

# ARTICLE X

## EMPLOYMENT PROVISIONS

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## **CIVIL SERVICE**

### **Sec. 1000. Applicability.**

The provisions of this Article shall apply to all employees of the City, except for those specifically exempted in Section 1001.

### **Sec. 1001. Exemptions.**

Each of the following positions shall be exempt from this Article:

- (a) **Exempt Positions.**

- (1) All officers elected by the people.
- (2) All members of the boards of commissioners.
- (3) All chief administrative officers of the City's departments and offices and the Directors of the Public Works' Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services.
- (4) Two positions in the class of Assistant General Manager or Deputy Director in each City office or department, and two positions in the class of Assistant Director in each of the Public Works Bureaus of Contract Administration, Engineering, Sanitation, Street Lighting and Street Services, and two positions in the class of Deputy Controller in the Office of Controller.
- (5) All Deputy Chiefs of Police.
- (6) All Deputy Chiefs of Fire.
- (7) Positions in the Office of the Mayor.
- (8) Positions established by the Council for the purpose of assisting the members of the Council in the performance of their duties, except for clerical personnel.
- (9) All positions in the office of the City Attorney.
- (10) The Chief Financial Officer of the Department of Water and Power.
- (11) The Executive Director of the Board of Police Commissioners.
- (12) The Inspector General of the Police Department.
- (13) The Executive Director and all non-clerical personnel of the City Ethics Commission.
- (14) All Assistant Directors in the Office of Administrative and Research Services.
- (15) The Traffic Manager and the Port Warden of the Harbor Department.
- (16) Crossing Guards.
- (17) All physicians and psychologists subject to Section 1040.
- (18) All officers of election.
- (19) Persons specially employed by the City Clerk, as authorized by the provisions of Section 405 of the Charter, to assist in the conduct of any election.
- (20) Positions elsewhere specifically exempted by the Charter.

(b) **Management, Professional, Scientific or Expert Services.** In addition to those positions described in subsections (a), (c) and (d) of this section, up to 150 persons to provide management services or to render professional, scientific or expert services of an exceptional character to offices or departments including the Proprietary Departments. Appointments under this subsection shall be subject to the following:

- (1) As to each position to be exempted under this subsection, and prior to the initiation of the selection process to fill the position, the Mayor shall forward to the Council a recommendation for an exempt position which sets forth the educational, experience and other professional requirements of the position and describes the circumstances presented by the department seeking the appointment that preclude filling the position through the civil service system. Within ten Council meeting days from receipt of the recommendation, the Council may by two-thirds vote disapprove the Mayor's recommendation for the exemption. If the Council does not act on the recommendation within the specified time period, the recommendation shall be deemed approved. When the position is vacated, the exemption shall terminate unless re-authorized in accordance with this subsection.
- (2) No person may be employed under this subsection if he or she has served in an exempt position in the office of an elected City official in the prior two years unless he or she meets the professional experience requirements established for the position.
- (3) Persons who have been exempted or who have been appointed to an exempt position prior to the effective date of this Charter, will retain their exemption. Exemptions under this subsection shall be prospective and shall be made only at the time of filling a vacant position.

(4) Council may, by ordinance adopted by two-thirds vote, increase the maximum number of exempt positions as provided in subsection (b) to no more than one percent (1%) of the regular authorized positions in the City workforce, provided that if the maximum number of exempt positions is increased pursuant to this subsection, the number of positions created by subsections (a) (4), (5) and (c) of this section shall be counted toward the maximum allowable exemptions. If Council provides for a maximum number of exemptions based on a percentage of the workforce, and a reduction in the workforce results in more filled exempt positions than permissible, each incumbent shall retain the exemption, but when vacated, such excess exemptions shall terminate.

(c) **Proprietary Department Positions.** In addition to the exempt positions in the Proprietary Departments created by subsections (a), (b)(1), (2), (3) and (d) of this section, up to 15 positions in the Department of Water and Power and up to ten positions to be allocated between the Harbor Department and the Department of Airports for employment of persons to provide management services or to render professional, scientific or expert services of an exceptional character. Exemption of these positions shall be subject to the following:

(1) Upon receipt of a request for an exempt position by the department which sets forth the educational, experience and other professional requirements of the position and describes the circumstances that preclude filling the position through the civil service system, the Mayor shall forward to the Council a recommendation for the exempt position. Within ten Council meeting days from receipt of the recommendation, the Council may by two-thirds vote disapprove the Mayor's recommendation for the exemption. If the Council does not act on the recommendation within the specified time period, the recommendation shall be deemed approved.

(2) No person may be employed under this subsection if he or she has served in an exempt position in the office of an elected City official in the prior two years unless he or she meets the professional experience requirements established for the position.

(3) Persons who have been exempted or who have been appointed to an exempt position prior to the effective date of this Charter, shall retain their exemption. Exemptions under this subsection shall be prospective and shall be made only at the time of filling a vacant position.

(d) **Positions Approved by Council.** In addition to the exempt positions created in subsections (a), (b) and (c) of this section, any of the following may be exempted from the provisions of this Article upon the request of the head of the department or office in which they are employed, by order of the Board of Civil Service Commissioners, approved by the Council by resolution:

(1) positions of unskilled laborers, including drivers;

(2) positions for workers, mechanics or craftspersons (including crew leaders) employed exclusively in that position on the construction of public works, improvements or buildings;

(3) any position requiring the services of one individual for not more than half time and paying a salary not to exceed three-fourths of the monthly rate established by the salary fixing authority of the department, division or office for entering-level clerical positions;

(4) grant-funded positions for a term of no more than two years which, by application of the procedures described in this subsection, may be extended for one additional year for a maximum exemption period of three years.

Any exemption made under the provisions of (1) through (4) may be terminated at any time by resolution of the Board of Civil Service Commissioners.

(e) **Leave of Absence from Civil Service.** Each person exempted or appointed to an exempt position under this section shall, during the period of exempt employment, be considered as being on leave of absence from the classified civil service if at the time of exemption he or she holds a position in the classified civil service, or is entitled to hold a position therein, and shall continue, during such period, to accrue seniority credit the same as though serving in such position.

#### SECTION HISTORY

Amended by: Subsec. (a), Charter Amendment Q § 1, approved March 8, 2011, effective April 8, 2011.

### **Sec. 1002. Employees of Acquired Public Utility.**

All persons employed in the operating service of any public utility acquired by the City, who have been so employed for at least one year immediately prior to the date of the acquisition, may be employed by the City in their respective positions to the extent practicable, and, so long as continuously so employed by the City, shall be exempt from the civil service provisions of this Charter.

### **Sec. 1003. Classification of Positions.**

The Board of Civil Service Commissioners shall establish classes for all positions of employment. The positions classified by the

board shall constitute the classified civil service of the City, and no appointment to any of these positions shall be made except in accordance with the rules adopted by the board under the authority of this Article (the civil service rules).

Each class shall be given an appropriate title and shall include all positions sufficiently similar in respect to duties and responsibilities and that have the same requirements as to education, experience, knowledge and ability; the same tests of fitness; and to which the same schedule of compensation may apply with fairness.

#### **Sec. 1004. Civil Service Rules.**

The board shall promulgate civil service rules to carry out the purposes of this Article in accordance with applicable law. All rules and any changes to those rules shall be made in writing. The board shall give notice by publication in some daily newspaper circulated in the City of Los Angeles of the place or places where the rules may be obtained, and the date, not less than 30 days after the date of publication, when the rules shall go into effect. The civil service rules shall provide for, among other subjects, examinations, leaves of absence, transfers, temporary appointments, disciplinary hearings, layoffs, and procedures for the review and appeal of determinations by the general manager of the Personnel Department with respect to the civil service provisions of the Charter.

#### **Sec. 1005. Examinations.**

Positions in the classified civil service shall be filled through competitive examination. Applicants shall be subject to review of experience and character and may be disqualified if it is determined specified requirements are not met. Examinations shall be practical, and shall relate to those matters that will fairly test the relative capacity of the persons examined to discharge the duties of the position to which they seek to be appointed and, when appropriate, shall include, or exclusively consist of, tests of physical qualifications, and manual skill. No limitation or restriction whatsoever shall be imposed, excepting to the extent permitted by applicable state or federal law in the departments of fire and police, fixing a maximum age in excess of which persons shall be deprived from taking examinations for or being employed in the classified civil service. The provisions of Section 104(i) regarding discrimination on the basis of age shall not prohibit fixing a maximum age in the departments of fire and police if otherwise authorized by this section.

#### SECTION HISTORY

Amended by: Charter Amendment Q § 2, approved March 8, 2011, effective April 8, 2011.

#### **Sec. 1006. Credit for Military Service.**

(a) Subject to the conditions set forth in this section, in all original examinations, the Board of Civil Service Commissioners shall, in addition to all other credits, give a credit of five percent of the total credits specified for an examination to all persons who receive a passing score on the examination and who have served in the armed forces of the United States during time of war or armed insurrection, or during any time when the United States is engaged in active military operations against any foreign power, whether or not war has been formally declared, or when the United States is assisting the United Nations in actions involving the use of armed forces to restore international peace and security (Military Service), if such persons are honorably discharged from active service even if they remain in the military reserve.

(b) The five percent (5%) credit shall be granted for a period of five years from the date of release from active Military Service of an eligible person or five years from the date the person becomes available for employment. A person shall be deemed unavailable for employment if the person is a student engaged in a training or educational process approved by the board or is hospitalized as a result of a service-connected injury or illness.

(c) A five percent (5%) credit for a period not to exceed five years shall be given to widows or widowers of persons killed while in Military Service. Such five-year period shall commence to run from the date the spouse is deceased.

(d) A five percent (5%) credit for a period not to exceed five years shall be given to spouses of persons who are unable to work because of disabilities resulting from Military Service. Such five-year period shall commence to run from the date the board determines that the person became unable to work.

(e) Notwithstanding any time limitations set forth in other parts of this section, the five percent (5%) credit shall be provided to all persons with disabilities resulting from Military Service without regard to the date of discharge. For purposes of this subsection, a person shall be deemed disabled if the disability is certified by the Veterans Administration or its successor agency.

#### **Sec. 1007. Examination Bulletins.**

Notice of time, place and general scope of every examination shall be given by the general manager of the Personnel Department as provided in the civil service rules.

### **Sec. 1008. Register of Eligible Candidates.**

The general manager of the Personnel Department shall prepare a register for each class of position in the classified civil service of the persons whose general average standing upon examination for the class is not less than the minimum fixed by the civil service rules, and who are otherwise eligible. These persons shall be listed in the register as candidates in the order of their relative excellence, as determined by their examination without reference to the date of examination. The board may prescribe a minimum score in the written portion of any examination, including credit for past service in examinations for promotion, and may exclude from subsequent portions of the examination any candidate who fails to attain the minimum score.

The board may, by its rules, provide for the extension of the life of an eligible list and may delegate to the general manager of the Personnel Department the authority to extend the life of an eligible list for entry-level positions in accordance with the civil service rules.

### **Sec. 1009. Promotion.**

The board shall by its rules provide for promotion in the classified civil service on the basis of ascertained merit and seniority in service and examination, and shall provide, in all cases where it is practicable, that vacancies shall be filled by promotion. All examinations for promotion shall be competitive among members of lower ranks who apply for the examination and who have the experience and qualifications required by the board as a prerequisite for taking the examination. The general manager of the Personnel Department shall submit to the appointing authority for each promotion the names of eligible applicants in accordance with Section 1010.

In rating eligible candidates, the board shall make an allowance of credits for past service. The announcement of the examination shall state that credits will be given for past service. Upon the written request of the appointing authority, the board may certify the names of those applicants having the highest ratings on the open competitive eligible list whose scores before adjustment for preferential credits are higher than the score of the highest available applicant on the promotional eligible register after credits for past service have been added. Names of candidates shall be removed from the register of eligibles for promotion after they have remained on the register for two years without re-examination.

Promotional examinations shall be held at intervals necessary to maintain a register of eligibles for promotional positions in which there are vacancies. The method and rules governing examination and certification for promotions shall be the same as provided for applicants for original appointment, except as otherwise provided in this section.

### **Sec. 1010. Certification.**

(a) **Three Highest Whole Scores.** The appointing authority of a department shall notify the board when one or more classified positions are to be filled. The general manager of the Personnel Department shall certify to the appointing authority the names and addresses of those eligibles having the three highest whole scores on the register for the class to which the positions belong. The appointing authority shall fill the positions from the names certified by the general manager within 60 days from the date of certification. Certified test scores shall be made public.

(b) **Selective Certification.** Upon request of the appointing authority and approval by the board, the general manager of the Personnel Department may establish a separate register of eligibles from among those eligibles having the three highest whole scores based on factors such as special skills, licenses, language proficiency and specialized training.

(c) **Extra Certifications.** If there are sufficient eligibles available, the general manager of the Personnel Department shall certify at least five names and addresses more than the number of positions to be filled. If there are less than five available eligibles more than the number of positions to be filled within a range of three whole scores, the general manager of the Personnel Department shall certify the names and addresses of all available eligibles within such additional number of whole scores as necessary to provide a minimum of five available eligibles more than the number of positions to be filled.

Where there are remaining on the eligible list less than five available eligibles more than the number of positions to be filled and the general manager of the Personnel Department finds that it is for the good of the civil service, the names of all available eligibles may be certified and appointments may be made from among those available eligibles.

(d) **Certification Within Range of One or More Whole Scores.** In consideration of the number of vacancies to be filled and the likely number of available eligibles within a range of three whole scores, the general manager of the Personnel Department may certify the names and addresses of all available eligibles within a range of one or more whole scores whenever a certification is requested by an appointing authority and there are at least five eligibles available within such range over and above the number of positions to be filled.

(e) **Order of List.** Whenever the general manager of the Personnel Department certifies the names and addresses of eligible candidates, the names shall be listed in the order of the whole scores achieved, except that within the range of each single whole score the names of eligibles shall be listed in random order.

(f) **[Repealed.]**

### **Sec. 1011. Probation.**

(a) **Length of Probation.** A candidate appointed to an entry level classified position shall be employed on probation for a period not exceeding 12 months, with the specific period to be established by the board, and for a period not exceeding 18 months, to be measured from the commencement of recruit training, for those employees appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of regular police officers. The civil service rules may provide for a different period of probation for non-entry level employees, not exceeding six months except that a longer period, not exceeding 12 months, may be fixed for management personnel.

(b) **Termination During Probation.** At or before the expiration of the probationary period, the appointing authority may terminate the probationary employee by delivering written notice of termination to the employee assigning in writing the reasons for the termination. The appointing authority shall subsequently notify the board of such termination. Unless the probationary employee is served with written notice of termination during the probationary period, the employee's appointment shall be deemed complete.

#### SECTION HISTORY

Amended by: Subsec. (a), Charter Amendment Q § 4, approved March 8, 2011, effective April 8, 2011.

### **Sec. 1012. Removal from and Reinstatement to the Register of Eligible Candidates.**

(a) No candidate shall lose his or her place on a register of eligible candidates by certification or rejection, except that the board may remove names of candidates from a register after they have remained on the register for more than two years.

(b) The board may, by its rules, provide for striking off names of candidates from open competitive eligible lists established as a result of continuous examinations after they have remained on the list for six months.

(c) The civil service rules shall provide for reinstatement to the register of eligibles, on recommendation of the head of the department, of persons who have become separated from the civil service or who have been reduced in rank, other than persons who have been removed for cause.

(d) The board may, by its rules, provide for restoration to the register of eligibles, those candidates who are terminated during the probationary period, but the general manager of the Personnel Department may not certify any candidate to the department or office which terminated the candidate except at the specific request of the appointing authority of that department or office.

### **Sec. 1013. Temporary Appointment.**

(a) **Length of Appointment.** To prevent stoppage of public business or to meet extraordinary exigencies, any appointing authority may make temporary appointments to classified positions in accordance with civil service rules that the board shall prescribe. The board shall have the power to authorize such temporary appointments until an eligible list is established, but for no longer than one year.

(b) **Termination.** Any temporary appointment shall terminate immediately when a regular appointment can be made unless the board finds that for a specified period it is necessary that the temporary employee remain to orient or train the new regular appointee.

(c) **Temporary and Intermittent Appointments.** The civil service rules shall provide for the tenure of persons appointed from a register of eligibles to positions determined by the board to be temporary or intermittent in character. Any rules adopted pursuant to this subsection shall provide that when appointment is made to a position determined to be temporary or intermittent, the provisions of Section 1011 with respect to period of probation and completion of appointment shall not apply.

#### SECTION HISTORY

Amended by: Subsec. (a), Charter Amendment Q § 5, approved March 8, 2011, effective April 8, 2011.

### **Sec. 1014. Special Reassignments.**

(a) **Reassignment Without Examination.** In addition to and notwithstanding the provisions of Section 1015, the board may by its rules provide for status and seniority for civil service employees in classes other than those for which they were examined, where:

(1) an employee is incapable of performing satisfactorily the duties of his or her position because of injury, sickness or disability; or

(2) an employee has completed a probationary period in the City service.

(b) **Requirements for Reassignment.** Any rules adopted by the board pursuant to this section shall provide that:

- (1) no employee may be placed in a different class without first receiving the employee's written consent to the reassignment;
- (2) no change of class status may be allowed if it would result in a promotion;
- (3) no employee may be placed in a different class unless the employee possesses the minimum qualifications required for the class and the capability of performing the required duties;
- (4) no employee who is placed in a different class pursuant to the provisions of this section may be credited with more seniority than accumulated in the employee's former class.

#### **Sec. 1015. Layoffs.**

In addition to all other matters, the board shall by its rules provide for the following:

(a) **Order of Suspension and Restoration.** The civil service rules shall provide the manner and order, not inconsistent with the provisions of this section, in which all persons employed in the classified civil service shall be suspended and restored where the suspension results from lack of work, lack of funds or abolishment of position or otherwise, excepting suspension for personal delinquency. In all cases, suspension and restoration shall be based upon seniority as provided in this section, or as provided by the civil service rules.

No assignment of employees to positions within a class, except as provided in this section, for which no different examination requirements have been established by the board shall affect the requirements of this section governing suspension and restoration for lack of work, lack of funds or abolishment of position or otherwise. In all of these cases, all employees within the same Class-Group, as defined below, and for which similar examinations are required by the board shall be considered as one Class-Group for purposes of suspension and restoration.

Whenever suspension other than for personal delinquency is to be made in any class in an office, department, bureau or major division in a department having control of its own funds (Class-Group), the person to be suspended shall be selected in the order determined by length of service in such class and in classes of higher rank since regular appointment in the classified civil service, after deducting periods of absence in accordance with the civil service rules. Persons having the shortest length of service shall be suspended first.

(b) **Displacement.** Any person so suspended shall be entitled to displace the person holding a position in a Class-Group in which a regular position was formerly held by the person so suspended, who has the shortest length of service in such Class-Group and in classes of higher rank after deducting periods of absence as provided by the civil service rules. Any person entitled to displace a person may fill instead, with the consent of the appointing authority, a vacant position in the Class-Group in which he or she is entitled to displace. In the event an employee exercises his or her right to displacement, the employee shall receive the salary at the level of the highest paygrade in the Class-Group which the employee held prior to leaving the Class-Group.

(c) **Determination of Class-Groups.** The Class-Group in which suspension is to be made or the Class-Group in which restoration is to be made, shall include all positions created from such Class-Group after the original regular appointment therein of the person suspended or restored. The determination of the board as to the Class-Group from which such positions were subsequently created shall be final and conclusive.

(d) **Reserve List.** A reserve list shall be established in each class in each office, department, bureau or division of a department having control of its own funds which shall consist of the names of those persons who have been regularly appointed or promoted to, and have served beyond the probationary period in a class and have been suspended for causes other than personal delinquency. Each person whose name appears on the reserve list, until regularly restored to a position in the class in the office, department, bureau or division from which he or she was suspended shall be certified for appointment to a position in the class in the office, department, bureau or division from which he or she was suspended. The name of any person who has been out of the service of the City for more than five years shall be permanently removed from the reserve list.

(e) **Order of Certification.** Whenever any vacancy is to be filled, it shall be filled by certifying in the following order:

- (1) from the reserve list, if any, in the class and office, department, bureau or major division in which the vacancy exists, the name of the person with greatest length of service in the class and all classes of higher rank, or by transfer of a person whose service in the class and classes of higher rank is greater than that of any person on the reserve list.
- (2) from the promotional list, if any, provided for in Section 1009, of the office, department, bureau or major division where the vacancy is to be filled;
- (3) from the reserve list of other offices, departments, bureaus and major divisions as provided in the civil service rules;
- (4) by certifying from the appropriate register of eligibles provided in this Article.

As to certifications to be made from other than the reserve list of the office, department, bureau or major division in which the vacancy exists, the board may by its rules provide that when the list or register from which certification is to be made does not contain as many names as may be certified for any vacancy or vacancies under the provisions of Section 1010, additional names, up to but not exceeding the maximum number allowed, shall be certified from the list or register next in the order as provided above.

(f) **Procedural Review.** The board shall have the same power and duty to review as to regularity of procedure all cases of suspension for lack of work, lack of funds or abolishment of position or otherwise, as elsewhere provided in the Charter for removal, discharge, or suspension for cause; but the question of the necessity for suspension for lack of work, lack of funds or abolishment of position shall not be subject to review by the board.

#### **Sec. 1016. Discharge or Suspension.**

(a) **Discharge or Suspension for Cause.** Any board or officer having the power of appointment shall have the power to suspend or discharge any officer, member or employee of the office or department. No person in the classified civil service shall be discharged or suspended except for cause, which shall be stated in writing by the board or officer having the power to make such discharge or suspension.

(b) **Statement of Cause.** The written statement of cause shall be filed with the Board of Civil Service Commissioners, with certification that a copy has been served upon the person so discharged or suspended, in accordance with Section 1018. Upon filing with the board, the discharge or suspension shall take effect.

(c) **Application for Hearing.** Within five days of service of the written statement upon any person so discharged or suspended, the person shall file a written application with the board in order to require the board to hold a hearing to investigate the grounds for the discharge or suspension. In the event that the person does not file an application, the board may, but is not required to, within 15 days after the filing of the written statement with the board, determine to hold a hearing to investigate the grounds for the discharge or suspension.

(d) **Reinstatement; Restoration.** If, after investigation and hearing as required by law is held, the board finds, in writing, that the grounds stated for the discharge or suspension were insufficient or were not sustained, the board shall order the person to be reinstated or restored to duty. With the consent of the appointing authority, the board may also reduce the length of the suspension, or may substitute suspension for discharge, if the board makes a written finding that such action is warranted. The order of the board with respect to the discharge or suspension shall be promptly certified to the appointing board or officer, and shall be final and conclusive.

(e) **Compensation.** If the board orders reinstatement or restoration to duty of a person who has been discharged or suspended, the person shall be entitled to receive compensation from the City the same as if he or she had not been discharged or suspended by the appointing board or officer.

(f) **Change of Disciplinary Review.** The Council may, by ordinance, provide for an alternative system for impartial review of employee discipline as set forth in subsections (b) through (e) of this section, provided that such a system conforms with due process standards for a fair hearing, and provided there remains a process for review of employee discipline in which costs are borne by the City.

(g) **Finality of Order of Suspension for Lack of Funds.** The order of any appointing board or officer suspending any person because of lack of funds or lack of work in the department shall be final, and shall not be subject to review by the Board of Civil Service Commissioners.

(h) **Applicability.** The procedure for review of discipline set forth in this section shall not apply to:

(1) those members of the Police Department appointed under civil service rules and regulations and sworn in, as provided by law, to perform the duties of regular police officers who are subject to the provisions of Section 1070 of the Charter.

(2) those members of the Fire Department appointed under civil service rules and regulations to perform the duties of regular firefighters who are subject to the provisions of Section 1060 of the Charter.

(3) any suspension of five working days or less in any 12 month period for personal delinquency. The reasons stated in writing for any suspension shall be furnished to the suspended employee and promptly filed with the board. Any suspension which results in an employee having a total suspended time by reason of the exercise of authority under this subsection in excess of five working days in any 12 month period shall be subject to all of the provisions of this section.

#### **Sec. 1017. Demand for Reinstatement; Claim for Compensation.**

Whenever it is claimed by any person that he or she has been unlawfully demoted, suspended, laid off or discharged, and that person has filed an application for a hearing as provided in Section 1016(c) and reinstatement or restoration to duty has been denied, the person may file a written claim for compensation and a demand for reinstatement. The claim and demand must be filed within 90 days from the date of the decision of the board following a hearing, or if no hearing is applied for, from the date on which it is claimed that the person



was first illegally, wrongfully or invalidly demoted, laid off, suspended or discharged. The demand for reinstatement must be filed with the board and the claim for compensation must be filed with the City Clerk. Failure to file a demand for reinstatement with proof of filing with the board, within the time specified in this section, shall be a bar to any action to compel reinstatement. Proof of filing with the City Clerk of the claim for compensation within the time and in the manner specified shall be a condition precedent to any recovery of wages or salary claimed to be due on account of demotion, layoff, suspension or discharge. Except as provided in this section, claims for compensation shall conform to the requirements of Section 350.

#### **Sec. 1018. Service of Notice.**

Service of notice in accordance with this Article may be made by handing a copy to the person or by sending a copy by certified mail to the person's last known residence if, after due diligence, the person cannot be found.

#### **Sec. 1019. Falsification and Corruption.**

(a) **Investigation.** The board shall investigate the enforcement of the civil service provisions of this Article and the civil service rules. All officers of the City shall aid the board in all proper ways in carrying out the civil service provisions of this Article.

(b) **Reprimand; Recommendation of Discharge or Suspension.** Any person holding a position in the classified civil service who willfully violates any of the civil service provisions of this Article shall, after hearing by the board, be subject to reprimand by the board. The board shall have the right to recommend suspension, discharge, or in lieu of discharge, demotion of the person to the appointing power.

(c) **Misdemeanors.** The following conduct is a violation of this Article and shall be punishable as a misdemeanor:

(1) any oral or written false statement willfully made under oath in any application or document filed with the board, in any proceeding before the board, in any investigation conducted by or under the jurisdiction of the board, or in any proceeding arising under this Article.

(2) any conduct, whether done alone or in cooperation with others to defeat, deceive or obstruct any person in respect to his or her right of examination; to corruptly or falsely mark, grade, estimate, or report upon the examination of proper standing of any person examined under the civil service provisions, or aid in so doing; or to willfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects of any person for employment or promotion.

(3) direct or indirect payment or promise of payment of money or other valuable consideration to any person for appointment, proposed appointment, or promotion to a position in the classified civil service.

#### **Sec. 1020. Certification of Employment.**

The Controller shall not approve any compensation for services to any person performing the duties of a position in the classified civil service, unless the board has certified that the person has been employed in accordance with this Article and the civil service rules.

#### **Sec. 1021. Employment Upon Consolidation or Annexation of Other Governmental Entities.**

Officers and employees of any governmental agency, municipality or any special assessment or other special district created under general laws, all or part of which may become part of the City through consolidation, annexation or joint powers agreement, may upon Council approval of the consolidation, annexation or joint powers agreement become employees of the City in a similar capacity as provided in this section.

In order to avoid suspension for lack of work of employees of the Community Redevelopment Agency (CRA), the Council may, by resolution, direct the Board of Civil Service Commissioners to develop procedures allowing placement, as provided in this section, of CRA employees in civil service positions for which they are qualified in any City office or department except the Department of Water and Power. Appointment would be made only at the discretion of the City department or office where there is a vacancy, and only after persons on a department reserve list, if any, have been offered the position in accordance with civil service rules.

Upon consideration of the resolution regarding CRA employees or consolidation, annexation, or joint powers agreement, but prior to final approval, the Council shall request that the Board of Civil Service Commissioners establish the qualifications, fitness requirements and background standards for the prospective employees and establish the method of determining that the prospective employees meet those qualifications, requirements and standards. The board shall also establish the appropriate employment classifications, length of probationary periods, and seniority for layoff and examination purposes for the prospective employees. The Council may establish terms and conditions of employment in addition to those provided elsewhere in the Charter, and in addition to or different from those provided by ordinance, by memorandum of understanding or otherwise.

Those employees who are determined by the board to have met the qualifications, requirements, and standards established by the board, and who meet all other legally applicable requirements, shall become employees of the City upon final approval of the consolidation, annexation or joint powers agreement by the Council or, in the case of individual CRA employees, upon approval of the appointment by the board.

If the duties of any officer or employee of any municipality or any special assessment or other special district conflict with the duties of any officer of the City, then that officer or employee shall become an employee of the City in a position subordinate to the officer of the City.

#### **Sec. 1022. Use of Independent Contractors.**

Nothing in this Article shall be deemed or construed as preventing the Council, or a board of commissioners in the case of those departments having control of their own revenues and funds, from entering into contracts for the performance of work when it is determined by the Council or the board of commissioners that the work can be performed more economically or feasibly by independent contractors than by City employees. The authority of the Council set forth in this section may be delegated to departments and officers of the City under rules and procedures as the Council may prescribe. Nothing in this section shall limit the application of Sections 370 through 373 of the Charter relating to contracts and competitive bidding for contracts.

#### **Sec. 1023. Military Leave.**

Every officer or employee who leaves his or her office or position to serve in the armed forces of the United States shall be entitled to a leave of absence and, upon returning to the service of the City, shall be entitled to restoration to the position to which he or she would have been entitled as if the leave had not occurred, subject to applicable state and federal law and as further provided by ordinance.

#### **Sec. 1024. Non-discrimination.**

Notwithstanding any other provision of the Charter, the City shall not discriminate in the provision of employee benefits between employees with spouses and employees with domestic partners. The Council shall adopt ordinances to implement this provision.

### ***DISCIPLINE FOR PHYSICIANS AND PSYCHOLOGISTS***

#### **Sec. 1040. Rights and Due Process Procedures.**

Persons appointed to full-time, non-management positions as physicians or psychologists shall be employed on probation for a period of two years. Persons serving in such positions as of the effective date of this section, shall be given credit for their service with the City prior to the effective date with respect to completion of the required probationary period. Upon successful completion of the probationary period, these employees shall be entitled to the rights and due process procedures set forth in Section 1016.

Notwithstanding any other provision of this section, any person employed by the City as a full-time physician or psychologist is subject to layoff due to lack of work, lack of funds, or abolishment of position in a manner consistent with the principles contained in Section 1015. The civil service rules promulgated pursuant to that section shall establish the procedure for such layoffs, determination of seniority rights and for the establishment of reserve lists.

### ***EMPLOYMENT IN THE CITY ATTORNEY'S OFFICE***

#### **Sec. 1050. Employment in the City Attorney's Office.**

The City Attorney's Office shall be subject to the following:

(a) No person shall be removed, suspended or reduced in grade without good cause who has served continuously as an attorney in the Office of the City Attorney for two years or more immediately preceding the action, or who has served continuously in any other capacity in the Office of the City Attorney for one year or more immediately preceding the action. The time during which persons serve at the pleasure of the City Attorney as prescribed in subsection (d) shall not be considered in the computation of time periods under this provision.

(b) Every person having served for those periods enumerated in the preceding subsection who is removed, suspended, or

reduced in grade, shall have the right to appeal to an impartial trier of fact in accordance with written rules promulgated by the City Attorney. The rules shall, before they become effective, be submitted to the Council. If the Council approves the rules, or if the Council fails to disapprove the rules within 60 days after submission, they shall become effective. The rules shall provide for service upon the person involved of a written statement of grounds and for a fair hearing by an impartial trier of fact who may:

(1) deny the appeal;

(2) sustain the appeal and order that the appellant be reinstated with full back pay to the position from which removed, suspended, or reduced in grade; or

(3) sustain the appeal in part and deny it in part and substitute as a lesser penalty either a suspension or a reduction in grade as may be appropriate. The trier of fact shall have the power to administer oaths and affirmations, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence at the hearing by subpoena to be issued by the City Clerk.

(c) Notwithstanding any other provision of this section, any person employed in the Office of the City Attorney is subject to layoff due to lack of work, lack of funds, or abolishment of position in a manner consistent with the principles contained in Section 1015. The rules promulgated pursuant to the preceding subsection shall establish the procedures for layoffs, determination of seniority rights, and for the establishment of reserve lists.

(d) Notwithstanding any other provision of this section, the City Attorney may appoint to serve at the pleasure of the City Attorney from among persons not then employed in the Office of the City Attorney no more than four assistants who meet the qualifications for those positions, and no more than four other persons. At the time of the appointments, the City Attorney shall file with the City Clerk a statement identifying the persons appointed. The appointment of all persons serving at the pleasure of the City Attorney shall terminate when the succeeding City Attorney is sworn in, unless reappointed by the succeeding City Attorney. In the event there is no vacancy in the class of positions to which a person is appointed under this provision, and should the Council fail to authorize an additional position, the person in the class to which the appointment is to be made having the least seniority in that class and higher classes shall be reassigned to a position in any other lower class of positions in which that person has displacement rights based on seniority or, at that person's option, may be transferred to any vacant position in the Office at the same or lower level class for which that person is found by the City Attorney to be qualified.

## ***DISCIPLINARY PROCEDURES FOR THE FIRE DEPARTMENT***

### **Sec. 1060. Rights and Due Process Procedures.**

(a) **Applicability; Rights.** For purposes of this section, the term "member" refers to all officers and firefighters of the Fire Department. This section shall not apply to any member of the department who has not completed the period of probation in his or her entry position as provided in Section 1011(a). Members not covered by this section who are otherwise entitled by law to a hearing or appeal with regard to proposed or imposed discipline shall be provided a hearing or appeal under rules promulgated by the Fire Chief.

The right of a member of the Fire Department, except the Fire Chief and any other member in a position exempt from civil service, to hold his or her office or position and to receive compensation attached to the office or position is hereby declared to be a substantial property right of which the holder shall not be deprived arbitrarily or summarily, nor other than as provided in this section. No member of the Fire Department shall be suspended, removed, or otherwise separated from the service of the Fire Department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair and impartial hearing before a Board of Rights except as provided in subsection (b) and (h) of this section. The charges must be filed within one year of the department's discovery of the act committed or omitted by a member and in no event later than two years from the date of the act or omission. No case of suspension with loss of pay shall be for a period exceeding six months.

(b) **Temporary Relief from Duty; Suspension.** After following predisciplinary procedures otherwise required by law, the Fire Chief may:

(1) temporarily relieve from duty any member pending a hearing before and decision by a Board of Rights on any charge or charges pending against the member; or

(2) suspend the member for a total period not to exceed 30 days with loss of pay and with or without reprimand, subject to the right of the member to a hearing before a Board of Rights. In the event the member files an application for a hearing before a Board of Rights as provided in this section, the suspension shall automatically become a temporary relief from duty pending hearing and decision by the Board of Rights. In the event that the member fails to apply for a hearing within the period prescribed, he or she shall be deemed to have waived the hearing and the suspension shall remain effective, unless the Fire Chief requires that a hearing be held.

(3) cancel such temporary relief from duty, or following such relief from duty, restore the member to duty with or without

restrictions pending a hearing before a Board of Rights.

(c) **Complaint.** In the event any order of relief from duty or suspension is made, the order shall contain a statement of the charges assigned as causes. The Fire Chief shall, within five days after the order is served as provided in subsection (d), file with the Board of Fire Commissioners, a copy of a verified written complaint upon which the order is based, with a statement that a copy of the order and verified complaint was served upon the accused. The complaint shall be verified by the oath of the Fire Chief and shall contain a statement in clear and concise language of all the facts constituting the charge or charges. If the complaint and proof of service are not filed within the five day period prescribed, the order of temporary relief from duty or suspension shall be void and of no effect and shall be automatically revoked, and the accused member restored to duty with the department without loss of pay and without prejudice, as if no order of relief from duty or suspension had been made.

(d) **Service.** The service of any notice, order or process mentioned in this section, other than service of subpoena, may be made either by handing the member a copy personally or by sending a copy by certified mail to his or her last known address of record with the Fire Department if, after due diligence, the member cannot be found.

(e) **Application for Hearing.** Within five days after personal service upon the accused of a copy of the verified complaint or within ten days after service by certified mail, the accused member may file with the Fire Chief a written application for a hearing before and decision by a Board of Rights.

(f) **Time and Place of Hearing.** Upon the selection of a Board of Rights, the Fire Chief shall set the time (not less than five nor more than ten days thereafter) and designate a place where the hearing is to be held, and shall cause notice thereof to be served upon the accused. After the Board of Rights has first convened, the board may continue the hearing of the matter to a specific date, and no other notice need be given, except as required by order of the board.

(g) **Composition of Board of Rights.** The Board of Rights shall be composed of three officers of the rank of battalion chief or higher. Upon the filing of the request for hearing before a Board of Rights, the accused shall draw six cards from a box containing the names of all officers who are qualified to be members of the board (except the names of the accused, the accuser, the Fire Chief, Deputy Chiefs, and other officers who may be prejudiced or disqualified by reason of being a material witness to the facts constituting the charges made), and shall select any three of the six names drawn to be members of the Board of Rights, rejecting the three names not selected by replacing them in the box.

(h) **Failure to Request a Hearing; Failure to Appear.** In the event the accused fails to request a hearing before a Board of Rights within the period prescribed, the Fire Chief may require a hearing to be held before a Board of Rights and may for that purpose, within five days after the expiration of such period, draw three names from a box to constitute the board.

If a Board of Rights has been constituted for the purpose of hearing and the accused, without reasonable excuse, fails, or refuses to appear before the Board of Rights at the time and place designated, the Fire Chief may, at his or her discretion, either direct the Board of Rights to proceed with the hearing in the absence of the accused, or the Fire Chief may, without a hearing, impose the penalty of suspension or removal as he or she deems fit and proper. The Fire Chief shall cause notice of the action to be served upon the accused and shall file a statement of the action with the Board of Fire Commissioners within five days.

If the accused and the Fire Chief both fail to draw and create a Board of Rights within the period prescribed in any case of temporary relief from duty pending hearing, the temporary relief from duty shall be null and void.

(i) **Oaths, Affirmations and Subpoenas.** Each member of the Board of Rights shall have the power to administer oaths and affirmations, in any investigation or proceeding pending before the board, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence.

Upon demand of any member of the Board of Rights, the City Clerk shall issue a subpoena in the name of the City, and attest the same with the corporate seal. The subpoena shall direct and require the attendance of the witnesses or the production of evidence at the time and place specified. It shall be the duty of the Chief of Police to cause all such subpoenas to be served upon the person or persons required to attend or produce evidence. It shall be the duty of the Council to provide suitable penalties for disobedience of such subpoenas, and the refusal of witnesses to testify or produce evidence.

(j) **Legal Advice.** Upon the request of any two members of the Board of Rights, the board's chairperson shall request an attorney from the City Attorney's office who shall advise the board on legal matters during any session of the hearing. The attorney need not be physically present at the hearing, but may advise the Board telephonically or through other means of communication. The same attorney advising the Board of Rights shall not advise the department's advocate in the same matter.

(k) **Burden of Proof.** In Board of Rights proceedings, the Fire Department shall have the burden of proving each charge, including those based on conduct punishable in whole or in part as a crime, by a preponderance of the evidence.

(l) **Representation; Transcript.** At the hearing, the accused shall have the right to appear in person and by counsel or representative, or both, and make defense to the charges and may produce witnesses and cross-examine witnesses. The accused shall have the right and privilege to select and name any other member of the department of any rank not higher than the rank of captain (who is not otherwise disqualified by reason of prejudice or being a party to the action in any capacity) to act as his or her defense representative at the hearing. The Fire Chief must immediately assign the member selected to act as defense representative, and it is hereby made the duty of such member to use every legal means available and exercise the best efforts of which he or she is capable to defend the accused at the

hearing.

All testimony at the hearing shall be given under oath, reported by a stenographer and transcribed and the member shall be entitled, upon request, to a certified copy of the transcript without charge or payment of fee.

(m) **Findings and Decision.** The Board of Rights shall, at the conclusion of the hearing, make its findings of guilty or not guilty on each charge which must be based only upon the evidence presented at the hearing. If the accused is found not guilty, the board shall order his or her restoration to duty without loss of pay and without prejudice, and the order shall be self-executing and immediately effective. If the accused is found guilty, the Board of Rights shall, by order, prescribe its penalty of:

- (1) suspension for a definite period not exceeding six months with total loss of pay, and with or without reprimand; or
- (2) reprimand without further penalty; or
- (3) removal from office or position.

The decision and order must be certified in writing and a copy immediately delivered to the Fire Chief.

(n) **Personnel History and Records.** The departmental personnel history and records of the accused shall be available to the Board of Rights only if the accused has been found guilty of any charge upon which he or she was heard by the Board of Rights, and then only for the purpose of determining a proper penalty, except that the medical package of the accused shall not be considered by the board with regard to penalty unless such information is relevant to a charge as to which there was a finding of guilty. At the penalty stage, the board must look to the nature and gravity of the offense of which the accused has been found guilty and may at its discretion review the departmental personnel history and record of the accused, provided that no item or entry in the record may be considered by the board except in the presence of the accused, unless the member has failed or refused to be present, and then only if the accused has been given a fair and reasonable opportunity to explain the item or entry.

(o) **Imposition; Reduction of Penalty.** Within five days of delivery to the Fire Chief of a certified copy of the decision and order of the Board of Rights, the Fire Chief shall either execute the order, or the Fire Chief may, at his or her discretion and in lieu of the order, impose a penalty less severe than that ordered by the Board of Rights, but may not impose a greater penalty. In the case of a suspension or removal, the Fire Chief shall cause a copy of the notice of the penalty to be served upon the accused and shall file a statement of such action with the Board of Fire Commissioners within five days thereafter.

(p) **Effective Date of Penalty.** In any case of suspension or removal prescribed by the Board of Rights, or by the Fire Chief if no hearing is held before a Board of Rights, the time of the suspension shall be computed from the first day the member was suspended or relieved from duty pending hearing before and decision by the Board of Rights and the removal shall relate back to and be effective as of the date of the relief from duty pending hearing before and decision by the Board of Rights. Notwithstanding the above, the Fire Chief and the member may agree to an alternative date for the commencement of the period of suspension and/or may agree to non-consecutive dates for the term of the suspension.

(q) **Double Jeopardy; Exoneration.** No member shall be twice tried for the same offense, except upon his or her request. In any case of exoneration of the accused after a hearing before a Board of Rights, exoneration shall be without prejudice to the member.

(r) **Rehearing.** At any time within three years after the effective date of removal, the removed member may file a request with the Fire Chief to be reheard or to be heard on the cause of his or her removal, together with a supporting affidavit setting forth in clear and concise language the reasons or grounds for a hearing or rehearing. The Fire Chief shall consider and make a decision upon the request within 30 days after filing. If the Fire Chief determines that good reason or cause exists for a hearing or rehearing, the Fire Chief shall without unnecessary delay, cause a Board of Rights to be constituted for the purpose of hearing and deciding upon the matter. The Board of Rights shall, at the conclusion of the hearing, render and certify its findings (independent of any previous findings by any other Board of Rights, or any other court, board or other tribunal, or any investigation or report of or discretion exercised by the Fire Chief in cases where no hearing was had before a Board of Rights), based only upon the evidence presented at such hearing. The board shall make and certify its decision and order in writing, and deliver a copy to the Fire Chief. The Fire Chief shall proceed in the same manner as provided for above after decision by a Board of Rights.

(s) **Other Legal Rights.** This section shall not be construed to affect any rights a member may have to assert other legal rights or remedies in relation to his or her office or position or to the compensation attached thereto, or to appeal to or be heard or tried by any court or other tribunal of competent jurisdiction.

(t) **Restoration to Duty.** Any person restored to duty or reinstated in his or her office or position after suspension or removal, shall be entitled to receive full compensation from the City as if the suspension or removal had not been made, except that such compensation shall not be for more than one year's salary unless otherwise provided by law.

(u) **Effects of New Charter.** This section shall not apply to the discipline of any member who was relieved from duty or who appealed a suspension to a Board of Rights prior to its effective date. Matters arising out of such relief from duty or suspension shall be adjudicated in accordance with applicable prior Charter provisions.

## *DISCIPLINARY PROCEDURES FOR THE POLICE DEPARTMENT*

### **Sec. 1070. Rights and Due Process Procedures.**

(a) **Applicability; Rights.** As used in this section, member shall mean an employee of the Police Department who has peace officer status as defined in California Penal Code Section 830.1. The provisions of this section shall not apply to any member of the Police Department who has not completed the period of probation in his or her entry level position, as provided in Section 1011(a). Non-tenured Police officers, where otherwise entitled by law to a hearing or appeal with regard to proposed or imposed discipline, shall be provided a hearing or appeal under procedures promulgated by the Chief of Police.

The rights of a member, except the Chief of Police and any other member in a position exempt from civil service, to hold his or her office or position and to receive compensation attached to the office or position is hereby declared to be a substantial property right of which the holder shall not be deprived arbitrarily or summarily, nor other than as provided in this section. No member shall be suspended, demoted in rank, suspended and demoted in rank, removed, or otherwise separated from the service of the department (other than by resignation), except for good and sufficient cause shown upon a finding of guilty of the specific charge or charges assigned as cause or causes after a full, fair, and impartial hearing before a Board of Rights, except as provided in subsections (b) and (i). No case of suspension with loss of pay shall be for a period exceeding 65 working days.

(b) **Temporary Relief from Duty; Suspension; Demotion.** After following predisciplinary procedures otherwise required by law, the Chief of Police may:

(1) temporarily relieve from duty any member pending a hearing before and decision by a Board of Rights on any charge or charges pending against the member, except that a member so relieved shall not suffer a loss of compensation until 30 days after the date on which the member was served with the charge or charges, except as provided for in subsection (q) or whenever the employee is temporarily relieved of duty on a new charge or charges while relieved of duty or serving a suspension based on a prior charge or charges. There shall be a calendar priority for Board of Rights hearings when a member is subject to relief from duty pending a hearing. The Chief of Police in his or her sole discretion shall have the power to cancel temporary relief from duty, or following relief from duty, to restore the member to duty with or without restrictions pending hearing; or

(2) suspend the member for a total period not to exceed 22 working days with loss of pay and with or without reprimand, subject to the right of the member to a hearing before a Board of Rights as provided in this section; or

(3) demote the member in rank, with or without suspension or reprimand or both, subject to the right of the member to a hearing before a Board of Rights as provided in this section; or

(4) demote the member in rank, with or without temporary relief from duty or cancellation of such relief from duty, subject to the right of the member to a hearing before a Board of Rights as provided in this section.

In the event the member suspended and/or demoted in rank under this subsection files an application for a hearing by a Board of Rights as provided in this section, the suspension and/or demotion shall automatically be stayed pending hearing and decision by the Board of Rights. Provided, however, in the case of any member demoted in conjunction with a temporary relief from duty or cancellation of such relief from duty, the demotion shall not be stayed pending a hearing before and decision by a Board of Rights unless the accused specifically requests in the written application that the Board consider the demotion in conjunction with the appeal of the temporary relief from duty or cancellation of such relief from duty. In the event that the member fails to apply for a hearing within the period prescribed, the member shall be deemed to have waived a hearing, and the suspension and/or demotion shall remain effective unless the Chief of Police requires that a hearing be held.

(c) **Limitations Periods.** No member shall be removed, suspended, demoted in rank, or suspended and demoted in rank for any conduct that was discovered by an uninvolved supervisor of the department more than one year prior to the filing of the complaint against the member, except in any of the following circumstances:

(1) If the act, omission, or allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(2) If the member waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(3) If the criminal investigation is a multi jurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves more than one employee and requires a reasonable extension.

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(6) If the investigation involves a matter in civil litigation where the member is named as a party defendant, the one year time period shall be tolled while that civil action is pending.

(7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(8) If the investigation involves an allegation of workers' compensation fraud on the part of the member.

(9) If a predisciplinary notice is required or utilized and the response results in additional investigation, the one-year period shall be tolled while the additional investigation is pending.

(d) **Complaint.** Any order of relief from duty, cancellation of relief from duty pending a Board of Rights hearing, suspension, demotion in rank, or suspension and demotion in rank shall contain a statement of the charges assigned as causes. The Chief of Police shall, within five days after the order is served as provided in subsection (e), file with the Board of Police Commissioners a copy of a verified written complaint upon which the order is based, with a statement that a copy of the order and verified complaint was served upon the accused. The complaint shall be verified by the oath of the Chief of Police and shall contain a statement in clear and concise language of all the facts constituting the charge or charges.

(e) **Service.** The service of any notice, order, or process mentioned in this section, other than service of subpoena, may be made by handing the accused a copy personally. If a copy of any notice, order or process cannot with reasonable diligence be personally served, service may be made by United States mail.

(f) **Application for Hearing.** Within five days after personal service upon the accused of a copy of the verified complaint, or within ten days after service in any other manner provided for in this section, the member may file with the Chief of Police a written application for a hearing before and decision by a Board of Rights. A Board of Rights is considered a *de novo* hearing.

(g) **Time and Place of Hearing.** Upon the selection of a Board of Rights, the Chief of Police shall set the time for (not less than 10 nor more than 30 days thereafter) and designate a place where the hearing is to be held, and shall cause notice thereof to be served upon the accused. After the Board of Rights has first convened, the Board may continue the hearing of the matter to a specific date, and no other notice need be given, except as may be required by order of the Board.

(h) **Composition of Board of Rights.** The Board of Rights shall be composed of two officers of the rank of captain or above and an individual who is not a member of the department (the civilian member), except as provided in the second paragraph of this subsection below. The members selected as prescribed in this section shall constitute the Board for the purpose of hearing and deciding upon the matter for which it was specially drawn. The qualifications of, selection procedures for, and compensation of the civilian members shall be established by ordinance. Upon the filing of the request for a hearing before a Board of Rights, as provided in subsection (f), the accused shall draw four cards from a box containing the names on cards of all officers who are qualified to be members of the Board of Rights (except the names of the accused, accuser, the Chief of Police, any staff or command officer specifically exempted by the Chief of Police in accordance with the provisions of the Board of Rights Manual or successor document, and any other officer who may be prejudiced or disqualified by reason of being a material witness to the facts constituting the charges made, otherwise disqualified for cause as determined by the Chief, or who has a conflict of interest). The accused shall select any two of the four names drawn to be members of the Board of Rights.

Notwithstanding the foregoing, the Council may adopt an ordinance providing the accused the option of having the complaint heard and decided by a Board of Rights composed of three individuals who are not members of the department (three civilian members) instead of a Board composed of two officers and one civilian. The qualifications of, selection procedures for, and compensation of the civilian members shall be established by ordinance. If the Council adopts an ordinance providing the option for an all civilian Board of Rights as described in this paragraph: the ordinance shall not apply to any complaint that has been filed by the Chief of Police with the Board of Police Commissioners prior to the effective date of the ordinance; the Council shall not repeal the ordinance for at least two years after it is adopted; and the department shall submit a report to the Council evaluating the effectiveness of the ordinance at the end of the two-year period.

(i) **Failure to Request a Hearing; Failure to Appear.** In the event the accused fails to request a hearing before a Board of Rights as provided in subsection (f) within the period prescribed, the Chief may require a hearing to be held before a Board of Rights and may for that purpose, within five days after the expiration of such period, draw two names from a box to sit on the Board.

If a Board of Rights has been constituted for the purpose of hearing and the accused, without reasonable excuse, fails or refuses to appear before the Board at the time and place designated, the Chief of Police may, at his or her discretion, either direct the Board of Rights to proceed with the hearing in the absence of the accused, or the Chief may, without a hearing, impose a penalty of suspension, demotion in rank, suspension and demotion in rank, or removal as he or she deems fit and proper. The Chief shall cause notice of the action to be served upon the member and shall file a statement of the action with the Board of Police Commissioners within five days.

If the accused and Chief both fail to draw and create a Board of Rights within the period prescribed, the complaint shall be null and void.

(j) **Oaths, Affirmations and Subpoenas.** During an internal investigation, prior to a Board of Rights hearing, or prior to or during other administrative proceedings, the Police Commission may compel the attendance of witnesses and the production of evidence by subpoena. Upon demand of the Police Commission, the City Clerk shall issue a subpoena in the name of the city and attest the same with the corporate seal. The subpoena shall direct and required the attendance of the witnesses or the production of evidence, at the time and place specified. A request to quash a subpoena may be filed with the Police Commission who shall decide the matter. Each Board

member shall have the power to administer oaths and affirmations in any investigation or proceeding pending before a Board of Rights, examine witnesses under oath, and compel the attendance of witnesses and the production of evidence by subpoena. Upon demand of any Board member, the City Clerk shall issue a subpoena in the name of the City and attest the same with the corporate seal. The subpoena shall direct and require the attendance of the witnesses or the production of evidence, at the time and place specified. It shall be the duty of the Chief of Police to cause all such subpoenas to be served upon the person or persons required to attend or produce evidence. It shall be the duty of the Council to provide suitable penalties for disobedience of such subpoenas and the refusal of witnesses to testify or produce evidence.

(k) **Legal Advice; Ex Parte Communication.** Upon the request of any two Board members, the Board's chairperson shall request an attorney from the City Attorney's office who shall advise the Board on legal matters during or between any session of the hearing. The attorney need not be physically present at the hearing, but may advise the Board telephonically or through other means of communication. The attorney who advises the Board may not advise the department's advocate in the same matter.

Ex Parte communication with members of a Board of Rights regarding the subject matter of the hearing while proceedings are pending is prohibited. No person shall attempt to influence the decision of a Board of Rights except during the hearing and on the record.

(l) **Burden of Proof.** In Board of Rights proceedings, the department shall have the burden of proving each charge, including those based on conduct punishable in whole or in part as a crime, by a preponderance of the evidence.

(m) **Representation; Transcript; Evidence.** At the hearing, the accused shall have the right to appear in person and by counsel or representative, (at his or her expense) and make defense to the charge or charges and may produce witnesses and cross-examine witnesses.

All testimony at the hearing shall be given under oath and shall be reported by a stenographer for possible transcription. Upon prepayment of the fee for the preparation thereof, the accused shall be entitled to a certified copy of the transcript; provided, however, when the department has previously had all or a portion of the report transcribed, a copy of the previously prepared report(s) shall be given to the member without charge. When the report is transcribed, the original transcript shall be placed on file in the department.

Evidence of acts, irrespective of whether they were associated with a personnel complaint against the accused and irrespective of the resolution of the complaint, may be considered in the discretion of a Board of Rights if relevant to the charges, such as, if the acts tend to prove that the conduct charged is consistent with a pattern of conduct. The acts may have occurred either before or after the conduct concerning which the member is presently charged.

(n) **Finding and Decision.** The Board of Rights shall at the conclusion of the hearing make findings of guilty or not guilty on each charge, which findings shall be based only upon the evidence presented at the hearing. If the accused is found not guilty, the Board shall order the member's restoration to duty without loss of pay and without prejudice, and the order shall be self-executing and immediately effective. If the accused is found guilty, the Board of Rights shall prescribe its penalty by written order of:

- (1) suspension for a definite period not exceeding 65 working days with total loss of pay, and with or without reprimand; or
- (2) demotion in rank, with or without suspension or reprimand or both; or
- (3) reprimand without further penalty; or
- (4) removal.

The decision of the Board must be certified in writing and a copy delivered to the Chief of Police as soon as practicable, but in no event later than ten days after the decision of the Board of Rights. Whenever a Board of Rights prescribes a penalty of suspension or removal and the member is not currently relieved from duty, the Chief may temporarily relieve the member from duty pending execution of the order.

For purposes of this section, demotion in rank shall mean reduction in civil service classification. The provisions of this section shall not apply to reductions in pay grade or similar personnel actions caused by reassignment, deselection from bonused positions, and the like. Such personnel actions shall be administered under policies adopted by the department.

(o) **Personnel History and Records.** The departmental personnel history and records of the accused shall be available to the Board of Rights only if the accused has been found guilty of any charge upon which the member was heard or tried by the Board of Rights, and then only for the purpose of determining a proper penalty. At the penalty stage, the Board may consider the entire departmental personnel history and record of the accused which shall include, among other things, information concerning personnel complaints against the accused that were sustained and information derived from complaints against the accused that were not resolved, to the extent and in the manner allowed by department policy except that the medical package of the accused shall not be considered by the Board with regard to penalty unless such information is relevant to a charge as to which there was a finding of guilty. In prescribing the penalty, the Board shall look to the nature and gravity of the offense of which the member has been found guilty and may at its discretion review the departmental personnel history and record of the member. No item or entry in the record may be considered by the Board except in the presence of the member and only where the member has been given a fair and reasonable opportunity to explain any item or entry unless the member has failed or refused to be present. Personnel records introduced at or considered by the Board are confidential except for any document or information from a document that was publicly disclosed during the hearing.



(p) **Imposition; Reduction of Penalty.** Within ten days of delivery of a certified copy of the decision of a Board Rights to the Chief of Police, the Chief shall either uphold the recommendation of the Board of Rights or may, at his or her discretion, impose a penalty less severe than that ordered by the Board Rights, but may not impose a greater penalty. In the case of a demotion, suspension, demotion and suspension, or removal, the Chief shall cause a copy of the notice of the penalty to be served upon the member and shall file a statement of this action with the Board of Police Commissioners within five days.

(q) **Effective Date of Penalty.** A removal prescribed by the Board of Rights, or by the Chief of Police if no hearing is had before a Board of Rights, shall relate back to and be effective as of the date of the relief from duty without pay pending hearing before and decision by the Board; however, where a final decision has been made by the Chief of Police prior to the end of the 30 day period referred to in subsection (b)(1), the removal shall be effective immediately. When there has been no relief from duty, the removal shall be effective upon service of the order. The effective date of any suspension and/or demotion prescribed by the Board of Rights, or by the Chief of Police if no hearing is had before a Board of Rights, shall be determined by policies adopted by the department; provided, that in case of suspension where there has been a temporary relief from duty, the 30 day period referred to in subsection (b)(1) or any portion thereof in which the member received compensation shall not be counted as part of the suspension. Nothing in this section shall preclude the imposition of a suspension without pay when a final decision is made prior to the end of the 30 day period. Practices in effect on the effective date of the most recent amendment to this section shall remain in effect until the adoption of any modification to the policies.

(r) **Calendar Days.** Except as otherwise provided in this section, all time periods, including those of limitation, shall be calculated in calendar days. When the last day of any such period falls on a weekend or City holiday, the period shall extend to the next business day.

(s) **Not Guilty.** In any case of a finding of Not Guilty of the accused after a hearing before a Board of Rights, the finding of Not Guilty shall be without prejudice to the member.

(t) **Rehearing.** At any time within three years after the effective date of removal, the removed member may file a request with the Chief of Police to be reheard or to be heard on the cause of the member's removal, together with a supporting affidavit setting forth in clear and concise language the reasons or grounds for a hearing or rehearing. The Chief shall consider and make a decision on the request and affidavit within 30 days after filing. If the Chief determines that good reason or cause exists for a hearing or rehearing, the Chief shall, without unnecessary delay, cause a Board of Rights to be constituted for the purpose of hearing and deciding upon the matter. The Board of Rights shall, at the conclusion of the hearing, render and certify its findings (independent of any previous findings by any other Board of Rights, or any other court, Board, or other tribunal, or any investigation or report of or discretion exercised by the Chief in such cases where no hearing was had before a Board of Rights) based only upon the evidence presented at the hearing. The Board shall make and certify its decision and order in writing and deliver a copy to the Chief. The Chief shall proceed in the same manner as provided for above after decision by a Board of Rights.

(u) **Modification of Penalty.** Following the filing of the notice of penalty with the Board of Police Commissioners as required in subsection (p), the Chief of Police may correct a technical error, or where there is good cause shown, may reduce a penalty, including restoration of a person following removal. The provisions of subsection (w) shall not apply to this subsection; however, the member shall receive full compensation for any penalty or portion thereof already served which has been reduced or nullified by the Chief of Police. The Chief of Police shall file a copy of the modified order or statement of his decision with the Board of Police Commissioners.

(v) **Other Legal Rights.** This section shall not be construed to affect any rights a member may have to assert other legal rights or remedies in relation to his or her office or position or to the compensation attached thereto, or to appeal to or be heard or tried by any court or other tribunal of competent jurisdiction.

(w) **Restoration to Duty.** A member restored to duty after removal or temporary relief from duty, or whose suspension or demotion has been overturned in whole or in part, shall be entitled to receive full compensation from the City as if the nullified penal action had not been taken; except that such compensation shall not exceed one year's salary unless otherwise required by law.

(x) **Decisions Based on Evidence.** Members of a Board of Rights are to make decisions based solely on the evidence before them.

(y) **Public Records.** The order referred to in subsection (d) and the notice of the penalty referred to in subsection (p) are considered to be a public record at the time of filing of such documents with the Board of Police Commissioners. The Chief of Police or his or her designee shall be the custodian of public records referred to in this section.

(z) **Effects of Amending This Section.** This section shall not apply to the discipline of any member who was relieved from duty or who appealed a demotion or suspension or both to a Board of Rights prior to its effective date. Matters arising out of such relief from duty, demotion or suspension shall be adjudicated in accordance with applicable prior Charter provisions.

#### SECTION HISTORY

Amended by: Charter Amendment 1, approved April 10, 2001, effective May 5, 2001; Subsec. (h), Charter Amendment C § 1, approved May 16, 2017, effective June 14, 2017.