plan.

For purposes of this section, "immediate family" means spouse, children of employee or spouse, parents of employee or spouse, employee's brother or sister, relative or individual residing in the employee's home or dependent upon the employee for his or her full support.

Sick leave is not granted for (1) any sickness or injury purposely self-inflicted or caused by the employee's own willful misconduct, or (2) disability arising from any sickness or injury related to employment other than with the Department.

Sick leave is not granted and no cash payment is made for accumulated sick leave at the time of termination or retirement.

Accrued sick leave may be used during a period of pregnancy leave, as provided under Section 11.15.

11.05 Expiration of sick leave

In the event of an employee's continued illness after expiration of accrued sick leave, such absence may, with the approval of the Fire Chief, be charged to compensatory time and vacation time accrued. Upon depletion of leave benefits, the Fire Chief, with approval of the Personnel Director, may grant leave without pay not to exceed 30 calendar days. If the employee has not returned to work by the end of such period, he or she may request further medical leave without pay which is subject to the approval of the Joint Executive Directors. If further leave is granted, the employee must notify the Fire Chief every 30 days regarding his/her ability to return to work. If the employee does not notify the Fire Chief or if further leave is not requested and granted, the employee is deemed to have resigned.

An employee receiving long term disability benefits shall be covered by any administrative policy established by the Department for that purpose and which shall be consistently applied.

11.06 Sick leave: Relation to workers compensation

An employee who is a "local safety member" of PERS or is eligible for "4850 time" may not use accrued sick leave for an absence resulting from an on-the-job injury or illness.

An employee not eligible for "4850 time" and who is receiving temporary disability payments under Workers' Compensation may choose to use accumulated sick leave in order to continue to maintain base pay income. Under such circumstances, the employee shall be charged for the use of sick leave to pay the difference between base pay and the temporary disability benefits.

Payments for permanent disability under Workers' Compensation laws are retained by the employee.

Temporary or other non-classified service employees are covered by and shall receive the benefits provided by Workers' Compensation, but are not eligible for any other benefits from the Department.

11.07 Vacation policy: Eligibility

Vacations are considered essential to the employee's welfare and they are granted by the Department to allow employees relaxation and rest from their duties. Therefore, it is the policy of the Department not to allow the accumulation of vacation leave in excess of the amount specified in the Memorandum of Understanding and Management Compensation

Plan. If vacation is not permitted for the convenience of the Department, the Fire Chief shall authorize payment of all hours over the accrued limit or temporarily set a higher accrual limit for that employee.

If an employee does not use the vacation as provided, the employee shall be notified in writing that vacation accrual beyond these limits is prohibited.

Regular, limited duration, special funded, provisional and probationary employees accrue vacation leave and are eligible for paid vacation leave at their current rate of pay.

11.08 Vacation accrual

Each eligible employee accrues vacation at the rate specified in the Memorandum of Understanding and the Management Compensation Plan.

A part-time employee whose position is budgeted for 20 hours but less than 30 hours per week average accrues vacation at one-half the monthly rate. A part-time employee whose position is budgeted for 30 hours but less than 40 hours per week average accrues at three-quarters the monthly rate.

11.09 Use of vacation

The Fire Chief shall determine the time period within which an employee may use accrued vacation leave and the amount to be taken at any one time, considering the wishes of the employee and regard for the needs of the Department as well as the applicable provisions of the Memorandum of Understanding and the Management Compensation Plan.

An employee may use more than his or her annual rate of accrual in any calendar year with the prior approval of the Fire Chief.

If an employee inadvertently uses more vacation than accrued and then terminates, the Department shall deduct the value of such time from the employee's final check.

11.10 Vacation at termination

An eligible employee whose employment with the Department terminates shall be paid for that part of her/his accrued vacation that remains unused at the time of termination (subject to the accumulation limit set forth in section 11.07). Payment for unused vacation shall be made at the rate of pay in effect at the time of termination. Accrued vacation time may not be used to extend employment without the prior approval of the Personnel Director.

11.11 Military leave

Military leave is granted in accordance with state law. Each employee entitled to military leave shall give the appointing power an opportunity within the limits of military regulations to determine when such leave is taken.

11.12 Leave of absence without pay

- a. Non-medical. The Fire Chief may grant a regular or probationary employee a leave of absence without pay for up to one calendar week. The Joint Executive Directors, in their discretion, may grant a regular or probationary employee a non-medical leave of absence without pay not to exceed three months. After three months, the leave of absence may be extended if so authorized. No seniority, vacations or sick leave accrues during such non-medical leave.
- b. Medical. The Joint Executive Directors may grant a regular or probationary employee a medical leave of absence without pay. The duration and conditions of such a leave shall be established for each individual case. No seniority, vacations or sick leave accrues during such medical leave.
- c. Requirements. Before such leave is granted, the employee must have exhausted all other paid leave to which he or she is entitled.

No such medical or non-medical leave or extension shall be granted except upon written request of the employee setting forth the reason for the request. If granted, the approval must be in writing.

Upon expiration of a regularly approved leave or within a reasonable period of time after notice to return to duty, the employee shall be reinstated in the classification held at the time leave was granted. Reinstatement from medical leave will be subject to the employee's ability to satisfactorily meet medical standards as determined by the Department designated physician, and to perform the duties of the position. If the probationary period was interrupted by the leave, the completion of the probationary period for the class will be required upon reinstatement. An employee on leave who fails to report promptly at its expiration, or within a reasonable time after notice to return to duty, is deemed to be discharged. The depositing in the United States mail of a first class letter, postage paid, addressed to the employee's last known place of address, is reasonable notice.

Employees are advised that they risk losing benefits if they continue on no-pay status for more than 10 consecutive working days.

11.13 Unauthorized leave

Any unauthorized absence of an employee from duty is deemed to be an absence without pay and is grounds for disciplinary action by the Fire Chief. (See §13.02e.) An employee who is absent for three days or more without authorized leave is deemed to have resigned when the absence without leave is admitted or the Department reasonably believes an abandonment has occurred. The Fire Chief may excuse such absence by granting a leave with or without pay when extenuating circumstances are found to have existed.

The failure of an employee absent without leave to return to duty within 24 hours after receiving notice to return is cause for immediate discharge, and the employee waives all rights to appeal under the personnel rules. Personal service or the depositing in the United States mail of a first class letter, postage paid, addressed to the employee's last known place of address, is reasonable notice. When the notice is mailed, it is deemed received five days later.

11.14 Jury duty and witness leave

a. Jury duty.

Each regular or probationary employee of the Department who is required to serve as a trial juror is entitled to be absent from his/her duties with the Department during the period of such service or while necessarily being in court as the result of such a call. When the employee's services are not required or upon dismissal from court, the employee shall return directly to work to complete the balance of the work day or shift. The employee is allowed his or her regular salary provided the employee compensates the Department for any fees received for the service, less travel pay. If the employee does not compensate the Department for such fees, the salary shall be lowered by the amount of such fees.

b. Witness leave.

Each regular or probationary employee who receives a subpoena as a witness in a court proceeding is entitled to be absent from his/her duties while attending the required proceeding. The employee is granted the leave with pay in the amount of the difference between the employee's regular earnings and any amount he or she receives for the appearance, less travel pay.

(Reference: Government Code §§1230, 1230.1)

11.15 Pregnancy leave

The Department shall comply with all federal and state laws governing pregnancy disability. A pregnant employee may continue employment and performance of regular duties. The Department may require written approval from the employee's physician indicating that she can continue working, based upon her medical condition and the actual job duties.

A pregnant employee is entitled to a leave of absence without pay for a period of up to four months for the period of disability on account of pregnancy, childbirth or a related medical condition. A pregnant employee assigned to the suppression duty is entitled to a leave of absence without pay for the period of disability as determined by a doctor; however, such determination shall consider the availability of a light duty position if the period of disability exceeds four months.

An employee on pregnancy disability leave may use any accrued vacation, sick or other leave in order to receive regular compensation benefits during the absence. (See Sections 11.04,

Use of sick leave, and 11.16. Family care leave.) The maximum time permitted for pregnancy leave is four months unless otherwise authorized by a doctor if no light duty assignments are available.

A request for pregnancy disability leave shall be in writing and shall be made through the Fire Chief. The employee shall give the Department reasonable notice of the date the leave will begin and the estimated duration of the leave.

If the employee does not return to work with the Department upon the expiration of the pregnancy disability leave, or has not requested and received a leave of absence without pay, the employee forfeits the right to re-employment and has no right of appeal.

This section shall be interpreted and applied in conformance with state law. If there is any inconsistency, the state law prevails. (Reference: Government Code §12945)

11.16 Family care leave

The Department shall comply with all federal and state laws governing family care leave. The California Family Rights Act of 1991 and the Federal Family and Medical Leave Act of 1993 both provide for unpaid leave for an employee to care for the employee's newborn or newly-adopted child, or to care for the employee's seriously ill child, parent or spouse (or the employee's own serious health condition, under the Federal Act), subject to certain conditions and limitations.

Attached as Exhibit A-1 and A-2 to these Rules is a general notice for each Act. (The personnel director shall attach current notices required by state and federal law, without the necessity of formal amendment to these Rules.) Interested employee's should contact the Personnel Director for more information.

(References: Government Code §12945.2, 2 Cal. Code of Regs. §7297 and following; P.L.103-3, 1993; 29 U.S.C.2601 and following; 29 C.F.R. 825, 825.301(a).)

11.17 Relief of duty

The Fire Chief may approve the temporary assignment of an employee to a status of leave with pay during an investigation or opportunity to respond as may be required to determine if disciplinary or other appropriate action is to be taken.

11.18 Holidays

Department business offices shall be closed all day for the following designated holidays:

1. New Year's Day
2. Martin Luther King Jr. Day (third Monday in January)
3. President's Day (third Monday in February)
4. Memorial Day (last Monday of May)
5. Independence Day

6. Labor Day (first Monday in September)
7. Veterans' Day
8. Thanksgiving Day
9. Day after Thanksgiving Day
10. December twenty-fourth
11. December twenty-fifth
12. December thirty-first

Fire stations shall remain open at all times and shall be staffed during all holidays with line suppression personnel.

When a holiday falls on a Saturday, the preceding Friday is observed and when a holiday falls on a Sunday, the following Monday is observed.

When work schedules are other than Monday through Friday, the Department shall establish a policy to designate which days the affected employees will observe those holidays which fall on the employee's normal days off.

Regular and probationary employees assigned to a 40-hour work week are entitled to paid holidays. To qualify for the paid holiday, the employee must be at work, or be on an approved paid leave, on the scheduled worked days immediately preceding and following the holiday.

11.19 Holidays worked

An employee whose work schedule causes him or her to work on a designated holiday shall receive equivalent holiday benefits as provided for in the Memorandum of Understanding and Management Compensation Plan.

CHAPTER 12 - EMPLOYEE TRAINING AND EDUCATION

12.01 Statement of policy

The Department encourages the training, self-improvement and personal development of all employees. This includes two general phases, in-service training and educational programs.

12.02 In-service training

The Fire Chief and Personnel Director have responsibility for developing in-service training programs. Training programs may include classes, lectures, courses, demonstrations, reading assignments, research and report writing, and other methods for improving effectiveness and broadening the knowledge of employees.

12.03 Education programs: Tuition reimbursement

Employees are encouraged (but not required) to further their education by taking accredited courses which are: related to the employee's present position with the Department; related to the employee's potential development with the Department; or part of a program leading to a degree related to the employee's present position or potential for development.

An employee who participates in an educational program may be reimbursed for courses taken on the employee's own time and at his or her expense. Expenses eligible for reimbursement are registration fees and books.

To be eligible for tuition reimbursement, the employee must: (1) be a regular employee; (2) submit the request for reimbursement to the Fire Chief and have it approved in advance of taking the course; and (3) receive a grade of "C" or better in the course. Other requirements for the receipt of tuition reimbursement, as well as provisions related to the reimbursement amount, are contained in the Memorandum of Understanding and the Management Compensation Plan.

An employee who voluntarily terminates employment with the Department within 18 months after receiving tuition reimbursement, is required to return the reimbursement to the Department or have the amount deducted from compensation.

The Joint Executive Directors shall establish policies and regulations for the administration of the tuition reimbursement program, including an annual maximum reimbursement and a pro-rata return policy for employees who terminate within 18 months. In establishing policies and regulations, the Joint Executive Directors will take into account the fiscal condition of the Department. The decision of the Joint Executive Directors on all tuition reimbursement matters is final.

CHAPTER 13 - DISCIPLINARY ACTION

13.01 Authority to impose discipline

A Fire Chief may take disciplinary action against an employee under her/his authority for one or more of the causes for discipline specified in Section 13.02.

The disciplinary action may include counseling, a verbal warning, written reprimand, suspension with or without pay, reduction in pay, demotion, transfer, discharge, or other action.

A Fire Chief may delegate to a supervisory employee the authority to impose disciplinary action up to a written reprimand.

Under the Fair Labor Standards Act (FLSA), an employee classified as "exempt" under the FLSA is not subject to any disciplinary action resulting in a reduction in pay (including reduction in pay, temporary demotion or suspension) without forfeiting that exempt status. Therefore, a Department employee who is classified as exempt is subject only to the following types of discipline: verbal or written reprimand, disciplinary probation which does not result in a reduction in pay, suspension with pay, other disciplinary action which does not result in a reduction in pay, or discharge. Salary reductions for violations of safety rules of major significance are an exception.

13.02 Causes for disciplinary action

Causes for disciplinary action include but are not limited to the following:

- a. Fraud in securing employment.
- b. Neglect of duty.
- c. Violation of safety rules or procedures.
- d. Discourteous or other offensive treatment of the public or another employee.
- e. Unauthorized leave or not observing working hours.
- f. Disobedience of, or insubordinate conduct toward, proper authority.
- g. Conviction of a felony, a misdemeanor involving moral turpitude, or any crime having a direct impact on the position or Department employment.
- h. Refusal or failure to perform lawful work assigned.
- i. Misuse, abuse, or appropriation for personal or other non-authorized use, of the Department position, office or employment, time or property.
- j. Unauthorized soliciting on Department property.
- k. Interfering with or impeding an employee's job performance or the conduct of Department business.
- l. Falsification of Department records.
- m. Violation of Department rules, regulations, codes, policies or orders.
- n. Theft, dishonesty, or any other action which reduces the ability of the employee or the Department to provide proper services, or meet community obligations.
- o. Behavior which constitutes discrimination or harassment.

13.03 Applicability

The procedures set forth in this chapter do not apply to the discipline of verbal or written warnings or reprimand or of suspension without pay for five days or less.

The procedures in this chapter do not apply to "Management" employees.

13.04 Suspension or relief of duty

The Fire Chief may suspend or relieve from duty an employee with pay pending conduct or completion of an investigation of, or the opportunity to respond to, disciplinary action.

13.05 Proposed discipline: Notice; Employee response

a. Written notice.

The Fire Chief shall give written notice of the proposed disciplinary action to the employee. The notice shall include the action being considered; the reasons for the proposed action and the nature of the charges; copies of or reference to the materials upon which the action is based; notice of the opportunity to respond in writing or orally at a particular time and place (within five working days); the right of the employee to be represented by an attorney or other representative at any disciplinary proceeding; and the fact that the failure of the employee to respond is conclusively presumed to be a waiver of his or her objection to the discipline and the procedure. The employee or his or her representative may request a specific change of the time to respond.

b. Employee response.

An employee notified of proposed disciplinary action may respond by submitting a written response and/or appearing at the appointed place and time. The purpose of the meeting is to hear the response of the employee to the charges. It is not an evidentiary hearing and the employee is not entitled to present witnesses.

The Fire Chief may grant a brief continuance of the hearing date at the employee's request for good cause.

13.06 Imposing discipline

As soon as practicable after the employee has had an opportunity to respond, the Fire Chief shall notify the employee and the Personnel Director in writing of the nature and extent of the discipline, if any, and the effective date. The notification will also advise the employee of the right of appeal.

13.07 Appeal

A disciplined line employee may appeal the decision according to the Memorandum of Understanding.

13.08 Effect of disciplinary actions

a. Disciplinary probation

An employee placed on disciplinary probation accrues vacation and sick leave time, but does not accrue earned time for salary review or promotion while on such probation. The employee is not allowed to compete in promotional examinations while on disciplinary probation. Disciplinary probation may be for up to one year. A person on disciplinary probation may be terminated if he or she fails to meet job requirements.

b. Suspension

An employee suspended from the Department service forfeits all rights, privileges and compensation during the period of suspension, except that the employee is eligible for COBRA (Consolidated Omnibus Budget Reconciliation Act) benefits. (Reference: COBRA, P.L. 99-272, enacted on April 7, 1986.)

c. Discharge

An employee who has been discharged is paid salary accumulated to the effective date of termination, any compensatory time accumulated, accumulated holiday pay, and accrued vacation time.

d. Reduction in pay

Reduction in pay becomes effective at the beginning of the next payroll period following the effective date of the disciplinary action.

e. Written reprimand

An official reprimand is in the form of a written notice to the employee and is placed in the employee's personnel file. No employee shall have a written reprimand entered in his or her personnel file without the employee having first read and signed the document, indicating he or she is aware of the comment, except that the reprimand may be placed in the file if after reading the document, the employee refuses to sign it. In that case, the refusal shall be noted and signed by the employee or the supervisor.

CHAPTER 14 - GRIEVANCE PROCEDURE

14.01 Purpose

The purposes of this grievance procedure are to:

- a. promote full communication between the Department and its employees by providing a reasonable method of resolving disputes regarding wages, hours and other terms and conditions of employment.
- b. assure the employee of a prompt and fair discussion on the issue involved.
- c. provide that complaints are settled as near as possible to the point of origin.
- d. encourage the prompt resolution of problems and complaints.
- e. enable employees to make their complaints known by orderly process.
- f. provide that complaints are heard and settled informally.

14.02 Statement of Department policy

Retaliatory or discriminatory action for using this procedure or discrimination in the application of a rule or policy is prohibited.

14.03 Applicability

The applicability of the grievance procedure as well as the steps in the applicable grievance procedure is included in the Memorandum of Understanding for line employees

CHAPTER 15 - HARASSMENT POLICY AND COMPLAINT PROCEDURE

15.01 Purpose

The purpose of this policy is to establish the Department's strong commitment to prohibiting harassment in the conduct of city business, to define harassment and to set forth a procedure for investigating and resolving complaints of harassment.

15.02 Policy

Harassment is personally offensive, is disruptive and damaging to an effective work place and can be a violation of federal and state law.

Harassment of an applicant or employee by a supervisor, management employee or co-worker on the basis of race, religion, color, national origin, ancestry, disability, medical condition, marital status, sex, sexual orientation or age will not be tolerated. This policy applies to all aspects of employment including (but not limited to) hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leave of absence, compensation, training and working conditions.

Disciplinary action up to and including termination will be instituted for harassment behavior.

Retaliation against a person for filing a harassment complaint is prohibited.

15.03 Definition

- a. General. Harassment includes, but is not limited to verbal harassment, physical harassment and visual forms of harassment on the basis of race, religion, color, national origin, ancestry, handicap, disability, medical condition, marital status, sex, sexual orientation or age. Examples include (verbal) epithets, derogatory comments or slurs; (physical) assault, impeding or blocking movement, physical interference with normal work or movement; (visual) derogatory posters, notices, bulletins, cartoons or drawings.
- b. Sexual harassment. Sexual harassment is conduct of a sexual nature which is unwelcome. It includes conduct directed by a man toward a woman or another man, or by a woman toward a man or another woman.

Sexual harassment includes harassment in which a supervisor demands sexual favors in exchange for job benefits, sexual conduct that creates an offensive or hostile work environment, and retaliation against an employee for submitting a complaint of alleged sexual harassment. It includes verbal, physical and visual forms of harassment.

Examples of sexual harassment include pinching, grabbing, patting, propositioning; making either explicit or implied job threats or promises in return for submission to sexual favors; making inappropriate sex-oriented comments on appearance, including dress or physical features; telling embarrassing sex-oriented stories; displaying sexually explicit or pornographic material; sexual assaults; and other unwelcome activity of a sexual nature.

The standard used for determining whether conduct against a person is hostile or offensive is how a reasonable person could have perceived the conduct (and not necessarily how a another person would perceive the conduct or what the harassing employee intended).

15.04 Distribution of policy

The Personnel Director shall distribute a copy of this policy to each new employee, annually to each manager and supervisor, and at least every two years to all employees.

15.05 Complaint procedure

- a. **Filing.** An employee or job applicant who believes he or she has been harassed may make a complaint orally or in writing with any of the following:
 1. immediate supervisor
 2. any supervisor or manager within or outside of the Department.
 3. the Personnel Director
 4. The Joint Executive Directors if the complaint involves the Fire Chief or the Board if the complaint involves the Joint Executive Directors or city attorney.

A supervisor or manager who receives a harassment complaint should notify the Personnel Director immediately.

- b. **Investigation.** Upon notification of a harassment complaint, the Fire Chief shall (unless he or she is the subject of the complaint, in which case the Joint Executive Directors or Board shall):
 1. Authorize the investigation of the complaint or investigate the complaint. The investigation will include interviews with: 1) the complainant; 2) the accused harasser; 3) any other person the investigator believes may have relevant knowledge concerning the complaint. This may include victims of similar conduct. During the interview, the complainant may have present any support person he or she wishes. If the complainant wishes to have a trusted division head present for the entire investigation, the Department will abide by that request if possible.
 2. Review factual information gathered through the investigation to determine whether the alleged conduct constitutes harassment; giving consideration to

all factual information; the totality of the circumstances, including the nature of the verbal, physical, visual or sexual conduct, and the context in which the alleged incidents occurred;

3. Report the results of the investigation and the determination as to whether harassment occurred to appropriate persons including the complainant, the alleged harasser, the supervisor and the Fire Chief. The complainant will be advised of the results of the investigation and any discipline imposed, unless disclosure is prohibited by law.
- c. Follow up. Following the investigation, the Fire Chief (or Joint Executive Directors or Board) shall:
1. If harassment occurred, take prompt and effective remedial action against the harasser. The action will be commensurate with the severity of the offense. Any appeal of discipline may be made in accordance with the appeal procedures in chapter 13 of the personnel rules;
 2. Take reasonable steps to protect the victim from any retaliation as a result of communicating the complaint;
 3. If appropriate, take action to remedy the victim's employment-related loss, if any, which resulted from the harassment.
- d. Confidentiality. All employees shall maintain confidentiality about complaints in order to protect the parties involved. Information about the complaint or investigation shall not be shared with anyone other than those necessarily involved in the investigation.

15.06 Discrimination

It is the Department's policy not to discriminate on the basis of race, color, ancestry, national origin, religious creed, sex, sexual orientation, age, physical or mental disability, marital status or political opinion or affiliation. (See §1.02 b and d) An employee or job applicant who believes he or she has been improperly discriminated against shall follow the complaint procedure set forth in section 15.05.

CHAPTER 16 - GENERAL REGULATIONS

16.01 Incompatible activity

An employee shall not engage in any employment, activity or enterprise which is inconsistent, incompatible or in conflict with her/his duties as a Department employee. The Fire Chief, in consultation with the Joint Executive Directors, shall determine those activities which are considered inconsistent, incompatible or in conflict. In making this determination, the Fire Chief shall consider activities which involve:

- a. the use for private gain or advantage of city time, facilities, equipment, supplies, or the badge, uniform, prestige or influence of or knowledge acquired in the scope of Department employment.
- b. the soliciting or the acceptance by the employee of any money, gift, gratuity, or other consideration for the performance of an act which the employee would be required or expected to render in the regular course or hours of her/his city employment, or as a part of her/his duties as a Department employee.
- c. the performance of an act which may later be subject to direct or indirect control, inspection, review, audit or enforcement by such employee or the Department..
(Reference: Government Code §§1125-1128)

16.02 Gifts

No employee shall solicit for personal gain any gift, reward, service or gratuity of any kind by reason of Department employment.

16.03 Financial interests: conflicts

A Department officer or employee may not enter into a contract on behalf of the Department or the cities of Pleasanton or Livermore in which he or she has a financial interest.

No Department officer or employee shall make, participate in making or in any way attempt to use his or her official position to influence a governmental decision in which he or she has a financial interest.

(References: Government Code §§1090, 87100.)

No Department employee shall purchase surplus property from the Department or the cities of Pleasanton or Livermore or sell anything to or contract with the Department or the cities of Pleasanton or Livermore unless the transaction is in accordance with the each city's purchasing or surplus property ordinance or the Public Contract Code.

An employee shall so arrange his or her personal financial affairs so that credit and collection agencies will not have to make use of the offices of the Department, the Fire Chief, or Joint

Executive Directors for the purpose of making collection. An employee's failure to meet just obligations may be grounds for discipline.

16.04 Licenses/Certificates

Each employee required to maintain a license as a condition of employment is responsible for renewing or otherwise maintaining its validity and shall notify the Fire Chief immediately of its expiration, restriction, or withdrawal.

16.05 Fitness for duty

Each employee is responsible for maintaining his or her health, physical fitness, and personal conduct.

The Department may require each employee to complete a medical history record on a form or in the manner as prescribed by the Department and is subject to a medical examination by a Department-appointed physician (at Department expense) before appointment to a position.

Employees may not be under the influence of alcohol or illegal use of drugs (including the abuse of prescription or over-the-counter drugs) in the work place.

16.06 Political activities

An employee of the Department shall not solicit political funds or contributions from other employees of the Department or the cities of Pleasanton or Livermore (except when communicating by mail or other mass media to a significant segment of the public which may include Department and city officials and employees).
(Reference: Government Code §3206)

No employee shall participate in political activities of any kind during working hours or while in uniform.
(Reference: Government Code §3207)

16.07 Privacy issues

- a. Computers, voice mail, mechanical and electronic equipment. Personal computers, telephone voice mail and other mechanical and electronic equipment are the property of the Department. The Department reserves the right to have access to information stored in the equipment whenever business needs of the Department require it.
- b. Searches of work areas. Employees have a reasonable expectation of privacy in areas that they intend to maintain as private, depending upon the realities of the work place. At the same time, The Department has a legitimate interest in maintaining a safe and efficient work place. The Fire Chief's search of the employee's work area, office, desk, locker or file cabinets is justified if conducted with a witness and if

necessary for a work-related purpose or if there is a reasonable suspicion of employee misconduct. The scope of the search must be limited to serve only the legitimate purpose and does not include the right to search inside personal property found in those areas.

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November 12, 1997 (6:34pm)

Exhibit A-1
California Family Rights Act of 1991
(Reference Rules §11.16)

Attached is the required state notice to employees.

FAMILY CARE AND MEDICAL LEAVE

Under the California Family Rights Act of 1991, if you have more than one year of service with the Department, you have a right to an unpaid family care and medical leave of up to 12 weeks in a 12-month period for the birth, adoption or foster care of your child or for the serious health condition of your child, parent, spouse or yourself. Granting this leave contains a guarantee of reinstatement to the same or to a comparable position at the end of the leave, subject to any defense allowed under the law.

If possible, you must provide at least 30 calendar days written advance notice for foreseeable events (such as the expected birth of a child or a planned medical treatment of a family member). For events which are unforeseeable 30 days in advance, you must notify the Department, preferably as soon as you learn of the need for the leave, but in any event no later than five working days from learning of the need for the leave. Failure to comply with these notice rules is grounds for, and may result in, denial or deferral of the requested leave until you comply with this notice policy.

The Department may require certification from the health care provider of yourself, your child, parent, or spouse who has a serious health condition before allowing you a leave to take care of that family member.

If you are pregnant, you have certain rights to take a pregnancy disability leave and also a family care leave; you should check regarding your individual situation.

There are certain exceptions to eligibility for a family care and medical leave and the Department is legally permitted to deny a request for leave under certain circumstances. Also, taking a family care and medical leave may impact certain of your benefits and your seniority date.

If you want more information regarding your eligibility for a leave and/or the impact of the leave on your seniority and benefits, please contact the personnel director.

Exhibit A-2
Federal Family and Medical Leave Act of 1993
(Reference Rules §11.16)

Attached is the required federal notice to employees.