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The Dallas City Code

## **CHAPTER 34 PERSONNEL RULES**

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## **ARTICLE I. GENERAL PROVISIONS.**

### **SEC. 34-1. POLICY.**

The provisions of this chapter are subject to modification, rescission, and amendment by the Dallas city council at any time. Nothing in this chapter conveys a contract of employment with the city of Dallas. Nothing in this chapter conveys a private cause of action to any employee. (Ord. Nos. 24873; 26182)

### **SEC. 34-2. ADMINISTRATION.**

(a) City manager.

(1) The city manager is designated by the charter as the chief administrative and executive officer with appointing authority for all positions of employment with the city, except as otherwise provided by the city charter.

(2) The city manager is responsible for employee efficiency, morale, and welfare. The city manager, a department director, or a designated representative of either may discharge, demote, suspend, or reprimand any employee, subject to provisions of the charter.

(b) Director of human resources. The director of human resources is appointed by the city manager to administer the personnel system as established by the city charter, this chapter, and other applicable city ordinances and state and federal laws. Responsibilities include, but are not limited to, the following:

(1) Establishing processing and orientation procedures for all new city employees.

(2) Reviewing and approving all appointments, reappointments, and reinstatements to city employment.

- (3) Providing and administering personnel programs, rules, regulations, procedures, and actions affecting employment status, including, but not limited to, promotions, transfers, leaves of absence, and paid leave programs.
- (4) Administering and ensuring compliance with disciplinary and grievance procedures in cooperation with department directors, assistant directors, and supervisors, except as otherwise provided in this chapter.
- (5) Reviewing departmental personnel programs, rules, regulations, procedures, and actions and ensuring compliance with city policies and this chapter.
- (6) Ensuring departmental compliance and cooperation with the rules and regulations of the civil service board, when applicable.
- (7) Providing regulations, guidelines, procedures, and assistance to employees and departments regarding personnel-related complaints, excluding formal complaints filed with the civil service board.
- (8) Regulating information made available to employees by regular distribution, including all charity drives or fund solicitations in which employees are asked to contribute or participate.
- (9) Developing and administering, in cooperation with other departments, training programs for city employees.
- (10) Administering the employee benefit program as directed by the city manager.
- (11) Developing, recommending, and administering equitable compensation and benefit programs for city employees.
- (12) Maintaining master employee personnel files and, in consultation with the city attorney, developing procedures for responding to all requests for personnel information.
- (13) Reviewing all council resolutions amending the number of budgeted positions or the salary and classification schedules.
- (14) Maintaining an employee service awards program.
- (15) Administering classification and evaluation programs applicable to positions of employment.
- (16) Administering the unemployment compensation program.
- (17) Maintaining a human resources information system and preparing and submitting all statistical personnel reports required by federal, state, or other agencies.
- (18) Providing guidance, consultation, and personnel information to other departments.
- (19) Developing and maintaining an employee performance evaluation and associated merit pay program.
- (20) Performing all other actions necessary for the proper administration of the personnel system as established by the city charter, this chapter, and other applicable city ordinances and state and federal laws.

(c) Fireandpolicedepartments. The chiefs of the fire and police departments shall, respectively, designate an officer of rank in each department who shall act as personnel officer, subject to the direction and supervision of the chief of the department. Those officers shall cooperate with the director of human resources in all departmental personnel matters relating to their respective departments and maintain complete departmental personnel records.

(d) Certification for classified positions. The names of persons eligible for classified positions are certified by the civil service board only upon request of the city manager, a department head, the director of human resources, or a designated representative. (Ord. Nos. 19340; 19473; 22026; 24873; 28424)

### **SEC. 34-3. PENALTY.**

An employee who fails to comply with this chapter, or who violates one or more of the rules of conduct set forth in this chapter, is subject to appropriate disciplinary action, including reprimand, suspension, demotion, or discharge, whichever is applicable. All disciplinary action taken and any appeal from the disciplinary action must be in conformance with the procedures established by the city charter, this chapter, departmental rules and regulations, and other applicable law. (Ord. Nos. 19340; 24873)

### **SEC. 34-4. DEFINITIONS.**

In this chapter:

(1) ADMINISTRATIVE TERMINATION means termination because of death, disability, service retirement, or end of a temporary assignment.

(2) APPOINTMENT means:

(A) initial city employment; or

(B) placement into a position of department director, assistant department director, or other managerial personnel designated by the city council in accordance with Section 11, Chapter XVI of the city charter, regardless of whether the placement was through a competitive or noncompetitive selection process.

(3) ASSIGNMENT PAY means additional compensation for specialized duties as established by the salary and classification schedule.

(4) AUTHORIZED POSITION means an individual position described by a specific classification title and approved by the city council. Any change to an authorized position requires city council approval.

(5) BASE HOURLY RATE OF PAY means the hourly rate of an employee's base salary as established in the salary and classification schedule.

(6) BENEFIT means an employer-sponsored program that includes, but is not limited to, paid leave and health and life insurance benefits, but does not include wages, merit increases, service credit, or seniority.

(7) BREAK IN SERVICE means termination for one or more work days as a result of:

(A) administrative termination, resignation, reduction in force, or discharge, followed by reappointment; or

(B) leave of absence without pay for more than six consecutive calendar weeks, except to the extent that the leave without pay is authorized by federal or state law.

(8) CITY means the city of Dallas, Texas.

(9) CIVIL SERVICE BOARD means the civil service board of the city.

(10) CLASSIFICATION means all positions, regardless of departmental location, that are sufficiently alike in duties and responsibilities to:

(A) be called by the same descriptive title;

(B) be accorded the same pay scale under like conditions; and

(C) require substantially the same education, experience, and skills.

(11) CLASSIFICATION CHANGE means revision of a position title that may include an adjustment of pay range.

(12) CLASSIFIED POSITION means a position that is subject to civil service rules and regulations as designated by the city charter.

(13) DEMOTION means a demotion as defined in Section 34-12(a) of this chapter.

(14) DISCHARGE means involuntary termination.

(15) EMPLOYEE means a person employed and paid a salary or wages by the city, whether under civil service or not, and includes a person on a part-time basis, but does not include an independent contractor or city council member.

(16) EMPLOYEES' RETIREMENT FUND BOARD means the board of trustees of the employees' retirement fund of the city of Dallas.

(17) EXEMPT EMPLOYEE means an exempt employee as defined by the Fair Labor Standards Act, as amended.

(18) FAMILY AND MEDICAL LEAVE ACT means the Family and Medical Leave Act of 1993 (29 U.S.C.A. §§ 2601 et seq.), as amended.

(19) FAMILY LEAVE means authorized leave as provided for in the Family and Medical Leave Act.

(20) FIRE DEPARTMENT means the fire-rescue department of the city.

(21) FLEX TIME means a balancing time entry process that provides exempt employees with the opportunity to substitute additional hours worked outside of his or her normal work schedule for time not worked during the same pay period in order to meet the total 80 hours required in a pay period. Flex time is a balancing entry only and is not paid leave.

(22) FURLOUGH LEAVE means time off from work when employees are placed in a temporary non-duty, non-pay status for required budgetary reasons.

(23) GENDER IDENTITIY AND EXPRESSION means an individual's real or perceived gender identity as male, female, both, or neither.

(24) GRADE means a division of a salary and classification schedule with specified rates or ranges of pay.

(25) GRIEVANCE means an employee's formal, written complaint regarding work conditions that the employee claims have been adversely affected by a violation, misinterpretation, or misapplication of a specific law, ordinance, resolution, policy, rule, or regulation.

(26) IMMEDIATE FAMILY MEMBER means:

(A) a husband, wife, father, mother, father-in-law, mother-in-law, son, daughter, brother, or sister of an employee; or

(B) any person related to an employee by blood or marriage and who resides in the same household as the employee.

(27) INTERNAL APPEAL means an administrative appeal to which an employee may be entitled under this chapter, this code, the city charter, or departmental regulations.

(28) LEAVE WITHOUT PAY means an authorized temporary absence without pay.

(29) MANDATORY CITY LEAVE means paid leave that is provided to employees by the city as a result of budget-related pay reductions.

(30) MERIT INCREASE means a discretionary increase in salary based on performance.

(31) MILITARY LEAVE means authorized leave to perform duties in the military service as provided for in:

(A) the Uniformed Services Employment and Reemployment Rights Act;

(B) Chapter 431 of the Texas Government Code, as amended; and

(C) Chapter 613 of the Texas Government Code, as amended.

(32) MILITARY SERVICE means:

(A) the uniformed services, as defined in the Uniformed Services Employment and Reemployment Rights Act;

(B) the state militia, as defined in Chapter 431 of the Texas Government Code, as amended; and

(C) the military service, as defined in Chapter 613 of the Texas Government Code, as amended.

(33) NON-CIVIL SERVICE EMPLOYEE means an employee who fills a position that is exempt from the provisions applicable to the civil service, as designated by the city charter. Non-civil service employees include:

(A) employees of the legal department, the city manager's office, the city auditor's office, the city secretary's office, the library department, the park and recreation department, and the radio department (WRR);

(B) municipal court judges; and

(C) city council office staff.

(34) NONEXEMPT EMPLOYEE means a nonexempt employee as defined by the Fair Labor Standards Act, as amended.

(35) PAID LEAVE means sick leave, vacation leave, holiday leave, court leave, death-in-family leave, fifteen days of military leave each calendar year, and mandatory city leave.

(36) POLICE AND FIRE PENSION BOARD means the board of trustees of the police and fire pension system of the city of Dallas.

(37) POSITION means a collection of tasks, duties, and responsibilities regularly assigned to and performed by an individual.

(38) PROBATION:

(A) Probation means a minimum six-month period:

(i) after initial appointment, during which an employee can be terminated without right of appeal; or

(ii) after promotion, during which an employee can be:

(aa) returned to the previous position, if a retreat right to the previous position exists; or

(bb) terminated without right of appeal, if no retreat right exists.

(B) Probation may be extended to allow:

(i) six months on-the-job work performance; or

(ii) completion of any written prerequisites to employment.

(C) Probation does not apply to positions in departments exempt from civil service, and employees in those positions do not serve a probationary period.

(D) The service of a probationary period or the successful completion of a probationary period does not convey upon, imply, or intend to imply that an employee has a property interest in continued employment or a contract of employment with the city.

(39) PROMOTION means an increase in grade with a resulting increase in salary due to placement in a position as a result of a competitive or noncompetitive selection process.

(40) REAPPOINTMENT means re-employment of a former city employee.

(41) REASSIGNMENT means a change of an employee to an equivalent position (same grade) within the same department.

(42) REDUCTION IN FORCE means a reduction in the number of budgeted positions due to a change in work or funds.

(43) REGULAR RATE OF PAY means an employee's base hourly rate of pay plus additional payments as established in the salary and classification schedule.

(44) RESIGNATION means a voluntary termination.

(45) **SALARY AND CLASSIFICATION SCHEDULE** means a city council-approved resolution that establishes all position classifications for city employment and the corresponding pay rates.

(46) **SERVICE CREDIT** means the total duration of city employment, less any adjustments for breaks in service.

(47) **SEXUAL ORIENTATION** means the actual or perceived status of an individual with respect to the individual's sexuality. Heterosexual, homosexual, and bisexual are examples of sexual orientation.

(48) **SHIFT DIFFERENTIAL PAY** means additional compensation for regularly scheduled work hours outside of the city's normal business hours, as specifically described in administrative directives of the city.

(49) **STEP** means one salary increment within a grade for a sworn police or fire department employee.

(50) **SUSPENSION** means unpaid disciplinary leave for a specified period of time.

(51) **SWORN EMPLOYEES OF THE POLICE DEPARTMENT** means:

(A) police officers and all related classifications, including trainee police officers; and

(B) park rangers and all classifications above park ranger in the same classification family.

(52) **TASKING** means release from duty upon completion of assigned work before the scheduled end of the work day.

(53) **TERMINATION** means cessation of employment with the city.

(54) **TRANSFER** means the change of an employee from a position in one department to an equivalent position (same grade) in another department, but that does not result in either promotion or demotion.

(55) **UNCLASSIFIED POSITION** means an unclassified civil service position as designated by Section 3, Chapter XVI of the city charter.

(56) **UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT** means the Uniformed Services Employment and Reemployment Rights Act of 1994 (38 U.S.C.A. §§ 4301 et seq.), as amended.

(57) **WORK WEEK** means the seven- day period from Wednesday through Tuesday.

(58) **WORKING DAYS** means Monday through Friday, excluding official holidays observed by the city of Dallas as set forth in Section 34-25 of this chapter. (Ord. Nos. 19340; 19473; 19679; 22195; 22296; 22318; 24873; 28024; 28794; 29480; [30216](#))

#### **SEC. 34-5. CONDITIONS OF EMPLOYMENT.**

(a) Compliance with rules and laws. Every city employee shall comply with:

(1) the provisions of the city charter and ordinances; and

(2) instructions and regulations promulgated by the city council or by any person in whom authority is vested by the city council.

(b) Retirementfundmembership. Every permanent employee must be a member of the employees' retirement fund except a sworn employee of the police or fire department, who shall be a member of the police and fire pension system.

(c) Subrogation. Every employee of the city accepts employment upon the condition that, if in the course of employment the employee sustains injury attributable in whole or in part, directly or indirectly, through the negligence or wrongdoing of a third person, firm, or corporation, the city shall be subrogated to the employee's rights, remedies, and claims against the third party to the extent of the amounts expended by the city for and on behalf of the employee, including wage supplementation during absence from work, workers' compensation, and medical costs arising out of or in any manner connected with the injury.

(d) Nepotism.

(1) An employee may not work under the line of supervision of a relative or the employee's domestic partner.

(2) An employee shall not make, or attempt to influence, any determination concerning the employment status or eligibility for employment of a relative or the employee's domestic partner.

(3) For purposes of this subsection:

(A) DOMESTIC PARTNER has the meaning given that term in Section 12A-2 of the Dallas City Code.

(B) RELATIVE means the employee's spouse, mother, father, stepmother, stepfather, mother-in-law, father-in-law, son, daughter, stepson, stepdaughter, son-in-law, daughter-in-law, brother, sister, stepbrother, stepsister, brother-in-law, or sister-in-law, or any grandparent, aunt, uncle, niece, nephew, or cousin related to the employee by blood or marriage.

(e) Notification of arrest. Within one business day after returning to work, an employee who has been arrested in the United States or any other country shall notify the human resources representative for the employee's department of the arrest and the reason for the arrest. An arrested employee who gives notice under this subsection is still required to comply with the notice of absence or tardiness requirements set forth in Section 34-36(b)(1)(B) of this chapter. (Ord. Nos. 19340; 22296; 22318; 24873; 28024)

## **SEC. 34-6. REQUIREMENTS FOR INDUCTION.**

To obtain employment with the city, an applicant must:

(1) be at least 16 years of age, unless otherwise approved under a federally-sponsored program;

(2) be eligible to work in the United States in accordance with the federal Immigration Reform and Control Act, as amended;

(3) have a social security number;

(4) agree to be fingerprinted, if requested;

(5) take a polygraph examination related specifically to job performance, for positions designated by the director of human resources; and

(6) pass a medical, physical agility, and/or mental examination after an employment offer has been extended, for positions designated by the director of human resources. (Ord. Nos. 19340; 22026; 22195; 24873)

### **SEC. 34-7. APPLICATION FOR EMPLOYMENT.**

(a) Application form. Every applicant for employment with the city shall submit a completed application form. Every question on the form must be answered.

(b) False or incomplete information. Any applicant or employee who provides false information on the application form or who fails to disclose information that is pertinent to the appointment is subject to denial of employment or discharge. (Ord. Nos. 19340; 24873)

### **SEC. 34-8. APPOINTMENTS.**

(a) Temporary employees.

(1) Appointments. An employee is designated as temporary when appointed to any of the following:

(A) an assignment less than six months in duration;

(B) a position funded under a federal employment and training program as a participant meeting federal eligibility requirements, but not including administrative or staff positions;

(C) positions in the city's temporary help service program;

(D) a cooperative work-study program with an educational institution;

(E) a seasonal position, even though the assignment may last more than six months;

(F) a position that is intended to give introductory work experience to a person preparing for entry into the work force; and

(G) a position scheduled to work less than 20 hours per week.

(2) Release. A temporary employee does not serve probation and may be released at any time without right of internal appeal.

(b) Permanent employees. An employee is designated as permanent when appointed in any situation not defined as temporary under Subsection (a). Exceptions to this subsection must be approved by the director of human resources.

(c) Full-time and part-time status. An employee is designated as:

(1) full-time when appointed on a work schedule that is at least 40 hours per week or averages 40 hours per week;

(2) part-time when appointed on a work schedule that:

- (A) is less than the usual work schedule of the unit to which the employee is assigned; or
- (B) averages less than 40 hours per work week.

(d) Special appointments. An employee is designated as a special appointment when the appointment is:

- (1) to a special body or commission not fully under the jurisdiction of the city, but where the employee is carried on the city payroll for administrative purposes;
- (2) a mobility appointment under the federal Intergovernmental Personnel Act; or
- (3) a cooperative appointment with another agency or organization. (Ord. Nos. 19340; 19473; 22026; 24873)

### **SEC. 34-9. ELIGIBILITY FOR BENEFITS.**

(a) Permanent employees.

(1) A permanent full-time employee is eligible for employee benefits, including, but not limited to, paid leave as provided in this chapter, health benefit plan participation, life insurance, and retirement benefits. Benefits may be changed at any time subject to applicable law.

(2) An employee hired in a classification other than permanent full-time is eligible for benefits in accordance with federal law and as described in the applicable plan documents.

(b) City council members. City council members are not employees. City council members are eligible for certain tax-favored benefits in accordance with federal law and as described in the applicable plan documents. (Ord. Nos. 19340; 22026; 22195; 22296; 22318; 24873; 25051; [29883](#).)

### **SEC. 34-10. REAPPOINTMENTS.**

(a) Retrieving continuous full-time service.

(1) A person who is reappointed as a city employee retrieves previous continuous full-time service earned during the immediately preceding period of full-time city employment if the person:

(A) previously had completed at least six months, but less than five years, of continuous full-time service with the city; and

(B) is reappointed within one year after termination of the previous city employment.

(2) A person who is reappointed as a city employee retrieves previous continuous full-time service earned during the longest single preceding period of full-time service if the person:

(A) previously had completed at least five years of continuous full-time service with the city; and

(B) is reappointed within 10 years after termination of the previous city employment.

(3) Continuous full-time service retrieved under this subsection will be for purposes of determining all service related benefits except retirement benefits. Service credit for retirement and pension programs is defined in the governing documents, ordinances, and statutes establishing those programs.

(b) Probation. A reappointed employee who retrieves service under Subsection (a) of this section must serve a new probation period, if applicable, starting with the reappointment date. The service of a probationary period or the successful completion of a probationary period does not convey upon, imply, or intend to imply that an employee has a property interest in continued employment or a contract of employment with the city.

(c) Pay grade within one year. When a person is reappointed to the same classification or to a comparable one within one year after termination of prior city employment, the person may be returned to the same salary level held before termination. The date of reappointment determines the date of eligibility for a pay increase.

(d) Reappointment with no service time retrieved. A reappointed employee will be governed by regulations applying to new appointments if the employee is ineligible to retrieve continuous full-time service under Subsection (a) of this section after a break in service.

(e) Return from military service. Reappointment of an employee from military service must be in accordance with Section 34-30 of this chapter and administrative directives established pursuant to that section. (Ord. Nos. 19340; 22296; 22318; 24873; 25663; 28024)

### **SEC. 34-11. PROBATION.**

(a) Charter provisions. Section 10, Chapter XVI of the city charter establishes the period of probation, when applicable:

#### **SEC. 10. PROBATIONARY PERIOD.**

(a) Appointments or promotions of city officers and employees in the classified and unclassified service shall not be deemed complete until a period of six months shall have elapsed. A probationer may be discharged, suspended or reduced within said period by the city manager, or the head of the department in which said probationer is employed without right of appeal.

(b) Probationary periods may be extended under civil service rules or personnel rules to allow six months on-the-job work performance or completion of any written prerequisites to employment.

(b) Purpose. The purpose of any probation is to determine that the employee can and will perform satisfactorily. The service of a probationary period or the successful completion of a probationary period does not convey upon, imply, or intend to imply that an employee has a property interest in continued employment or a contract of employment with the city.

(c) Applicability.

(1) All employees in a classified or unclassified civil service position (including directors, assistant directors, and other managerial personnel designated by the city council of departments that are not exempt from civil service provisions under Section 9, Chapter XVI of the Dallas City Charter) serve a probationary period of six months after an initial appointment or a promotion.

(2) Non-civil service employees do not serve a probationary period after either an initial appointment or a promotion.

(3) No employee serves a probationary period after a lateral transfer or demotion.

(d) Initial probation. Until an employee in a classified or unclassified civil service position successfully completes probation required to be initially served after appointment or reappointment to city employment, the employee has no right to an internal appeal of a determination that the employee failed probation or of any subsequent termination of employment with the city. Even after serving an initial probation, appeal rights of department directors, assistant department directors, and other managerial personnel designated by the city council are limited by this chapter and Section 11, Chapter XVI of the Dallas City Charter.

(e) Promotional probation. Until an employee in a classified or unclassified civil service position successfully completes probation required to be served after a promotion, the employee has no right to an internal appeal of a determination that the employee failed probation or of any subsequent demotion. Even after serving a promotional probation, appeal rights of department directors, assistant department directors, and other managerial personnel designated by the city council are limited by this chapter and Section 11, Chapter XVI of the Dallas City Charter.

(f) A probationary period may be extended by the civil service board in the classified service or by the director of human resources, with approval of the city manager, in the unclassified service to include the entire training period of a formal apprenticeship training program or to allow six months on-the-job work performance or completion of any written prerequisites to employment. An employee will be informed in writing of the approval of such an extension.

(g) Notification of failed probation. Upon failing initial or promotional probation, an employee shall be immediately notified of the failure and:

(1) terminated, if serving an initial probation;

(2) given an opportunity to retreat, if serving a promotional probation and a right to retreat exists; or

(3) terminated, if serving a promotional probation and no right to retreat exists.

(h) Right to retreat.

(1) If an employee is promoted into a classified or unclassified civil service position and fails to complete probation in that position, whether voluntarily or because of nonsatisfactory performance, the employee maintains a right to retreat to the immediately former position, grade, and base hourly rate of pay or step, whichever is applicable, held or to a comparable one, provided that probation was completed in the immediately former position and the former position was a classified or unclassified civil service position.

(2) The right to retreat does not apply to an employee promoted to or from a position that is not a classified or unclassified civil service position or to an employee appointed to the position of director, assistant director, or other managerial personnel designated by the city council.

(3) An employee's right to retreat does not convey upon, imply, or intend to imply that an employee has a property interest in continued employment or a contract of employment with the city. (Ord. Nos. 19340; 19932; 22296; 22318; 24873; 28024)

### **SEC. 34-12. DEMOTIONS.**

(a) Demotion means a reduction in grade with a resulting decrease in salary. Demotions are not necessarily the result of or limited to reductions in grade resulting from disciplinary action. Department directors, assistant department directors, and other managerial personnel designated by the city council may be reduced in grade without a right to an internal appeal.

(b) Salary adjustment. If an employee who has completed probation is demoted by the employee's own election, demoted as a result of a reduction in force, or demoted in a disciplinary action, the employee's salary will be adjusted as outlined in the administrative directives of the city and in accordance with city council- approved salary schedules for the demoted position. (Ord. Nos. 19340; 22296; 22318; 24873)

### **SEC. 34-13. TRANSFERS AND REASSIGNMENTS.**

(a) Processing promotional transfers. A supervisor shall process an employee transfer that results in promotion within two weeks following notification of the employee's intent to accept the promotion. The director of human resources must approve exceptions to this subsection.

(b) Reassignments. A department director may reassign positions and staff within a department to provide for the best interest of the employee or the department. A reassignment is not grievable.

(c) Transfers. An employee who requests a transfer must meet the minimum qualifications of the requested position. The following procedures apply to a transfer:

(1) Present and prospective supervisors shall cooperate in considering and processing a transfer when operations of the transferring or receiving department are not impaired and department directors for both departments agree to the transfer. Supervisors shall process the release of an employee transfer within a reasonable time following notification of the employee's intent to accept the transfer.

(2) An employee who is transferred has no right to return to the immediately former position or a comparable position.

(3) An employee who accepts a transfer is not guaranteed the same base hourly rate of pay held in the immediately former position.

(d) Retention of benefits. A transferred employee maintains all benefits, including accrued leave, subject to the provisions of this chapter.

(e) Retirement plans. An employee who transfers to a position that is covered by a different retirement program than the one that covered the employee's previous position with the city must change membership to the appropriate employee retirement program. (Ord. Nos. 19340; 22026; 22296; 22318; 24873)

### **SEC. 34-14. TERMINATIONS.**

(a) Classification. A termination is classified as follows:

(1) resignation;

- (2) discharge;
- (3) reduction in force; or
- (4) administrative.

(b) Death during working hours. An employee who dies during working hours will be paid as if the employee had worked the entire regular work day.

(c) Benefits. Benefits due a terminating employee are stipulated elsewhere in this chapter under the sections pertaining to the respective benefit. (Ord. Nos. 19340; 24873; 28024)

## ARTICLE II. COMPENSATION.

### SEC. 34-15. GENERAL.

(a) Charter provisions. Section 18, Chapter XXIV of the city charter provides:

#### SEC. 18. EMPLOYEES' WAGES.

The wages, hours and conditions of employment of any and all of the city employees shall be fixed and approved by the city council.

(b) Salary schedule. All classifications and salary ranges existing in city employment are identified in the salary and classification schedule. Any addition to or deletion from this schedule must be made by resolution of the city council.

(c) The provisions of this article may be modified by a city council ordinance or resolution adopting a meet and confer or collective bargaining agreement. If any provision of this article conflicts with a provision of a meet and confer or collective bargaining agreement adopted by the city council, the provision of the meet and confer or collective bargaining agreement will prevail. (Ord. Nos. 19340; 24873; 28024)

### SEC. 34-16. WORK HOURS.

(a) Standard work day. The standard work day is eight hours, but may deviate depending on departmental operating needs. The work day may exclude approved meal periods, but may include a 15- minute break period within any uninterrupted four-hour work period. An employee may be required to work hours other than the employee's normal work schedule.

(b) The standard work week is 40 hours, but may deviate depending on departmental operating needs.

(c) Alternate work schedules. The following alternate work schedules, and any additional ones adopted by city council resolution, may be selected and implemented for a department, with prior written approval from the director of human resources and the city manager.

SCHEDULE	HOURS PER WEEK	HOURS PER 24 HOUR PERIOD BEGINNING AT MIDNIGHT

(1) Four 10-hour days a week.	40	Maximum of 10.
(2) 12-hour days on Monday and Tuesday and 8-hour days on Thursday and Friday. Tasking is allowed.	40	Varies from a minimum of 8 to a maximum of 12.
(3) Five 8-hour days a week. Tasking is allowed.	40	Maximum of 8.
(4) Four 9-hour days and one 4- hour day a week.	40	Varies from a minimum of 4 to a maximum of 9.
(5) Three 11-1/2 hour days one week of a pay period and four 11-1/2 hour days the other week of a pay period.	Varies from 34.5 to 46.	Maximum of 11-1/2.
(6) Three 12-hour days one week of a pay period and four 12-hour days the other week of a pay period.	Varies from 36 to 48	Maximum of 12
(7) Three 12-hour days one week of a pay period and three 12-hour days and one 8-hour day the other week of a pay period.	Varies from 36 to 44	Varies from a minimum of 8 to a maximum of 12
(8) Two 13-hour days and one 14-hour day a week	40	Varies from a minimum of 13 to a maximum of 14.
(9) Any combination of hours, ranging from a minimum of 4 to a maximum of 12, in a day. A work week consists of a minimum of 3-1/2 days and a maximum of 7 days. Tasking is allowed.	Varies from 32 to 48	Varies from a minimum of 4 to a maximum of 12.

(d) 24-hour staffing. For jobs requiring 24-hour staffing, meals may be eaten while on duty. An employee is considered on duty during all meal breaks and is expected to be readily available to perform required duties.

(e) Take-home vehicles. The work day for an employee who travels to and from a regular jobsite in city equipment begins at the time and location at which the employee is initially required to report for duty. The work day ends when the employee is relieved of duty.

(f) Flex time. Rules regarding the use and application of flex time are addressed in the administrative directives of the city. (Ord. Nos. 19340; 19473; 22296; 22318; 24052; 24873; 28024)

### **SEC. 34-17. OVERTIME AND PAID LEAVE FOR CIVILIAN EMPLOYEES.**

(a) Weekly overtime. Any nonexempt employee will be paid an overtime hourly rate of 1-1/2 times the employee's regular rate of pay for all hours worked over 40 in any work week.

(b) Paid leave. An employee is charged with paid leave only on days the employee would otherwise have been scheduled to work. If the employee is assigned to a standard work week, no more than 40 hours paid leave may be charged in one work week. If the employee is assigned to

an approved alternate work schedule, the hours charged in one work week as paid leave may not exceed the maximum hours contained in the alternate work week during which the leave was taken. Except for holiday leave, mandatory city leave, and court leave pursuant to Section 34-26, paid leave will not be counted as work time for purposes of computing overtime or compensatory leave.

(c) Call backs. A nonexempt employee who is called back to work and reports back to work outside of the employee's scheduled work hours must be paid a minimum of two hours worked, if the call back does not merge with the employee's scheduled start time.

(d) Exception. This section does not apply to a sworn employee of the police department or the fire

department. (Ord. Nos. 19340; 19473; 22296; 22318; 24052; 24873; 25389; 28024; [30216](#))

### **SEC. 34-18. PAY FOR VACATION LEAVE.**

(a) Rate of pay. When pay in lieu of vacation leave is approved as provided by Section 34-23 (o), the employee will receive the employee's base hourly rate of pay. This pay is not considered in determining eligibility for overtime pay under Section 34-17.

(b) Exception. This section does not apply to a sworn employee of the police department or the fire department. (Ord. Nos. 19340; 22296; 22318; 24873)

### **SEC. 34-19. WORK HOURS, PAID LEAVE, AND OVERTIME FOR PUBLIC SAFETY EMPLOYEES.**

(a) Police department. The work period and work hours for sworn employees of the police department are as follows:

(1) For purposes of the Fair Labor Standards Act, as amended, the work period for a nonexempt sworn employee of the police department is 28 days.

(2) Weekly overtime. A nonexempt sworn employee of the police department will be paid an overtime hourly rate of 1-1/2 times the employee's regular rate of pay for all hours worked over 40 in any work week, or be granted compensatory leave for all hours in excess of 40.

(3) Paid leave. Any sworn employee of the police department is charged with paid leave only on days the employee would otherwise have been scheduled to work. If the employee is assigned to a standard work week, no more than 40 hours paid leave may be charged in one work week. If the employee is assigned to an approved alternate work schedule, the hours charged in one work week as paid leave may not exceed the maximum hours contained in the alternate work week during which the leave was taken. Authorized attendance incentive leave, vacation leave, holiday leave, leave with pay as defined by Section 34-29, compensatory leave, court leave pursuant to Section 34-26, mandatory city leave, military leave, and death-in-family leave will be counted as work time for purposes of computing overtime or compensatory leave.

(4) Call backs. A nonexempt sworn employee of the police department who is called back to work and reports back to work outside of the employee's scheduled work hours must be paid a minimum of two hours worked, if the call back does not merge with the employee's scheduled start time.

(5) Compensatory leave in lieu of overtime pay may be granted a nonexempt sworn employee of the police department at the request of the employee, subject to supervisory approval. Compensatory leave is earned at the rate of 1-1/2 hours for each hour worked, to a maximum of 480 hours accrued. Compensatory leave will be granted within a reasonable time after being requested if the use of the compensatory leave does not unduly disrupt the operations of the department. Compensatory leave may be taken in hourly increments. The accrual and use of compensatory leave is governed by the Fair Labor Standards Act, as amended, and Section 142.0016 of the Texas Local Government Code, as amended. Compensatory leave not taken during the payroll quarter in which it is accrued or during the following two payroll quarters will be paid at the employee's regular rate of pay earned at the time of payment or at the time of forfeiture of the compensatory leave, whichever rate is higher. Compensatory leave will be paid upon termination at the higher of:

(A) the average regular rate of pay received by the employee during the last three years of the employee's employment with the city; or

(B) the final regular rate of pay received by the employee.

(6) A sworn employee of the police department above the rank of captain is an exempt employee and does not earn overtime or compensatory leave.

(b) Fire department. The work period and work hours for sworn employees of the fire department are as follows:

(1) The work period for a sworn employee of the fire department is, depending upon assignment, 28 days (pursuant to Fair Labor Standards Act, as amended,) or a standard 40-hour work week.

(2) The standard work day or shift for a sworn employee of the fire department may consist of the following, depending upon assignment:

(A) 8 hours a day;

(B) 12 hours a day; or

(C) 24 hours a day.

(3) A sworn employee of the fire department assigned to special training is subject to the eight-hour work day.

(4) A sworn employee of the fire department with the rank of assistant chief or above is an exempt employee and does not earn overtime. A civilian employee of the fire department with a classification equivalent to assistant chief or above is an exempt employee and does not earn overtime.

(5) A nonexempt sworn employee of the fire department who works more than 212 hours in a 28-day work period or 40 hours in a standard work week, depending upon assignment, will be paid at 1- 1/2 times the employee's regular rate of pay for hours worked beyond the scheduled work period.

(6) A nonexempt sworn employee of the fire department may, subject to departmental approval, choose to receive compensatory leave in lieu of overtime pay at the rate of 1-1/2 hours for each hour worked beyond each scheduled work period, to a maximum of 480 hours accrued.

(7) Compensatory leave may be earned by a sworn employee of the fire department other than an exempt employee above the ranks of fire battalion/section chief and fire prevention section chief. Compensatory leave will be granted within a reasonable time after being requested if the use of the compensatory leave does not unduly disrupt the operations of the department. Compensatory leave may be taken in hourly increments. The accrual and use of compensatory leave is governed by the Fair Labor Standards Act, as amended, and Section 142.0016 of the Texas Local Government Code, as amended. Compensatory leave not taken during the payroll quarter in which it is accrued or during the following two payroll quarters will be paid at the employee's regular rate of pay earned at the time of payment or at the time of forfeiture of the compensatory leave, whichever rate is higher. Compensatory leave will be paid upon termination at the higher of:

(A) the average regular rate of pay received by the employee during the last three years of the employee's employment with the city; or

(B) the final regular rate of pay received by the employee.

(8) A sworn employee of the fire department must use or be paid for all accrued compensatory leave before transferring to or from the emergency response bureau of the fire department or whenever the employee's full-time regular work schedule is increased or reduced.

(9) Authorized attendance incentive leave, vacation leave, holiday leave, leave with pay as defined by Section 34-29, compensatory leave, court leave pursuant to Section 34-26, mandatory city leave, military leave, and death-in-family leave will be counted as work time for purposes of computing overtime or compensatory leave.

(10) Call backs. A nonexempt sworn employee of the fire department who is called back to work and reports back to work outside of the employee's scheduled work hours must be paid a minimum of two hours worked, if the call back does not merge with the employee's scheduled start time.

(11) A sworn employee of the fire department may, with prior approval from the fire chief or a designated representative, trade time with another sworn employee. Trade time is not considered as work time in determining overtime, but trading time is subject to the Fair Labor Standards Act, as amended. (Ord. Nos. 19340; 22195; 24873; 24930; 25142; 25389; 28024; [30216](#))

### **SEC. 34-20. EXEMPT EMPLOYEES.**

(a) Pay. An exempt employee is paid on a weekly salary basis regardless of the number of hours worked, unless an absence is taken when the employee has no remaining paid leave balances or when the employee is on furlough leave. In rare instances, and with the approval of the city manager, an exempt employee may receive his or her regular rate of pay for overtime worked.

(b) Absence. Pursuant to the principles of public accountability and depending upon the reason for the absence, an absence of an exempt employee may be charged to administrative leave, sick leave, vacation leave, compensatory leave, furlough leave, mandatory city leave, family leave, court leave, death-in-family leave, military leave, or leave without pay.

(c) Prorated salary. If part of a week is taken as leave without pay, a proportionate part of the weekly salary will be paid to an exempt employee for the hours worked or charged to paid leave. A proportionate part of the weekly salary will be paid to an exempt employee for the part of the week worked in the initial or terminal week of employment. (Ord. Nos. 19340; 19473; 20075; 22195; 24873; 26182; 28024)

### **SEC. 34-21. DISTRIBUTION OF PAY CHECKS.**

(a) Administration. The city controller is responsible for proper distribution of pay checks. Any discrepancy in a pay check resulting in overpayment or otherwise should be brought to the attention of the employee's supervisor and/or the human resources representative for the employee's department. The employee shall also report the discrepancy to the city controller payroll section.

(b) Payday. Friday is the official payday of the city.

(c) Pay information for the appropriate payroll will be made available electronically to employees immediately after payroll processing is completed. This electronic information is provided in lieu of paper pay stubs and may be accessed from any computer with internet access. If necessary, signature pay checks will be released on or about 2:00 p.m. Friday by the city controller to authorized departmental personnel or directly to payee employees. (Ord. Nos. 19340; 22296; 22318; 24873; 28024)

## **ARTICLE III. LEAVE POLICIES.**

### **SEC. 34-21.1. GENERAL.**

The provisions of this article may be modified by a city council ordinance or resolution adopting a meet and confer or collective bargaining agreement. If any provision of this article conflicts with a provision of a meet and confer or collective bargaining agreement adopted by the city council, the provision of the meet and confer or collective bargaining agreement will prevail. (Ord. 28024)

### **SEC. 34-22. SICK LEAVE.**

(a) Eligibility. Every permanent employee accrues and may use sick leave upon initial appointment.

(b) Reappointments. A person reappointed as a city employee under conditions described in Section 34-10 (a)(1) or (a)(2) retrieves sick leave credit accumulated before the person's previous termination from city employment and is entitled to both accrue and use sick leave after reappointment.

(c) Sworn employee's sick leave eligibility.

(1) A sworn employee of the police or fire department may take 30 sick leave days each calendar year. This amount shall not exceed 360 hours for a sworn employee in the emergency

response bureau of the fire department and 240 hours for every other sworn employee of the police or fire department.

(2) Any sick leave days taken in excess of the number that, under Subsection (d), can be accrued during a year will be subtracted from the employee's accrued sick leave balance.

(d) Accrual. Every permanent employee accrues sick leave each year as follows:

(1) A sworn employee in the emergency response bureau of the fire department accrues six hours each bi-weekly pay period, to a maximum of 144 hours annually.

(2) A sworn employee in the communications bureau of the fire department accrues four hours each bi-weekly pay period, to a maximum of 96 hours annually.

(3) Every other bi-weekly paid employee accrues five percent of hours paid up to 80 in each bi-weekly pay period, to a maximum of 96 hours annually.

(4) Every weekly paid employee accrues five percent of hours paid up to 40 in each weekly pay period, to a maximum of 96 hours annually.

(e) Maximum accrual. The maximum sick leave that may be accrued is 2,160 hours for a sworn employee in the emergency response bureau of the fire department and 1,440 hours for any other employee. When an employee's accrued sick leave reaches the maximum number of hours, the accrual ceases until the employee takes sick leave hours.

(f) Computation of sick leave taken. An absence charged to sick leave will be for the number of hours in the standard work day and will not include overtime whether scheduled or not. An absence charged to sick leave for a sworn employee of the emergency response bureau of the fire department will be made on the basis of 24 hours for each scheduled work shift.

(g) Sick leave usage. Sick leave may only be granted or taken when:

(1) an employee is incapacitated for the performance of duties due to an illness, surgical procedure, or off-job injury;

(2) a medical, dental, or optical examination or treatment is necessary, provided that prior approval of the supervisor is obtained;

(3) an employee is incapacitated by or recovering from pregnancy, miscarriage, abortion, or childbirth;

(4) it is necessary to care for an immediate family member who is ill or incapacitated;

(5) an employee has been exposed to a contagious disease, meaning one that would warrant quarantine by a health officer, and the employee's presence on the job would jeopardize the health of others;

(6) it is allowed under the city's wage supplementation plan; or

(7) it is allowed under the city's administrative directives governing the administration of the Family and Medical Leave Act.

(h) Notice of unexpected absence.

(1) Notice of absence due to an illness, injury, or any other unexpected reason must be given in the following manner:

(A) Every employee, except one covered by Paragraph (1)(B) of this subsection, must give notice to the employee's supervisor from within two hours before to within 30 minutes after starting time, depending upon departmental procedures. The supervisor may require the employee to report on each succeeding day of absence.

(B) An employee in a department with a 24-hour, seven-day work schedule must give notice to the employee's supervisor at least one hour before reporting time on the first day of the absence and, if required by the supervisor, on each succeeding day of absence.

(2) Failure to give the notice required in this subsection may result in the employee being declared absent without leave and subject to disciplinary action.

(i) Physician's statement. Upon request by a supervisor, a department director, or the director of human resources, an employee may be required to:

(1) furnish a statement from an attending physician demonstrating the existence of circumstances described in Subsection (h)(1), (2), (3), (4), or (5) of this section; or

(2) submit to a physical or mental examination by a health care provider (including but not limited to a physician or psychologist) selected by the city.

(j) Refusal to return from sick leave. An employee who is released by the treating physician to return to regular or limited duty and who refuses to report for work or perform assigned duties is subject to disciplinary action.

(k) Holidays. If an official holiday occurs during a period of illness, an employee will be charged for the holiday instead of for sick leave.

(l) Illness during vacation. If an employee becomes ill while taking vacation leave, the period of illness may be charged as sick leave and the charge against vacation leave will be reduced accordingly. A request for this substitution must be made within two days after the employee's return to work and must be supported by a medical statement.

(m) Sick leave during suspension. An employee on suspension forfeits use and accrual of sick leave for the duration of the suspension. Upon completion of the suspension, the employee must either physically return to work or, if ill, submit an approved doctor's statement justifying inability to return to work before sick leave credit and accrual may be restored.

(n) Sick leave during leave without pay. An employee on leave without pay forfeits use and accrual of sick leave for the duration of the leave without pay, except to the extent that the leave without pay is authorized by the City's Family and Medical Leave provisions. Upon completion of the leave without pay, the employee must either physically return to work or, if ill, submit an approved doctor's statement justifying inability to return to work before sick leave credit and accrual may be restored.

(o) Military service. Sick leave for an employee performing duties in the military service is governed by Section 34-30 of this chapter and administrative directives established pursuant to that section.

(p) Sick leave adjustment for changes in work schedules. A sworn employee of the fire department will have any sick leave balance adjusted proportionately to reflect differences in work schedules when:

(1) the employee transfers to or from the emergency response bureau of the fire department;  
or

(2) the employee's full-time regular work schedule is increased or decreased.

(q) Use of vacation leave when sick leave is exhausted. If an employee's sick leave balance is exhausted, the employee may use available vacation leave in cases of illness or injury.

(r) Advance sick leave. The director of a department may approve a request for advance sick leave for an employee who has completed three consecutive years of city employment and accumulated a minimum of 96 hours of sick leave prior to the occurrence of the condition for which the advance sick leave is needed. The employee shall provide an anticipated return to work date when making the request. The maximum advance of sick leave that may be granted may not exceed 120 hours for a sworn employee in the emergency response bureau of the fire department or 80 hours for any other employee. A request for advance sick leave will not be approved until all expendable paid leave is exhausted and the employee has no outstanding balance of previously-granted advance sick leave. If an employee who is indebted for unearned sick leave terminates, the employee shall refund the amount paid for the period of the advanced sick leave. No refund is required in cases of death or retirement for disability.

(s) Lump sum payment of sick leave.

(1) Retirement or 20 years' service. An employee shall be granted lump sum payment of sick leave remaining to the employee's credit in any amount that does not exceed 1,080 hours for a sworn employee in the emergency response bureau of the fire department or 720 hours for any other employee when the employee:

(A) retires from city employment and is immediately eligible to receive retirement payments; or

(B) terminates for any reason with 20 or more years of continuous full-time service, including:

(i) any continuous full-time service retrieved under Section 34-10(a) of this chapter; and

(ii) any credited service purchased for retirement purposes under Section 40A-14 of this code after a termination resulting from a reduction in force.

(2) Disability. Any employee who is placed on a disability pension shall be granted lump sum payment of any sick leave remaining to the employee's credit in any amount that does not exceed 1,080 hours for a sworn employee in the emergency response bureau of the fire department and 720 hours for any other employee. The appropriate pension board will determine the date of permanent disability. Use of sick leave will be discontinued and lump sum payment made effective on that date.

(3) Death. If an employee dies, the total accumulated sick leave in any amount that does not exceed 1,080 hours for a sworn employee in the emergency response bureau of the fire department and 720 hours for any other employee shall be computed with the final settlement of the employee's wages and paid in a lump sum to the employee's beneficiary or estate.

(4) Computation. Lump sum payment of sick leave is computed by multiplying the number of hours of sick leave to which an employee is entitled by the employee's regular rate of pay on the date of termination. An employee who elects to receive lump sum payment of sick leave upon termination and who is later reemployed with the city may not receive another lump sum payment of sick leave.

(5) Eligibility. An employee hired or rehired by the city on or after October 1, 2003 is not eligible for any lump sum payment of sick leave under this subsection.

(t) Family leave. An employee who is eligible for family leave under Section 34-24.1(b) may be required to deduct hours from the employee's sick leave balance to cover all or part of any absence from work for a family leave purpose described in Section 34-24.1(c). (Ord. Nos. 19340; 19932; 22026; 22195; 22296; 22318; 24873; 24930; 25386; 28024; 28425; 29480; [29883](#).)

### **SEC. 34-22.1. MEDICAL TESTING.**

(a) An employee may be required to submit to drug and/or alcohol testing. Specific procedures regarding drug and/or alcohol testing are outlined in the administrative directives of the city.

(b) An employee may be required to submit to a physical and/or mental examination by a city- selected health care provider, including, but not limited to, a physician or psychologist, in order to evaluate the employee's current mental or physical status as it relates to the ability to perform the employee's job duties. (Ord. 24873)

### **SEC. 34-23. VACATION LEAVE.**

(a) Eligibility. Every permanent employee accrues vacation leave during the initial six months of city employment, but vacation leave may not be used until the initial six months of employment are completed. All vacation leave is forfeited if the employee terminates employment before completing the initial six months of employment.

(b) Reappointments. A person reappointed under conditions described in Section 34-10 (a)(1) or (a)(2) accrues vacation leave at a rate determined by the number of years of continuous full-time service retrieved and may both accrue and use vacation leave during the initial six months of employment after reappointment.

(c) Accrual. Vacation leave accrues as follows:

(1) Every permanent employee with less than five years of service accumulates vacation leave as follows:

(A) A sworn employee in the emergency response bureau of the fire department accrues nine hours each bi-weekly pay period, to a maximum of 180 hours annually.

(B) A sworn employee in the communications bureau of the fire department accrues six hours each bi-weekly pay period, to a maximum of 120 hours annually.

(C) A sworn employee of the police department accrues 7.5 percent of hours paid up to 80 in each bi-weekly pay period, to a maximum of 120 hours annually.

(D) Every other bi-weekly paid employee accrues 6.5 percent of hours paid up to 80 in each bi-weekly pay period, to a maximum of 104 hours annually.

(E) A weekly paid employee accrues 6.5 percent of hours paid up to 40 in each weekly pay period, to a maximum of 104 hours annually.

(2) Every permanent employee with five years of service but less than nine years of service accumulates vacation leave as follows:

(A) A sworn employee in the emergency response bureau of the fire department accrues 10.2 hours each bi-weekly pay period, to a maximum of 204 hours annually.

(B) A sworn employee in the communications bureau of the fire department accrues 6.8 hours each bi-weekly pay period, to a maximum of 136 hours annually.

(C) A sworn employee of the police department accrues 8.5 percent of hours paid up to 80 in each bi-weekly pay period, to a maximum of 136 hours annually.

(D) Every other bi-weekly paid employee accrues 7.5 percent of hours paid up to 80 in each bi-weekly pay period, to a maximum of 120 hours annually.

(E) A weekly paid employee accrues 7.5 percent of hours paid up to 40 in each weekly pay period, to a maximum of 120 hours annually.

(3) Every permanent employee with nine years of service but less than 15 years of service accumulates vacation leave as follows:

(A) A sworn employee in the emergency response bureau of the fire department accrues 10.8 hours each bi-weekly pay period, to a maximum of 216 hours annually.

(B) A sworn employee in the communications bureau of the fire department accrues 7.2 hours each bi-weekly pay period, to a maximum of 144 hours annually.

(C) Every other bi-weekly paid employee accrues nine percent of hours paid up to 80 in each bi-weekly pay period, to a maximum of 144 hours annually.

(D) A weekly paid employee accrues nine percent of hours paid up to 40 in each weekly pay period, to a maximum of 144 hours annually.

(4) Every permanent employee with 15 years of service but less than 19 years of service accumulates vacation leave as follows:

(A) A sworn employee in the emergency response bureau of the fire department accrues 12 hours each bi-weekly pay period, to a maximum of 240 hours annually.

(B) A sworn employee in the communications bureau of the fire department accrues eight hours each bi-weekly pay period, to a maximum of 160 hours annually.

(C) Every other bi-weekly paid employee accrues 10 percent of hours paid up to 80 in each bi-weekly pay period, to a maximum of 160 hours annually.

(D) A weekly paid employee accrues 10 percent of hours paid up to 40 in each weekly pay period, to a maximum of 160 hours annually.

(5) Every permanent employee with 19 or more years of service accumulates vacation leave as follows:

(A) A sworn employee in the emergency response bureau of the fire department accrues 13.8 hours each bi-weekly pay period, to a maximum of 276 hours annually.

(B) A sworn employee in communication bureau of the fire department accrues 9.2 hours each bi-weekly pay period, to a maximum of 184 hours annually.

(C) Every other bi-weekly paid employee accrues 11.5 percent of hours paid up to 80 in each bi-weekly pay period, to a maximum of 184 hours annually.

(D) A weekly paid employee accrues 11.5 percent of hours paid up to 40 in each weekly pay period, to a maximum of 184 hours annually.

(d) Maximum accumulation. An employee may accumulate vacation leave up to an amount equal to the employee's vacation leave entitlement for a two-year period. When accumulated vacation leave reaches the maximum allowed, the accrual ceases until vacation leave is taken.

(e) Acceleration and increased accrual limits. Upon the date of an employee's 5th, 9th, 15th and 19th service anniversary:

(1) accrual of vacation leave will be accelerated; and

(2) annual accrual limits of vacation leave will be increased.

(f) Incentive programs. In addition to vacation leave earned under this section, an employee may earn vacation leave under incentive programs approved by the city manager and adopted by the city council.

(g) Vacation usage. Vacation use is based on the employee's regular work day and the number of hours the employee would have worked that day. If the employee is assigned to a standard work week, no more than 40 hours paid leave may be charged in one work week. If the employee is assigned to an approved alternate work schedule, the hours charged in one work week as paid leave may not exceed the maximum hours contained in the alternate work week during which the leave was taken. This subsection does not apply to sworn fire department shift personnel.

(h) Selection of vacation time. A supervisor may grant vacation leave at a time during the year that will best serve the public interest. Preference may be given to an employee on the basis of length of service.

(i) Holidays. If an official holiday occurs during vacation leave, an employee will be charged for holiday leave instead of vacation leave. This subsection does not apply to a sworn employee of the emergency response bureau or communications bureau of the fire department who is assigned to a 12-hour or 24-hour work shift.

(j) Death in family. An appropriate extension of death-in-family leave may be given for a death in an employee's family occurring while the employee is taking vacation leave.

(k) Vacation leave during suspension. An employee on suspension forfeits use and accrual of vacation leave for the duration of the suspension. Upon completion of the suspension, the employee must either physically return to work or, if ill, submit an approved doctor's statement justifying inability to return to work before vacation leave credit and accrual may be restored.

(l) Vacation leave during leave without pay. An employee on leave without pay forfeits use and accrual of vacation leave for the duration of the leave without pay, except to the extent that the leave without pay is authorized by the City's Family and Medical Leave provisions. Upon completion of the leave without pay, the employee must either physically return to work or, if ill, submit an approved doctor's statement justifying inability to return to work before vacation leave credit and accrual may be restored.

(m) Vacation leave in conjunction with leave without pay. Prior departmental approval must be obtained for any period of leave without pay taken in conjunction with a normal vacation. Favorable consideration will be given only to exceptional reasons.

(n) Pay in lieu of vacation leave. Vacation leave is provided for the specific purpose of allowing an employee a period of rest and recreation, and the practice of "selling" vacation leave is contrary to this purpose. Pay in lieu of vacation leave may only be granted in cases of extreme emergency and must be approved by the city council or city manager.

(o) Lump sum payment of vacation leave.

(1) Payment upon termination. An employee who terminates employment after the initial six months of employment shall be paid for vacation leave accrued but not taken.

(2) Retirement. An employee who retires will be paid in a lump sum for the period of vacation leave due the employee.

(3) Discharge. A discharged employee who has completed the initial six months of city employment will be paid for all accrued vacation leave in a lump sum at the end of the next complete pay period following the date of discharge. No credit will be given for a holiday that may have fallen within the vacation period had the vacation period been extended on the payroll.

(4) Death. Vacation leave accrued to the credit of an employee who dies will automatically be paid in a lump sum. Holidays occurring after the date of death will not be paid. Upon instructions from the city attorney's office, monies due the deceased employee will be delivered to the employee's beneficiary or estate.

(5) Computation. Lump sum payment of vacation leave is computed by multiplying the number of hours of vacation leave to which an employee is entitled by the employee's regular rate of pay on the date of termination from city employment.

(p) Vacation leave adjustment for changes in work schedules. A sworn employee of the fire department will have any vacation leave balance adjusted proportionately to reflect differences in work schedules when:

(1) the employee transfers to or from the emergency response bureau of the fire department;  
or

(2) the employee's full-time regular work schedule is increased or decreased.

(q) Family leave. An employee who is eligible for family leave under Section 34-24.1 (b) may be required to deduct hours from the employee's vacation leave balance to cover all or part of any absence from work for a family leave purpose described in Section 34-24.1 (c). (Ord. Nos. 19340; 19473; 19932; 22195; 22296; 22318; 24873; 24930; 28024; 29480; [29883](#).)

## **SEC. 34-24. COMPENSATORY LEAVE.**

(a) Eligibility. An exempt employee (other than the city manager, the first assistant city manager, an assistant city manager, a department director, an assistant department director, other managerial personnel designated by the city council, or an exempt employee of the city attorney's office) who works overtime one full hour or more in a pay period may earn compensatory leave. A nonexempt employee (other than a sworn employee of the police or fire department) may not accrue compensatory leave but will be paid overtime for any overtime hours worked.

(b) Accrual. Compensatory leave is accrued in half hour increments for each half hour worked over 80 hours in a pay period, up to a maximum balance of 80 hours.

(c) Reporting and records. Compensatory leave must be reported biweekly. As with any payroll transaction, the recording of compensatory time may be subject to audit.

(d) Maximum balance. An employee's compensatory leave balance may not exceed 80 hours at any time. Hours accrued in excess of this maximum amount will be immediately forfeited. An exempt employee may not be paid for accrued compensatory hours.

(e) This section does not apply to an exempt sworn employee of the fire department below the rank of deputy chief. (Ord. Nos. 19340; 20075; 22195; 24873; 24930; 29480)

### **SEC. 34-24.1. FAMILY LEAVE.**

(a) Federal regulations. The terms used in this section that are not defined in Section 34-4 of this chapter have the meanings given them in the Family and Medical Leave Act and Part 825, Title 29 of the Code of Federal Regulations, as amended. All interpretations and applications of this section must be made in compliance with the minimum requirements of the Family and Medical Leave Act and Part 825, Title 29 of the Code of Federal Regulations, as amended. If any provision of this section conflicts with a provision of the federal law governing family leave, the federal law prevails.

(b) Eligibility. Every employee is eligible for family leave if the employee has:

- (1) been employed by the city for at least 12 months; and
- (2) worked at least 1,250 hours during the 12-month period immediately preceding the commencement of family leave.

(c) When family leave may be taken.

- (1) An eligible employee may take family leave only in the following circumstances:
  - (A) for the birth of the employee's son or daughter or to care for the child after its birth;
  - (B) for the placement of a son or daughter with the employee for adoption or foster care or to care for the child after placement;
  - (C) to care for a spouse, son, daughter, parent, or "designated care recipient" of the employee, if the spouse, son, daughter, parent, or "designated care recipient" has a serious health condition;
  - (D) for a serious health condition that makes the employee unable to perform the functions of the employee's position;

(E) for any qualifying exigency arising out of the fact that the employee's spouse, son, daughter, parent, or "designated care recipient" is a covered military member who is on active duty or has been notified of an impending call or order to active duty in support of a contingency operation; or

(F) to care for a covered service member with a serious injury or illness if the employee is the spouse, son, daughter, parent, or next of kin of the service member or if the service member is a "designated care recipient" of the employee.

(2) For purposes of this subsection, "designated care recipient" means one individual designated by the employee who is 18 years of age or older and has resided in the same household as the employee and intends to reside in the same household as the employee on a continuous basis.

(d) Administration of family leave. Specific procedures and requirements for the administration of the Family and Medical Leave Act are outlined in the administrative directives of the city. No procedure or requirement adopted by administrative directive may conflict with the Family and Medical Leave Act or Part 825, Title 29 of the Code of Federal Regulations, as amended.

(e) Disciplinary action. Disciplinary action, up to and including discharge from city employment, may be taken against an employee who:

(1) falsifies or misrepresents any facts in order to obtain family leave; or

(2) shares confidential medical information relating to a request for family leave with any person not authorized to receive the information. (Ord. Nos. 22195; 24873; 28024; 29320)

### **SEC. 34-25. HOLIDAYS.**

(a) Days designated.

(1) The following official holidays will be observed:

(A) New Year's Day (January 1);

(B) Martin Luther King's Birthday (third Monday in January);

(C) President's Day (third Monday in February);

(D) Memorial Day (last Monday in May);

(E) Independence Day (July 4);

(F) Labor Day/Cesar E. Chavez Day (first Monday in September);

(G) Thanksgiving Day (fourth Thursday in November);

(H) Day after Thanksgiving/ September 11th Remembrance Day; and

(I) Christmas Day (December 25).

(2) Additional holidays may be granted by ordinance or resolution of the city council at the recommendation of the city manager.

(3) The police and fire chiefs will receive any additional holidays granted to other police and fire personnel under a meet and confer or collective bargaining agreement for the same length of time that the other police and fire personnel receive the additional holidays under the meet and confer or collective bargaining agreement.

(b) Holiday pay. Paid holidays are extended to every permanent employee. A temporary employee is extended the official holiday, but without pay, except that a temporary employee who is assigned to work on the official holiday will be paid for the hours worked. A full-time employee receives holiday pay equal to the employee's standard work day. A part-time employee receives holiday pay prorated on the basis of the average number of paid hours credited to the employee in the four payroll weeks preceding the holiday. For the purpose of calculating overtime, holidays are included as hours worked.

(c) Fire department. A sworn employee in the emergency response bureau of the fire department will receive the equivalent of nine holidays a year in accordance with departmental regulations.

(d) Weekend holidays. When an official holiday falls on a weekend, the following alternative schedule applies:

(1) A holiday that falls on a Saturday will be taken the Friday before the holiday.

(2) A holiday that falls on a Sunday will be taken the Monday after the holiday.

(e) Worked holidays. In a department in which employees regularly work on holidays, the department shall arrange schedules to allow each employee who works on the holiday a substitute holiday either before or after the holiday, but within a reasonable period of time. If the department cannot arrange a substitute holiday, the employee will be paid for hours equal to the employee's standard workday. This subsection does not apply to sworn fire department shift personnel.

(f) Loss of holiday pay. An employee will not receive pay for a holiday if the employee is:

(1) on unapproved leave without pay either the day before or the day following an official holiday;

(2) on unapproved leave without pay on a holiday on which the employee is normally scheduled to work; or

(3) on approved leave without pay the day before and the day following an official holiday, except to the extent the leave is authorized by the City's Family and Medical Leave provisions.

(g) Holiday during vacation or sick leave. When an official holiday occurs during an employee's vacation leave or sick leave, the employee will be charged for the holiday and no deduction from the employee's vacation or sick leave balance will be made for the holiday.

(h) Holiday during injury leave. Any employee who is on injury leave when a holiday occurs will be paid workers' compensation and will be charged for the holiday up to the number of hours needed to supplement the employee's pay. If the employee is on wage supplementation, no wage supplementation payments will be received for the holiday. No compensation will be provided for unused holiday time.

(i) Holiday during other leave. An employee on military leave, court leave, or death-in-family leave when a holiday occurs may take the holiday at a subsequent date convenient to the department.

(j) Death or discharge. Since final settlement of monies due an employee separated from the payroll because of death or discharge is paid in a lump sum, no holiday occurring after the date of death or discharge will be included in the determination of the settlement. (Ord. Nos. 19340; 24622; 24873; 28024; 28794; 29480)

### **SEC. 34-26. COURT LEAVE.**

(a) Eligibility. Court leave is a privilege extended to every permanent employee.

(b) Whengranted. An employee shall be granted court leave when:

- (1) summoned for jury duty; or
- (2) subpoenaed to appear as a witness.

(c) Personal litigation. An employee may not be granted court leave when the employee is involved in personal litigation, except as permitted under Subsection (b) of this section.

(d) Notice to supervisor. The employee must notify the employee's supervisor upon receipt of a summons or subpoena for which court leave is requested.

(e) Fees. All fees paid and expenses reimbursed by the court may be retained by the employee, provided that the city did not furnish travel, meals, lodging, or miscellaneous expenses.

(f) Standard work day credit. An employee on court leave is credited with a standard work day on the payroll. No allowance will be made for overtime the employee might have earned if the employee had worked.

(g) Return to work. When an employee on court leave is excused by proper court authority, the employee shall report back to the employee's place of employment when as much as two hours working time remains. (Ord. Nos. 19340; 24873)

### **SEC. 34-27. DEATH-IN-FAMILY LEAVE.**

(a) Eligibility. An allowance of three work days with pay is extended to every permanent employee when a member of the employee's immediate family, or the employee's designated care recipient, as defined in Sec. 34-24.1(c)(2) of this chapter, dies.

(b) Other than immediate family. Death of a relative not included in the immediate family may be considered individually and up to three days leave time allotted as the circumstances warrant.

(c) Multiple deaths. If multiple deaths occur within a family simultaneously, special exceptions to the normal allowance of three days may be made by the department director. (Ord. Nos. 19340; 24873; 29480)

### **SEC. 34-28. LEAVE WITHOUT PAY.**

(a) Eligibility. Leave without pay is granted as a matter of administrative discretion. No employee may demand leave without pay as a matter of right, but it may be granted to any employee.

(b) When granted. An employee may be granted leave without pay for the following reasons:

- (1) To participate in training that would result in increased job ability.
- (2) To achieve an educational level necessary to advancement in the city.
- (3) To perform a service that will contribute to the public welfare.
- (4) To recover from an illness or disability, not believed to be of a permanent or disqualifying nature, for which sick leave and wage supplementation benefits have been exhausted or are not available.
- (5) When return to work would threaten the health of others.
- (6) To provide necessary care for a family member who is ill or incapacitated.
- (7) For an excused absence during the initial six months of employment.
- (8) For an excused, but noncompensable, absence of less than a day.
- (9) To permit vacation.
- (10) To perform duties in the military service as authorized by Section 34-30 of this chapter and administrative directives established pursuant to that section.
- (11) To take family leave.
- (12) At the discretion of the department director, as other circumstances may warrant granting leave without pay.

(c) Allowable length of leave.

(1) An employee's department director may authorize leave without pay for a period not to exceed six consecutive calendar weeks. Leave without pay in excess of six consecutive calendar weeks must be requested by the department director and approved by the director of human resources. The city manager must approve leave without pay in excess of 13 consecutive calendar weeks.

(2) Notwithstanding Paragraph (1) of this subsection, leave without pay for an employee performing duties in the military service is governed by Section 34-30 of this chapter and administrative directives established pursuant to that section.

(d) Service credit.

(1) An employee who is on leave without pay from work for more than six consecutive calendar weeks loses service credit for that period in excess of the six calendar weeks, except to the extent that the leave without pay is authorized by the City's Family and Medical Leave provisions.

(2) Notwithstanding Paragraph (1) of this subsection, service credit for an employee performing duties in the military service is governed by Section 34-40 of this chapter and administrative directives established pursuant to that section.

(e) Accrued leave. An employee granted leave without pay forfeits use and accrual of sick leave, vacation leave, holiday leave, death-in-family leave, and court leave, except to the extent that the leave without pay is authorized by federal or state law.

(f) Termination. An employee granted leave without pay must physically return to work to retrieve sick leave credit, but will be paid for any vacation leave balance due if the employee terminates. Payment of the vacation leave balance will be at the pay rate in effect at the beginning of the leave without pay. (Ord. Nos. 19340; 19473; 20716; 22026; 22195; 24873; 29480)

### **SEC. 34-29. LEAVE WITH PAY (EXCUSED ABSENCE).**

(a) Discretionary. Certain authorized absences not provided for under regular leave policies fall within the category of administrative discretion. This leave with pay is referred to as administrative leave and is recorded as such in payroll records.

(b) When granted. A department director may administratively excuse an employee for the time necessary:

- (1) to take a civil service examination;
- (2) to take a physical examination required by the city;
- (3) to make an oral appeal before the civil service board, accident review board, or any other board or committee (except the city council) whose function may affect the employee's work status;
- (4) to vote in a city, state, or national election;
- (5) for urgent personal reasons; or
- (6) for other circumstances at the department director's discretion.

(c) Pending disciplinary action. An employee charged with a violation of a city, state, or federal law, rule, or policy, which if proven would justify formal disciplinary action, may be placed on leave with pay pending the outcome of any investigation to determine the exact nature and extent of the violation and pending the imposition of any disciplinary action taken for the violation. Formal disciplinary action includes reprimand, suspension, demotion, or discharge. (Ord. Nos. 19340; 24873)

### **SEC. 34-30. MILITARY SERVICE/MILITARY LEAVE.**

(a) Federal and state regulations. The terms used in this section, and in other provisions of the city's military service/military leave policy, that are not defined in this chapter have the meanings given them in the Uniformed Services Employment and Reemployment Rights Act; Chapter 431 of the Texas Government Code, as amended; and Chapter 613 of the Texas Government Code, as amended. All interpretations and applications of this section and other provisions of the city's military service/military leave policy must be made in compliance with the minimum requirements of those federal and state laws. If any provision of this section or of any other provision of the city's military service/military leave policy conflicts with a provision

of the federal or state law governing military service and military leave, the federal or state law prevails.

(b) Nondiscrimination. The city does not discriminate with regard to hiring, reemployment, retention, promotion, or any benefit of employment because of an applicant's or employee's membership, application for membership, or performance of duty in the military service.

(c) Military leave. The city will grant military leave to city employees in compliance with the Uniformed Services Employment and Reemployment Rights Act; Chapter 431 of the Texas Government Code, as amended; and Chapter 613 of the Texas Government Code, as amended. Specific procedures and requirements for the administration of military service/military leave policies are outlined in the administrative directives of the city. No procedure or requirement adopted by administrative directive may conflict with the Uniformed Services Employment and Reemployment Rights Act; Chapter 431 of the Texas Government Code, as amended; or Chapter 613 of the Texas Government Code, as amended.

(d) Responsibility. Responsibility for administering the city's military service/military leave policy rests with:

(1) the department director and the civil service board for an employee in a classified position;

(2) the department director and the director of human resources for an employee in an unclassified position; and

(3) the department director for an employee in a non-civil service position. (Ord. Nos. 19340; 22195; 22296; 22318; 24873)

### **SEC. 34-31. INJURY LEAVE.**

(a) After the first day, time off from work for disability or medical treatment for an injury occurring while the employee was in the course of employment with the city may be charged to injury leave.

(b) Disciplinary action against an employee should be delayed until the employee returns from injury leave, unless the disciplinary action is for a criminal offense committed by the employee.

(c) Merit increases may not be granted while an employee is on injury leave whether or not the employee is receiving wage supplementation payments. (Ord. 25389)

#### **SEC. 34-31.1. MANDATORY CITY LEAVE.**

(a) Eligibility. In a fiscal year in which mandatory city leave is authorized, every permanent employee will receive a bank of paid leave in accordance with policies approved by city council ordinance or resolution. This leave will be provided to and may be used by all permanent employees, including those in the initial six months of city employment.

(b) Carry-over provisions. Mandatory city leave must be used in the fiscal year in which it is established. Any mandatory city leave that is not used by the end of the fiscal year will be forfeited, and no compensation will be provided for the unused leave.

(c) Mandatory city leave usage. Mandatory city leave use is based on an employee's regular work day and the number of hours the employee would have worked that day. For the purpose of calculating overtime, mandatory city leave hours are included as hours worked.

(d) Increments. With departmental approval, a city employee may take mandatory city leave in one-hour increments.

(e) Official mandatory city leave days.

(1) Official mandatory city leave days established. At the recommendation of the city manager, the city council may, by ordinance or resolution, establish fixed official mandatory city leave days when city offices are officially closed. Except as specifically provided otherwise in this subsection, an employee must use mandatory city leave on these days.

(2) Worked official mandatory city leave days. In a department in which employees regularly work on an official mandatory city leave day, the department shall arrange schedules to allow each employee who works on an official mandatory city leave day a substitute day either before or after the official mandatory city leave day, but within a reasonable period of time. This subsection does not apply to sworn fire department shift personnel.

(3) Official mandatory city leave day during vacation or sick leave. When an official mandatory city leave day occurs during an employee's vacation leave or sick leave, the employee will be charged for mandatory city leave and no deduction from the employee's vacation or sick leave balance will be made for the official mandatory city leave day.

(4) Official mandatory city leave day during injury leave. Any employee who is on injury leave when an official mandatory city leave day occurs will be paid workers' compensation and will be charged for mandatory city leave up to the number of hours needed to supplement the employee's pay. If the employee is on wage supplementation, no wage supplementation payments will be received for the official mandatory city leave day. Any unused mandatory city leave hours may be taken on a subsequent date convenient to the department.

(5) Official mandatory city leave day during other leave. An employee on military leave, court leave, or death-in-family leave when an official mandatory city leave day occurs may take the mandatory city leave on a subsequent date convenient to the department.

(6) Official mandatory city leave during suspension. An employee on suspension when an official mandatory city leave day occurs will not be paid for the official mandatory city leave day but may take the mandatory city leave on a subsequent date convenient to the department.

(7) Official mandatory city leave during leave without pay. An employee on leave without pay when an official mandatory city leave day occurs may take the mandatory city leave on a subsequent date convenient to the department.

(f) Floating mandatory city leave days.

(1) At the recommendation of the city manager, the city council may, by ordinance or resolution, establish floating mandatory city leave days that may be used at an employee's discretion with a supervisor's approval. These days are in addition to any official mandatory city leave days established for the fiscal year.

(2) A supervisor may grant floating mandatory city leave at a time during the year that will best serve the public interest. Preference may be given to an employee on the basis of length of service.

(3) An employee on injury leave who is not receiving wage supplementation may use mandatory city leave like other paid leave to supplement the employee's pay.

(g) Lump sum payment of mandatory city leave. No payment will be provided for unused mandatory city leave when an employee terminates employment, regardless of the reason for the termination.

(h) Mandatory city leave adjustment for changes in work schedules. A sworn employee of the fire department will have any mandatory city leave balance adjusted proportionately to reflect differences in work schedules when:

(1) the employee transfers to or from the emergency response bureau of the fire department;  
or

(2) the employee's full-time regular work schedule is increased or decreased.

(i) Family leave. An employee who is eligible for family leave under Section 34-24.1(b) may be required to deduct hours from the employee's mandatory city leave balance to cover all or part of any absence from work for a family leave purpose described in Section 34-24.1(c). (Ord. 28024)

## ARTICLE IV. BENEFITS.

### SEC. 34-32. HEALTH BENEFIT PLANS.

(a) The city extends participation in health benefit plans to every permanent full-time employee and to every city council member. Other classifications of employees are eligible to participate in the city's health benefit plans in accordance with federal law and as described in the applicable plan documents.

(b) Eligibility, premium rates, and procedures for participation in the health benefit plans for active employees, retired employees, and city council members are defined in plan documents adopted by the city council and on file with the department of human resources. The city may change the health benefit plans at any time, subject to applicable law.

(c) Notice of retirees' rights to purchase continued health benefits.

(1) Under Chapter 175 of the Texas Local Government Code, as amended, a person who retires

from the city and is entitled to receive city retirement benefits is entitled to purchase retiree health benefits coverage from the city for the person and any eligible dependents.

(2) To receive continued health benefits coverage, the person must inform the city, within thirty days of the day on which the person retires, of the election to continue coverage.

(3) If the person elects to continue health benefits coverage for the person and/or any dependents and on any subsequent date elects to discontinue that coverage, then the person is no longer eligible for coverage from the city.

(4) If a person is not participating in the city's active employee health benefit plans at the time the person retires from the city, the person is not eligible for continued health benefits coverage under the city's retiree health benefit plans.

(5) A person hired as a city employee on or after January 1, 2010 who retires from the city may participate in the retiree health benefit plans but the cost of the continued health benefits coverage must be paid entirely by the person. (Ord. Nos. 19340; 20088; 22026; 22296; 22318; 24873; 28024; [29883](#))

### **SEC. 34-33. LIFE INSURANCE.**

(a) Every permanent employee is a participant in the group life insurance program. The city will pay the full cost of the basic term life insurance coverage for a permanent full-time employee and one-half the cost for a permanent part-time employee.

(b) An employee has the option to elect additional life insurance coverage. The employee shall pay the full cost of additional life insurance coverage. (Ord. Nos. 19340; 24873)

### **SEC. 34-34. RESERVED.**

(Repealed by Ord. 24873)

## **ARTICLE V. RULES OF CONDUCT.**

### **SEC. 34-35. FAIR EMPLOYMENT PRACTICES.**

(a) City management may not discharge an individual, fail or refuse to hire an individual, or otherwise discriminate against an individual with respect to compensation, terms, conditions, or privileges of employment because of the individual's race, color, age, religion, sex, marital status, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, military or veteran status, political opinions, or affiliations. Nothing in this subsection extends any employee benefits, including but not limited to paid or unpaid leave, medical benefits, or pension benefits, to any individual who is ineligible for those benefits under any other provision of this chapter, the city's master health plan, the employees' retirement fund program, or the police and fire pension system or under any other city ordinance or resolution or state or federal law.

(b) City management may not limit, segregate, or classify employees or applicants for employment in a way that would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect an employee's status because of the individual's race, color, age, religion, sex, marital status, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, military or veteran status, political opinions, or affiliations. (Ord. Nos. 19340; 22195; 22296; 22318; 24873; 29480)

**SEC. 34-36. RULES OF CONDUCT.****(a) Performance standards.**

(1) Every employee is expected to consistently maintain satisfactory performance standards. Continuing performance deficiencies, unlike the isolated rule violations noted in Subsections (b) and (c) of this section, should first be addressed by the mutually cooperative efforts of the supervisor and the employee.

(2) If performance standards are not met, the employee is subject to a formal disciplinary action of reprimand, suspension, demotion, or discharge. The specific action taken determines what, if any, appeal rights are available to the employee.

**(b) Unacceptable conduct.** The following types of conduct are unacceptable and may be cause for corrective discipline in the form of reprimand, suspension, demotion, or discharge depending upon the facts and circumstances of each case. The examples given are typical but not all-inclusive.

(1) Unsatisfactory attendance is exemplified by, but is not limited to, the following violations:

(A) unexcused absence or tardiness;

(B) failure to give notice of an absence or tardiness to the supervisor from within two hours before to within 30 minutes after starting time, as prescribed by departmental procedure;

(C) excessive separate absences or tardiness;

(D) absence or tardiness that causes service reduction or disruption; or

(E) excessive amounts of time off the job, regardless of the reason.

(2) Position abandonment occurs when an employee is absent from a position for three consecutive work days without authorization, or refuses an order to report to work. The employee is deemed to have abandoned the position and may be discharged.

(3) Inability to come to work occurs when an employee is absent due to an extended illness or injury after sick leave and wage supplementation have been exhausted.

(4) Inability or unwillingness to perform assigned work satisfactorily is exemplified by, but is not limited to, the following violations:

(A) failure to follow written or verbal instructions;

(B) arguing over assignments or instructions; or

(C) other deficiencies indicating the employee's failure to adequately perform the responsibilities of the position.

(5) Indifference towards work is exemplified by, but is not limited to, the following violations:

(A) inattention, inefficiency, loafing, sleeping, carelessness, or negligence;

(B) failure to remain at one's work station, leaving work without permission, or taking excessive time for eating or break periods;

(C) performance of personal business, including but not limited to excessive use of personal cell phones, blackberries, PDAs, or other electronic devices while on duty;

(D) interference with the work of others; or

(E) discourteous or irresponsible treatment of the public or other employees.

(6) Sabotage is exemplified by, but is not limited to, the following violations:

(A) deliberate damage to or destruction of city equipment or property;

(B) defacing of city property;

(C) unauthorized alteration, removal, destruction, or disclosure of city records;

(D) advocacy of or participation in unlawful trespass or seizure of city property;

(E) encouraging or engaging in slowdowns, sit-ins, strikes, or other concerted actions or efforts to limit or restrict employees from working;

(F) refusal to cross picket lines;

(G) interference with the public use of or access to city services, properties, or buildings;  
or

(H) threats to commit any act of sabotage as defined in this paragraph.

(7) Safety violations are exemplified by, but are not limited to, the following violations:

(A) failure to follow city or departmental safety rules and regulations;

(B) failure to use required safety apparel;

(C) removal or circumvention of a safety device;

(D) lifting in an unsafe manner;

(E) operation of a vehicle or other equipment in an unsafe manner;

(F) smoking in a prohibited area;

(G) endangering of one's own safety or that of others by careless or irresponsible actions or negligence;

(H) failure to report an on-the-job injury, vehicle accident, or unsafe work conditions;

(I) failure of a supervisor to remove from the workplace or to assist to a safe location an employee whose mental capabilities are impaired due to injury, illness, alcohol or drug use, or emotional distress;

(J) failing a city-required drug or alcohol test; or

(K) texting or emailing while operating a motor vehicle on city business.

(8) Dishonesty is exemplified by, but is not limited to, the following violations:

(A) acceptance of money or anything of value from a person subject to the regulatory decision or supervision of the employee;

(B) cheating, forging, or willful falsification of official city reports or records;

(C) false reporting of the reason for paid leave of absence; or

(D) any other falsifying action detrimental to the city or fellow employees.

(9) Theft, regardless of item value, is exemplified by, but is not limited to, the following violations:

(A) unauthorized taking of city property or the property of others;

(B) unauthorized use of city or employee funds;

(C) using or authorizing the use of city equipment or employee services for other than official city business; or

(D) using or authorizing the use of city equipment or employee services without proper authority.

(10) Insubordination is exemplified by, but is not limited to, the following violations:

(A) willful failure or refusal to follow the specific orders or instructions of a supervisor or higher authority; provided that:

(i) if the employee believes an instruction or order is improper, the employee should obey the instruction or order and file a grievance later; or

(ii) if the employee believes the instruction or order, if followed, would result in physical injury to the employee or others or damage to city equipment, the employee should request approval by the next higher level of supervision before performing the work, unless the danger complained about is inherent to the job;

(B) pursuit of a denied request to a higher authority without revealing the lower level disposition; or

(C) failure to submit to a drug and/or alcohol test when ordered to do so.

(11) Abuse of drugs or alcohol.

(A) Abuse of drugs or alcohol is exemplified by, but is not limited to, the following violations:

(i) an employee is unable to perform duties in an effective and safe manner due to:

(aa) ingestion, inhalation, or injection of a drug; or

(bb) ingestion of an alcoholic beverage;

(ii) an employee possesses, ingests, inhales, or injects into the employee's body a drug:

(aa) during working hours;

(bb) in a city vehicle; or

(cc) on city property;

(iii) an employee possesses or ingests an alcoholic beverage:

(aa) during working hours;

(bb) in a city vehicle; or

(cc) on city property, except at an authorized city event; or

(iv) an employee tests positive on a drug or alcohol test.

(B) In this paragraph:

(i) “Drug” means a controlled substance as defined by Chapter 481 of the Texas Health and Safety Code.

(ii) “Alcoholic beverage” means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, that is capable of use for beverage purposes, either alone or when diluted.

(C) An employee or a city council member may be required to take a drug or alcohol test, administered in accordance with directives established by the city manager and reviewed by the city attorney, if there is reasonable suspicion that:

(i) the employee or city council member has ingested, inhaled, or injected a drug into the employee’s or city council member’s body or ingested an alcoholic beverage; and

(ii) the presence of the drug or alcoholic beverage in the body of the employee or city council member has made the employee or city council member unfit for work, compromised the performance of the job duties of the employee or city council member, or created a safety hazard.

(D) An employee who is ordered to submit to a drug and/or alcohol test and refuses to do so, or submits a false specimen for testing, will be discharged for insubordination.

(E) An employee who tests positive for drugs or alcohol may be discharged.

(12) Disturbance is exemplified by, but is not limited to, the following violations:

(A) fighting or boisterous conduct;

(B) deliberate causing of physical injury to another employee or citizen;

(C) intimidation;

(D) unnecessary disruption of the work area;

(E) use of profane, obscene, abusive, threatening, or loud and boisterous language;

(F) harassment or workplace violence as defined in the administrative directives of the city;

(G) spreading of false reports; or

(H) other disruption of the harmonious relations among employees or between employees and the public.

(13) Abuse of city property.

(A) Abuse of city property is exemplified by, but is not limited to, the following violations:

- (i) negligent damage or destruction of city equipment or property;
- (ii) waste of materials or negligent loss of tools or materials;
- (iii) improper maintenance of equipment; or
- (iv) damage caused by use of tools or equipment for purposes other than that for which the tool or equipment was intended.

(B) In addition to being subject to appropriate disciplinary action, an employee shall be responsible for the repair or replacement of any item willfully or recklessly damaged by the employee. Failure to reimburse the city is cause for discharge.

(14) Misconduct is any conduct or criminal offense, during or off working hours, that, on becoming public knowledge, could have an adverse effect on the city or on the confidence of the public in city government.

(15) Disregard of public trust is any conduct, during or off working hours, that, on becoming public knowledge, could impair the public's confidence or trust in the operation of city government.

(16) Possession of weapons.

(A) Possession of a weapon capable of causing serious bodily injury is prohibited on city property, unless specifically authorized and work related.

(B) In this paragraph, a weapon capable of causing serious bodily injury means, but is not limited to:

- (i) any firearm;
- (ii) any illegal knife, including but not limited to:
  - (aa) a knife with a blade over five and one-half inches;
  - (bb) a hand instrument designed to cut or stab another by being thrown;
  - (cc) a dagger, including but not limited to a dirk, stiletto, or poniard;
  - (dd) a bowie knife;
  - (ee) a sword; and
  - (ff) a spear;
- (iii) a switchblade knife;
- (iv) any club, including but not limited to:
  - (aa) a blackjack;
  - (bb) a nightstick;

- (cc) a mace; and
- (dd) a tomahawk;
- (v) any explosive weapon or device;
- (vi) a firearm silencer;
- (vii) knuckles;
- (viii) ammunition;
- (ix) a zip gun;
- (x) any chemical dispensing device;
- (xi) any caustic or corrosive liquid, such as acid or lye, capable of causing serious bodily harm; and
- (xii) a taser.

(C) All other terms used in this paragraph have the meanings respectively given to them in the Texas Penal Code, as amended.

(D) An employee's personal belongings located on city property may be searched if there is reasonable suspicion that the employee is in possession of a weapon capable of causing serious bodily injury on city property.

(E) Small personal canisters of pepper spray are permitted.

(F) Notwithstanding Paragraph (16)(A) of this subsection, an employee who holds a license to carry a concealed handgun, or who otherwise lawfully possesses a firearm or ammunition, may possess the firearm or ammunition in a locked, privately-owned vehicle in a city parking lot, a city parking garage, or any other parking area provided by the city for its employees.

(G) Every employee should refer to specific procedures, requirements, and definitions regarding possession of weapons that are additionally outlined in the administrative directives of the city.

(17) Failure to maintain dress, grooming, and personal hygiene standards appropriate to the employee's work situation.

(18) Violation of an administrative directive of the city or a departmental rule or procedure.

(19) Failure to report a violation is exemplified by, but not limited to, failure to report to the proper authority any known violation described in this subsection within 10 working days after obtaining knowledge of the violation.

(c) Conflict of interest and undue political influence.

(1) Conflict of interest rules. Conflict of interest rules prohibit activities that tend to compromise an employee's allegiance to the city. These rules are set forth in Chapter 12A, "Code of Ethics," of this code and in Section 11, Chapter XXII of the city charter.

(2) Undue political influence in a city council election. To avoid undue influence of a city employee on the outcome of a Dallas city council election, and to avoid undue influence of city council members or candidates on a city employee, an employee or employee association shall comply with the regulations set forth in Chapter 12A, “Code of Ethics,” of this code, Section 16 (b), Chapter XVI of the city charter, and any applicable court decisions.

(3) Non-city council elections. In an election other than a Dallas city council election, an employee shall comply with the regulations set forth in Chapter 12A, “Code of Ethics,” of this code, Section 16(c), Chapter XVI of the city charter, and any applicable court decisions.

(d) Disciplinary and legal actions. Where the evidence supports a violation of this section, disciplinary action may be taken independently of and prior to any legal action or conviction. (Ord. Nos. 19340; 20251; 22296; 22318; 24873; 28024; 28425; 28794)

## **ARTICLE VI. DISCIPLINE, GRIEVANCE, AND APPEAL PROCEDURES.**

### **SEC. 34-37. DISCIPLINE PROCEDURES.**

(a) Guidelines. The director of human resources is authorized and directed to promulgate guidelines and procedures, consistent with the city charter, ordinances, and civil service rules and regulations, as are reasonably necessary and appropriate to implement the rules of employee conduct and discipline contained in this chapter.

(b) Departmental rules. Because of the variety of services performed by the city, it may be necessary for departments to establish codes of conduct, rules, orders, directives, and procedures to accomplish departmental responsibilities. An employee who violates a departmental code of conduct, rule, order, directive, or procedure is subject to disciplinary action. Departments may designate the level of supervisory or departmental authority at which disciplinary action may be taken or recommended. The provisions of this chapter and the procedures set forth in the administrative directives of the city take precedence over departmental rules.

(c) Pending investigations. When an employee is suspected of a violation of a city, state, or federal law, rule, order, directive, procedure, or regulation that, if proven, would justify disciplinary action, an investigation may be conducted to determine the exact nature and extent of the alleged violation, and the employee may be placed on administrative leave with pay pending the outcome of the investigation and the imposition of disciplinary action.

(d) Disciplinary action; procedures and notices.

(1) Formal disciplinary action includes reprimand, suspension, demotion, or discharge. Removal from a position as a result of a reorganization or reduction in force is not a disciplinary action. Letters of counseling or advice are not considered to be disciplinary action but are meant for the purpose of advising the employee of:

- (A) deficiencies in the employee’s conduct or performance;
- (B) possible violations caused by the employee’s conduct or performance; or
- (C) ways in which the employee’s conduct or performance should be improved.

(2) The procedure for a formal disciplinary action of reprimand, suspension, demotion, or discharge includes the following:

(A) Written notice must be given to the employee stating:

(i) the type of disciplinary action taken, i.e., reprimand, suspension, demotion, or discharge;

(ii) the specific rule violated;

(iii) the specific incident causing the action; and

(iv) the employee's right to appeal, if applicable, to a specific office within a specified time.

(B) Before an action of demotion or discharge is taken, an employee who has an internal right of appeal to a civil service trial board or to an administrative law judge must be given an opportunity to respond to the allegations, both in writing and orally, before the person having authority to take the action.

(3) The disciplinary procedures set forth in Paragraph (2) of this subsection do not apply to:

(A) a department director, assistant department director, or other managerial personnel designated by the city council in accordance with Section 11, Chapter XVI of the city charter;

(B) a permanent appointee who has not completed an initial probation, if applicable, as described in Section 34-11(d) of this chapter; or

(C) a non-civil service employee.

(4) A suspension imposed under this subsection may not exceed 45 working days for a single disciplinary action. Any employee who merits a suspension longer than 45 working days should be discharged. This subsection does not imply that a discharge that, upon appeal, has been reduced to a suspension cannot exceed 45 working days. (Ord. Nos. 19340; 19562; 21304; 22026; 24873; 26182; 28425)

### **SEC. 34-38. GRIEVANCE AND APPEAL PROCEDURES.**

(a) Applicability. This section applies to every permanent city employee except the following:

(1) A department director, assistant department director, or other managerial personnel designated by the city council in accordance with Section 11, Chapter XVI of the city charter.

(2) A non-civil service employee.

(b) Purpose. The grievance and appeal procedures described in this section are provided for the purpose of giving an employee the opportunity to:

(1) present a grievance concerning the employee's working conditions that the employee claims have been adversely affected by a violation, misinterpretation, or misapplication of a specific law, ordinance, resolution, policy, rule, or regulation; or

(2) appeal a disciplinary action.

(c) Terms and conditions.

(1) An employee who may appeal a grievance or disciplinary action may have two levels of appeal hearings but no more than a total of four hearings. Appeals of demotions or terminations to the civil service trial board or an administrative law judge are counted as one level of appeal hearing.

(2) A grievance or a disciplinary appeal may be heard during regularly scheduled working hours without loss of pay to the employee, provided the privilege is not abused.

(3) Preparation of a grievance or a disciplinary appeal, except for seeking assistance from the department of human resources, is not permitted during the employee's working hours.

(4) A sworn member of the police department or fire department may appeal a grievance only through Step 3, except that the grievance may be appealed beyond Step 3 if it involves:

(A) a claim of discrimination because of the employee's race, color, age, religion, sex, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, or military or veteran status as it affects the employee's training, promotion, advancement, or transfer; or

(B) a claim relating to an interpretation or application of a civil service rule.

(5) Except for the final step in appealing a suspension, demotion, or discharge, a hearing under these procedures is an informal discussion held without the taking of a written record. An employee must be willing to discuss the evidence and answer questions concerning the grievance or appeal at each step. Failure to discuss the facts of the case at any informal level of these procedures will constitute withdrawal of the grievance or appeal and will cause the last decision rendered to become nonappealable.

(6) An employee may seek assistance or representation in presenting a grievance or an appeal at any step. Guidance and assistance on the grievance or appeal procedures may be obtained from the department of human resources. If another employee is selected to provide assistance or representation on the grievance or appeal, that employee is not eligible for regular pay but may be released on vacation leave or leave without pay, depending upon departmental procedure. The supervisor may also obtain assistance or representation.

(7) The days used to establish time limits in this section are working days. Time limits begin to run the working day following the incident, event, hearing, or notice. Unless otherwise provided, the time limits for grievance or appeal requests require that the grievance or appeal request actually be received within that time period by the office designated as the next step for the grievance or appeal.

(8) Unless due to reasons beyond the employee's control, if an employee fails to file a grievance or an appeal within the time limits prescribed in Subsection (f) of this section or fails to personally appear at a hearing, the matter will be considered as having been accepted and the last decision rendered will be nonappealable.

(9) If the hearing of a grievance or an appeal is not held within 20 working days after the date the request is received (unless the hearing date is extended by mutual agreement or for extraordinary circumstances such as a death in the family or documented illness), the employee requesting the hearing may proceed to the next level of appeal. The city manager, park board,

civil service board, trial board, and administrative law judge hearing processes are excluded from this time limitation.

(10) If a disposition of a grievance or an appeal is not issued within the specified time limit, the employee may proceed to the next step, if applicable, by filing a grievance or appeal request to the next step within 20 working days after the date of the last hearing in the grievance or appeal process. If the employee fails to timely file a grievance or appeal request to the next step, the last disposition of the grievance or appeal is nonappealable.

(11) Any time limit specified in the procedures under this section may be extended by mutual agreement.

(12) A grievance filed against a department other than the employee's own department must be brought to the director of the charged department and is initiated at Step 3 of these procedures. The charged department is responsible for keeping the employee's own department informed of progress at each step of the grievance or appeal and for supplying the employee's department with copies of the findings.

(13) An employee who has not completed probation, when required, after appointment or reappointment to city employment may not file an appeal of a disciplinary action. An employee who has not completed probation, when required, after a promotion may not appeal a demotion.

(14) An employee shall not be subject to retaliation for using the grievance or appeal procedures.

(15) An appeal concerning a job performance rating, efficiency rating, or merit rating may not proceed beyond Step 3 unless the person issuing the job performance rating is a department director. In that case, the employee may appeal to an assistant city manager or, if the department reports to a board or commission, to a designated board or commission member.

(16) An appeal of a reprimand may not proceed beyond Step 3 unless the person issuing the reprimand is a department director. In that case, the employee may appeal to an assistant city manager or, if the department reports to a board or commission, to a designated board or commission member.

(17) The right to grieve ends if the employee terminates employment with the city.

(18) An employee may not grieve a position classification.

(19) The city vehicle collision appeal process will be administered in accordance with any applicable provisions of this chapter and with specific procedures and requirements outlined in the administrative directives of the city.

(20) An employee who files a grievance and subsequently files an appeal of the disposition of that grievance shall submit a copy of the original grievance at all levels of appeal.

(21) At every grievance appeal level, the hearing officer shall only hear matters contained in the original grievance.

(d) Grievance. A grievance and request for a hearing must be submitted in writing and must contain the following information:

(1) a brief explanation of the incident causing the grievance, including the date of occurrence;

(2) a brief statement showing how the employee's working conditions were adversely affected by the incident;

(3) the specific violation, misinterpretation, or misapplication of the specific law, ordinance, resolution, policy, rule, or regulation of which the employee is complaining;

(4) the remedy or solution sought; and

(5) the signature of the aggrieved employee.

(e) Disciplinary appeal. An appeal of a disciplinary action and request for a hearing must be submitted in writing to the person designated in the disciplinary notice, and must contain the following information:

(1) the disciplinary action being appealed and the effective date of the disciplinary action;

(2) the specific reason the discipline is judged to be unjust or otherwise in error;

(3) the remedy or solution sought; and

(4) the signature of the disciplined employee.

(f) Grievance and appeal procedure steps:

(1) Step 1. An employee who has a grievance shall, within 10 working days from the date of the occurrence that caused the grievance, or from the date the employee first had knowledge of the occurrence, request in writing a discussion of the grievance with the employee's immediate supervisor. The employee must also send a copy of the grievance to the department of human resources. A careful review of the charges and evidence or of the action or omission will be conducted. The supervisor shall respond in writing to the employee, stating the disposition of the grievance, within 10 working days after the discussion. If the grievance alleges a violation of the administrative directives on harassment and/or workplace violence and the immediate supervisor is a direct party in the alleged incident, the employee may file the grievance with the next higher level of supervision above the immediate supervisor. This step does not apply to the appeal of a disciplinary action.

(2) Step 2. If a grievance is not resolved or the employee wishes to appeal a disciplinary action to Step 2, the employee must, within 10 working days after receipt of the supervisor's written disposition of a grievance or of the disciplinary notice, submit a written request for a hearing to the person designated to hear the grievance or appeal at this level. A hearing shall be conducted within a reasonable time of receipt of the request and a written disposition issued within 10 working days after the date of the hearing. At the discretion of the department director, this step may be completely omitted or may be modified to require two separate hearings before different mid-managers in the department.

(3) Step 3. If a grievance or an appeal is not resolved and the employee wishes to proceed to Step 3, the employee must, within 10 working days after receipt of the disposition in the previous step, submit a written request for a hearing to the department director. A hearing must be conducted within a reasonable time after receipt of the request, and a written disposition must be issued within 10 working days after the hearing.

(4) Step 4.

(A) If a grievance or an appeal is still not resolved and the employee wishes to proceed to Step 4, the employee must, within 10 working days after receipt of the disposition in the previous step or of the disciplinary notice, submit a written request for a hearing to the designated assistant city manager or, in the case of a sworn member of the police department appealing a discharge, to the city manager, in care of the director of human resources of the city. A hearing must be conducted within a reasonable time after receipt of the request, and a knowledgeable representative of the department must be present and, in the case of a sworn member of the police department appealing a discharge, the police chief must also be present and will be represented by a representative of the city attorney. At the hearing, the assistant city manager or, in the case of a sworn member of the police department appealing a discharge, the city manager may, at his or her discretion, allow witnesses on behalf of the employee and the city. A written disposition must be issued within 10 working days after the hearing. If the employee introduces new and relevant evidence in a timely manner at this step, the assistant city manager or the city manager, whichever is applicable, may recess the hearing for 10 working days to give the department an opportunity to assess the evidence and re-examine its position.

(B) The assistant city manager or, in the case of a sworn member of the police department appealing a discharge, the city manager may either affirm the action of the department director or the director's designee, set aside the action of the department director or the director's designee, or direct the department director or the director's designee to enter a new order that the assistant city manager or the city manager, whichever is applicable, determines is just and equitable. Notwithstanding any other provision of this code or the city charter, the assistant city manager or the city manager, whichever is applicable, is not limited in determining the extent of any discipline ordered.

(g) Exception to Step 4 procedure. An employee of the employees' retirement fund or the police and fire pension system shall bring a grievance or an appeal respectively to the employees' retirement fund board or the police and fire pension board instead of to an assistant city manager in Step 4 of these procedures. Step 4 does not apply to an employee of the city auditor's, city secretary's, or civil service office.

(h) Step 4 procedure for suspensions. When an employee requests a Step 4 hearing for the appeal of a suspension before a designated assistant city manager, the employees' retirement fund board, or the police and fire pension board, whichever is applicable, the following procedures apply in addition to those prescribed in Subsection (f)(4) of this section, except that the employees' retirement fund board and the police and fire pension board may adopt procedures in lieu of those set forth in this subsection to be followed in hearings before their boards:

(1) At the hearing, the assistant city manager, the employees' retirement fund board, or the police and fire pension board, whichever is applicable, shall hear witnesses on behalf of the employee and the city and shall allow the introduction of documentary evidence.

(2) In accordance with Section 18, Chapter III of the city charter, the assistant city manager, the employees' retirement fund board, and the police and fire pension board are granted the power to compel the attendance of witnesses and the production of testimony and evidence, administer oaths, and punish for contempt in the same manner as provided by law for judges of the municipal court. At the request of an appealing employee or the city, the assistant city manager, the chair of the employees' retirement fund board, or the chair of the police and fire pension board, whichever is applicable, shall issue subpoenas for the attendance of witnesses and the production of records at the hearing.

(3) The city or the appealing employee must deliver a written request for a subpoena to the assistant city manager, the chair of the employees' retirement fund board, or the chair of the police and fire pension board, whichever is applicable, at least 10 working days before the hearing. The request for a subpoena must contain:

- (A) the name of the witness;
- (B) the address of the witness;
- (C) if the witness is a city employee, the name of the employee's department; and
- (D) the specific identification of books, papers, documents, or other tangible things sought to be subpoenaed.

(4) The party requesting a subpoena shall notify the subpoenaed witness of postponements, rescheduling, and appearance times.

(5) A witness served with a subpoena who fails to appear at the hearing or fails to produce requested evidence may be punished for contempt.

(6) The disposition of a suspension appeal by the assistant city manager, the employees' retirement fund board, or the police and fire pension board, whichever is applicable, is nonappealable.

(i) Final decision.

(1) The disposition of a grievance or an appeal by the assistant city manager, city manager, employees' retirement fund board, secretary of the civil service board, city auditor, or city secretary is nonappealable, except when the grievance or appeal involved a:

- (A) claim of discrimination because of an employee's race, color, age, religion, sex, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, or military or veteran status as it affects the employee's training, promotion, advancement, or transfer, which may be appealed to the civil service board;
- (B) civil service rule challenge, which may be appealed to the civil service board; or
- (C) demotion or discharge, which may be appealed to the trial board, unless provided otherwise in the city charter.

(2) The disposition of a grievance or an appeal by the police and fire pension board is nonappealable, except when the grievance or appeal involved:

- (A) a claim of discrimination because of an employee's race, color, age, religion, sex, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, or military or veteran status as it affects the employee's training, promotion, advancement, or transfer, which may be appealed to the civil service board; or
- (B) a civil service rule challenge, which may be appealed to the civil service board.

(j) Nothing in this section conveys upon, implies, or intends to imply that an employee has a property interest in continued employment or a contract of employment with the city based on any right to grieve or appeal provided by this section or on the nondiscrimination policy stated in Section 34-35 of this chapter. Nothing in this section or in the nondiscrimination policy creates any right or remedy under any law or limits any existing right or remedy provided under any

law. (Ord. Nos. 19340; 19562; 21674; 22026; 22195; 22296; 22318; 24873; 24930; 25389; 26182; 26693; 28024; 29480)

### **SEC. 34-39. APPEALS TO THE CIVIL SERVICE BOARD.**

(a) General provisions, applicability, jurisdiction, and quorum.

(1) To the extent that a rule adopted by the civil service board and approved by the city council conflicts with a provision of this chapter, this chapter prevails.

(2) In this section:

(A) BOARD means the civil service board of the city.

(B) SECRETARY means the secretary of the civil service board.

(3) This section does not apply to:

(A) a department director, an assistant department director, or other managerial personnel designated by the city council in accordance with Section 11, Chapter XVI of the city charter;

(B) a non-civil service employee; or

(C) applicants for employment.

(4) The civil service board has jurisdiction to hear the following matters:

(A) A grievance of a current employee that is not settled at the final grievance and appeal procedure step and that involves a claim of discrimination because of an employee's race, color, age, religion, sex, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, or military or veteran status as it affects the employee's training, promotion, advancement, or transfer, but only if the request for a grievance hearing:

(i) is filed in writing with the civil service board secretary within 10 working days after the date of the employee's receipt of the letter of the last disposition of the grievance;

(ii) contains the following information:

(aa) a brief explanation of the incident causing the complaint, including the date of occurrence;

(bb) a brief statement showing how the incident harmed the employee;

(cc) the type of discrimination alleged;

(dd) the remedy sought;

(ee) the signature of the employee; and

(ff) a certificate showing the date of service to the secretary; and

(iii) has a copy of the original grievance attached to the request.

(B) A grievance that is not settled at the final grievance and appeal procedure step and that involves an interpretation or application of a civil service rule, but only if the request for a grievance hearing:

(i) is filed in writing with the secretary within 10 working days after the date of the employee's receipt of the letter of the last disposition of the grievance; and

(ii) contains the following information:

(aa) a brief explanation of the incident causing the complaint, including the date of occurrence;

(bb) a brief statement showing how the incident harmed the employee;

(cc) the provision of the civil service board's code of rules and regulations that is in question;

(dd) the remedy sought;

(ee) the signature of the employee; and

(ff) a certificate showing the date of service to the secretary; and

(iii) has a copy of the original grievance attached to the request.

(5) The civil service board does not have jurisdiction to hear:

(A) a grievance of an individual whose employment with the city has terminated, even if the original grievance was filed when the individual was a city employee; and

(B) a grievance on a matter that was not included in the original grievance filed by an employee.

(6) Any four members of the civil service board constitute a quorum for purposes of conducting any meeting or hearing under this section. All decisions or actions of the board under this section must be made by a majority of the board members present at a meeting or hearing.

(b) Prehearing deadlines.

(1) To the fullest extent possible, within fifteen working days after the date of service of the request to the secretary of the civil service board, as shown on the certificate attached to the request under Subsection 34-39(a)(4)(A), 34-39(a)(4)(B), or 34-39(a)(4)(C), the secretary shall do the following:

(A) Set a hearing before the civil service board within 60 to 90 calendar days after receipt of the request by the secretary; however, the secretary of the civil service board may, with the approval of the civil service board chair, schedule a hearing outside of 60 to 90 calendar days from the date of the request.

(B) Prepare a "statement of questions," which must be styled, "Matter of (name of employee)" and include the following language:

(i) If the grievance involves a claim of discrimination, the statement of questions must read "Did the employee establish, by a preponderance of the evidence, the existence of discrimination based on the employee's (choose appropriate category - race, color, age, religion, sex, sexual orientation, gender identity and expression, genetic characteristics, national origin, disability, or military or veteran status) as it affects the employee's (choose appropriate category - training, promotion, advancement, or transfer)?"

(ii) If the grievance involves a claim of misinterpretation or misapplication of a board rule, the statement of questions must specify each rule alleged to have been violated.

(iii) The statement of questions may not include any issue not included in the original grievance.

(C) Transmit to each party notice of the hearing and the statement of questions.

(2) Objections.

(A) Within 10 working days after the date of service as shown on the certificate of service on the statement of questions, the parties shall file any objections to the statement of questions with the secretary.

(B) Within five working days after the date of service as shown on the certificate of service on the objections, a response may be filed.

(C) Objections may be resolved at the hearing immediately before evidence is accepted.

(3) Continuances.

(A) At least 15 working days before a hearing or two working days after a party learns of the facts requiring a continuance, whichever date is earlier, a motion for continuance of the hearing may be filed.

(B) Within five working days after the date of service as shown on the certificate of service on the motion for continuance, a response may be filed.

(C) Other than in cases in which the parties agree to abate a hearing to await the final adjudication of underlying criminal charges, the parties may agree to a continuance, in which case, the hearing will be continued for up to 60 calendar days. Agreed continuances in excess of 180 days from the date of the original setting of the hearing must be approved by the civil service board chair, or his or her designee who shall be a member of the civil service board.

(D) If the parties do not agree to a continuance, the continuance may be granted by a majority of the board members present at a meeting or hearing at which the motion for continuance is considered.

(4) Exchange of information. At least 10 working days before the hearing, each party shall:

(A) exchange witness lists;

(B) exchange exhibits;

(C) stipulate to undisputed facts;

(D) stipulate to the admissibility of exhibits; and

(E) file with the secretary a position statement that must include a:

(i) statement of the party's position on the issues in the statement of questions;

(ii) designation of undisputed facts;

(iii) list of witnesses and the estimated time required for the direct examination of each witness; and

(iv) list of exhibits.

(5) Request for subpoenas. At least 30 working days before the hearing, each party may file with the secretary a request for subpoena of witnesses and documents, in accordance with the following:

(A) The request for subpoena of witnesses and documents must include:

- (i) the name and address of each witness to be subpoenaed;
- (ii) if a witness is a city employee, the name of the employee's department; and
- (iii) if documents are being subpoenaed, the specific identification of books, papers, documents, or other tangible things sought to be subpoenaed.

(B) The party requesting the subpoena shall notify the subpoenaed witness of postponements, rescheduling, and appearance times.

(C) The board has the power to compel the attendance of witnesses and the production of testimony and evidence, to administer oaths, and to punish for contempt in the same manner as provided for municipal judges.

(D) Either party may object to a subpoena request within seven working days after receiving notice of the subpoena request. Objections to subpoenas must be in writing, submitted to the secretary, and copied to the opposing party, who has three working days after receipt of the objections to respond in writing to the substantive reasons for the objection.

(E) The secretary shall forward the written objections and the response to the objections, if any, to the civil service board chair for resolution. If the civil service board chair is unavailable, the objections must be ruled upon by his or her designee, who shall be a member of the civil service board.

(F) Once the scope of the subpoena is determined by the civil service board chair, or if no objections are filed, each party shall organize and number the responsive information ("the released documents") before turning it over to the secretary. The released documents must be provided within an amount of time determined by the civil service board chair or, if no objections are filed, in an amount of time determined by the secretary. The secretary shall provide a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.

(G) The individual picking up the released documents must sign for the produced information. The requesting party has three working days to submit, in writing, any objections to the completeness of the released documents. The producing party has three working days to respond, in writing, to the substantive reasons for the requesting party's objections. The secretary shall maintain one complete copy of the released documents, to allow the civil service board chair to fully assess and rule on any objections to the completeness of compliance with the subpoena.

(H) The secretary shall forward the objections and any response to the objections to the civil service board chair for resolution. If the civil service board chair is unavailable, the objections will be ruled upon by his or her designee, who shall be a member of the civil service board.

(I) Decisions rendered by the civil service board chair (or his or her designee, if applicable) regarding subpoenas or responsive information are final and are not subject to further appeal.

(J) After all decisions have been rendered by the civil service board chair regarding the scope of documents to be released pursuant to a subpoena, the secretary shall provide a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.

(6) Challenge of board members.

(A) At least 10 working days before the hearing, a motion to challenge a board member may be filed with the secretary and served upon all parties.

(B) Within five working days after the date of service as shown on the certificate of service on the motion to challenge a board member, a response may be filed.

(C) A challenge may not be made after the hearing begins, unless the challenge is based on a board member's:

- (i) ineligibility to hear the matter; or
- (ii) conduct during the hearing.

(D) If the challenged member does not voluntarily withdraw, the board, by a majority vote, not counting the vote of the challenged member, may remove the member.

(7) Service of subpoenas.

(A) At least five working days before the hearing, the secretary shall cause all subpoenas to be personally served.

(B) The secretary shall designate a person to deliver the subpoenas and that person shall sign each subpoena stating that the witness was served.

(C) The subpoena of an active city employee may be served through the director of the employee's department.

(8) Computation of time.

(A) In computing any period of time prescribed in this section, the day of the act or event from which the designated period of time begins to run is not included.

(B) The last day of the time period is included, unless it is a Saturday, Sunday, or official holiday observed by the city, in which event the period runs until 5:15 p.m. of the next day that is not a Saturday, Sunday, or official holiday observed by the city.

(C) Except as otherwise specified, time periods will be calculated based on calendar days.

(c) Hearings.

(1) Any four members of the board constitute a quorum for a hearing under this section. The board chair (or, in the chair's absence, the vice chair or longest serving board member present) shall preside at any hearing and make rulings regarding evidence or procedure. Upon motion of any board member, the board, by majority vote, may overrule or modify any ruling by the chair.

(2) The employee has the burden of establishing, by a preponderance of the evidence, that the city discriminated against the employee or misapplied or misinterpreted a rule as alleged.

(3) If the board, by majority vote, determines, by a preponderance of the evidence, that the city discriminated against the employee or misapplied or misinterpreted a rule as alleged, the board shall direct such relief as it deems just and equitable.

(4) The appealing employee:

(A) may request the hearing or deliberations, which are usually open to the public, to be closed; and

(B) may not be compensated for time away from the employee's city position while attending a hearing, unless so ordered by the board.

(5) The board may exclude:

(A) redundant, irrelevant, or cumulative evidence;

(B) evidence that is not competent or properly authenticated;

(C) any exhibit not previously exchanged; and

(D) the testimony of a witness not previously identified as a witness.

(6) The secretary shall maintain a record of the hearing and shall, at the city's expense, appoint a court reporter to make a record of the hearing.

(7) The board shall release city employee witnesses as soon as possible to return to city business.

(8) Placing witnesses under the rule.

(A) Upon request by either party, the witnesses on both sides shall be sworn and removed from the hearing room so they cannot hear the testimony as delivered by any other witness in the case.

(B) Witnesses shall be instructed that they are not to converse with each other or with any other person about the case, other than the attorneys in the case.

(9) After the parties have rested, the board may request a party to produce additional evidence as the board deems necessary to decide the issues before it.

(d) Disposition.

(1) Dismissal. A grievance or any part of a grievance must be dismissed for, but not limited to, any of the following reasons:

(A) The appealing employee fails to appear in person at the hearing, unless:

(i) good cause for the failure to appear is shown; and

(ii) the city would not be unduly prejudiced if the grievance is not dismissed.

(B) The appealing employee fails to introduce sufficient evidence to prove the alleged discrimination or misapplication or misinterpretation of a rule.

(C) The board cannot grant the relief that the appealing employee has requested.

(D) The board lacks jurisdiction.

(2) Board orders.

(A) The disposition of a grievance must be reduced to writing by the secretary and transmitted to the parties within three working days after the board has announced its ruling. This writing is the order of the board.

(B) The order is final unless a motion for rehearing is filed within 10 working days after the date on the written order.

(3) Relief. The board may grant the prevailing party relief that is just and equitable as is consistent with the city charter and other applicable law.

(4) Costs. The board may not authorize payment of attorney's fees, expenses, or costs or provide payment of damages beyond payment of salary and benefits that would have ordinarily been paid to the appealing employee.

(e) Post-hearing deadlines.

(1) Within 10 working days after the date on the written order, a motion for rehearing may be filed by either party.

(2) A motion for rehearing may be granted by the board only if the order:

(A) exceeds the board's authority;

(B) contains provisions im-permissible under applicable law;

(C) is unclear; or

(D) incorrectly states the dis-position of the matter.

(f) Other matters.

(1) If a court of law rules on an issue involved in the grievance, the board's order must conform with the court's ruling or must be vacated in deference to the court's ruling, whichever is applicable.

(2) The board may order, with the consent of the parties, that any matters having common issues of fact be consolidated.

(3) No party or party representative shall communicate with any board member regarding the issues involved in the grievance except at the hearing.

(4) The board, by majority vote, may seek advice regarding its jurisdiction or the nature and extent of its authority from the city attorney.

(5) A party may be heard through a representative if that representative is designated:

(A) in writing filed with the secretary and served on all parties;

(B) on the record at the hearing before evidence is accepted; or

(C) through the signature of the representative on any paper filed with the secretary on behalf of the party.

(6) The secretary shall ensure that the board receives any materials filed by the parties.

(7) Any paper served by a party on the secretary must include a certificate showing service to all other parties.

(8) Service upon the city must be accomplished by serving the assistant city attorney assigned to the hearing.

(9) Nothing in this section may be construed to authorize the practice of law except as permitted by the Supreme Court of Texas.

(10) By presenting to the board (whether by signing, submitting, or later advocating) a request for a hearing, a complaint, a written or oral motion, or any other document, the party is certifying that it is acting in good faith.

(g) Nothing in this section conveys upon, implies, or intends to imply that an employee has a property interest in continued employment or a contract of employment with the city based on any right to grieve or appeal provided by this section or on the nondiscrimination policy stated in Section 34-35 of this chapter. Nothing in this section or in the nondiscrimination policy creates any right or remedy under any law or limits any existing right or remedy provided under any law. (Ord. Nos. 19340; 20988; 22195; 24873; 24930; 25051; 26182; 28024; 29480)

### **SEC. 34-40. APPEALS TO THE TRIAL BOARD OR ADMINISTRATIVE LAW JUDGE.**

(a) General provisions, applicability, and jurisdiction.

(1) To the extent that a rule adopted by the civil service board, civil service trial boards, or administrative law judges and approved by the city council conflicts with a provision of this chapter, this chapter prevails.

(2) In this section:

(A) BOARD means the civil service board of the city.

(B) TRIAL BOARD means a civil service trial board.

(C) SECRETARY means the secretary of the civil service board, who will also serve as secretary to each trial board and each administrative law judge.

(3) This section does not apply to:

(A) a department director, an assistant department director, or other managerial personnel designated by the city council in accordance with Section 11, Chapter XVI of the city charter; or

(B) a non-civil service employee.

(4) A civil service trial board and an administrative law judge have jurisdiction to hear an appeal by an employee if the appeal:

(A) involves a demotion or discharge, unless provided otherwise in the city charter;

(B) is filed in writing with the secretary within 10 working days after the date of the employee's receipt of the letter of the last disposition of the appeal;

(C) contains the following information:

- (i) the type of disciplinary action being appealed and the effective date of the action;
- (ii) the specific reason the discipline is unjust or otherwise in error;
- (iii) the remedy sought;
- (iv) the signature of the employee; and
- (v) a certificate showing the date of service to the secretary; and

(D) has a copy of the disciplinary action attached to the appeal.

(5) Designating whether an appeal is heard by a trial board or an administrative law judge.

(A) An employee must specify in the appeal filed with the secretary whether the appeal will be heard by a trial board or an administrative law judge. This choice is final.

(B) All appeals will be heard by a trial board unless otherwise specified by the appealing employee.

(C) By choosing to have a hearing before an administrative law judge, the appealing employee agrees to pay one-half of the administrative law judge's fee for the hearing, based on a rate established by contract with the city. Before a hearing will be held before an administrative law judge, the employee must deposit with the civil service board secretary a cash amount equal to one-half the estimated fee of the administrative judge as determined by the secretary based on the estimated length of the hearing. If the deposit exceeds the actual cost of the hearing, the employee shall be refunded the difference. If the deposit is insufficient to cover the actual cost of the hearing, the employee must pay the additional amount.

(b) Selection of a trial board or an administrative law judge.

(1) For hearings before a trial board, the secretary shall select trial board members according to a rotation schedule established by the chair of the civil service board. The trial board must be composed of a civil service board member and two adjunct members of the civil service board.

(2) For hearings before an administrative law judge, the secretary shall select the administrative law judge according to a rotation schedule established by the chair of the civil service board. An administrative law judge who is involved in litigation against the city may not hear an appeal.

(3) The secretary shall promptly designate a replacement if a trial board member or an administrative law judge is unable to serve at a hearing and shall inform all parties of the replacement. A substitute trial board member or administrative law judge must be selected in accordance with the rotation schedule established under Paragraph (2) of this subsection.

(4) The civil service board member serving on a trial board shall preside as the chair at any hearing before the trial board and shall make any rulings regarding evidence or procedure. The chair's rulings may be overruled or modified by a majority vote of the other trial board members hearing the matter.

(5) The administrative law judge shall preside at any hearing before the administrative law judge and shall make any rulings regarding evidence or procedure.

(c) Prehearing deadlines.

(1) To the fullest extent possible, within fifteen working days after the date of service of the request to the secretary, as shown on the certificate attached to the request under Subsection (a) (4)(C) of this section, the secretary shall do the following:

(A) Set a hearing before a trial board or an administrative law judge within 60 to 90 calendar days after receipt of the request by the secretary; however, the secretary of the civil service board may, with the approval of the trial board chair or the administrative law judge, schedule a hearing outside of 60 to 90 calendar days from the date of the request.

(B) Prepare a “statement of questions,” which must be styled, “Matter of (name of employee)” and must specify the rules alleged to have been violated as stated in the letter of demotion or discharge.

(C) Designate the trial board members who will hear the appeal or, if elected by the employee, the administrative law judge.

(D) Transmit to each party notice of the hearing, the statement of questions, and the names of the trial board members or the name of the administrative law judge, whichever is applicable.

(2) Objections.

(A) Within 10 working days after the date of service as shown on the certificate of service on the statement of questions, the parties shall file any objections to the statement of questions with the secretary.

(B) Within five working days after the date of service as shown on the certificate of service on the objections, a response may be filed.

(C) Objections may be resolved at the hearing immediately before evidence is accepted.

(3) Continuances.

(A) At least 15 working days before a hearing or two working days after a party learns of the facts requiring a continuance, whichever date is earlier, a motion for continuance of the hearing may be filed.

(B) Within five working days after the date of service as shown on the certificate of service on the motion for continuance, a response may be filed.

(C) Other than in cases in which the parties agree to abate a hearing to await the final adjudication of underlying criminal charges, the parties may agree to a continuance, in which case, the hearing will be continued for up to 60 calendar days. Agreed continuances in excess of 180 days from the date of the original setting of the hearing must be approved by the administrative law judge or the trial board chair, or his or her designee, who shall be a member of the trial board.

(D) If the parties do not agree to a continuance:

(i) for a hearing before a trial board, the continuance may be granted by a majority of the trial board members present at a meeting or hearing at which the motion for continuance is considered; or

(ii) for a hearing before an administrative law judge, the secretary shall request a ruling from the administrative law judge on the motion for continuance.

(4) Exchange of information. At least 10 working days before the hearing, each party shall:

(A) exchange witness lists;

(B) exchange exhibits;

(C) stipulate to undisputed facts;

(D) stipulate to the admissibility of exhibits; and

(E) file with the secretary a position statement that must include:

(i) a statement of the party's position on the issues in the statement of questions;

(ii) a designation of undisputed facts;

(iii) a list of witnesses and the estimated time required for the direct examination of each witness; and

(iv) a list of exhibits.

(5) Request for subpoenas. At least 30 working days before the hearing, each party may file with the secretary, and copy the opposing party, a request for subpoena of witnesses and documents, in accordance with the following:

(A) The request for subpoena of witnesses and documents must include:

(i) the name and address of each witness to be subpoenaed;

(ii) if a witness is a city employee, the name of the employee's department; and

(iii) if documents are being subpoenaed, the specific identification of books, papers, documents, or other tangible things sought to be subpoenaed.

(B) The party requesting the subpoena shall notify the subpoenaed witness of postponements, rescheduling, and appearance times.

(C) The trial board or the administrative law judge has the power to compel the attendance of witnesses and the production of testimony and evidence, to administer oaths, and to punish for contempt in the same manner as provided for municipal judges.

(D) Either party may object to a subpoena request within seven working days after receiving notice of the subpoena request. Objections to subpoenas must be in writing, submitted to the secretary, and copied to the opposing party, who has three working days after receipt of the objections to respond in writing to the substantive reasons for the objections to the requested subpoenas.

(E) The secretary shall forward the objections and the response to the objections, if any, to the administrative law judge or trial board chair for resolution. If the trial board chair is

unavailable, the objections must be ruled upon by his or her designee, who shall be a member of the trial board.

(F) Once the scope of the subpoena is determined by the administrative law judge or trial board chair, or if no objections are filed, each party shall organize and number the responsive information (“released documents”) before turning it over to the secretary. The released documents must be provided within the amount of time determined by the administrative law judge or trial board chair or, if no objections are filed, in an amount of time determined by the secretary. The secretary shall release a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.

(G) The individual picking up the released documents must sign for the produced information. The requesting party has three working days to submit, in writing, any objections to the completeness of the released documents. The producing party has three working days to respond, in writing, to the substantive reasons for the requesting party’s objections. The secretary shall maintain one complete copy of the released documents, to allow the administrative law judge or trial board chair to fully assess and rule on any objections to the completeness of compliance with the subpoena.

(H) The secretary shall forward the objections and any response to the objections to the administrative law judge or trial board chair for resolution. If the trial board chair is unavailable, the objections shall be ruled upon by his or her designee, who shall be a member of the trial board.

(I) Decisions rendered by the administrative law judge or trial board chair (or his or her designee, if applicable) regarding subpoenas or responsive information are final and are not subject to further appeal.

(J) After all decisions have been rendered by the administrative law judge or trial board chair regarding the scope of documents to be released pursuant to a subpoena, the secretary shall release a complete copy of the released documents to both parties of the hearing, at the expense of the party who issued the subpoena for the documents.

(6) Challenge of a trial board member or an administrative law judge.

(A) At least 10 working days before the hearing, a motion to challenge a trial board member or an administrative law judge may be filed with the secretary and served upon all parties.

(B) Within five working days after the date of service as shown on the certificate of service on the motion to challenge a trial board member or an administrative law judge, a response may be filed.

(C) A challenge may not be made after the hearing begins, unless the challenge is based on:

(i) the ineligibility of a trial board member or an administrative law judge to hear the matter; or

(ii) the conduct of a trial board member or an administrative law judge during the hearing.

(D) If a challenged trial board member does not voluntarily withdraw, the trial board, by a unanimous vote, not counting the vote of the challenged member, may remove the member.

(E) If a challenged administrative law judge does not voluntarily withdraw, the administrative municipal judge of the municipal court of record may remove the member.

(F) If a challenge results in withdrawal of a trial board member or an administrative law judge, the hearing may be continued to a date certain.

(G) If a challenge results in withdrawal of a trial board member or an administrative law judge, the secretary shall promptly designate a replacement and inform all parties of the replacement.

(H) A challenge to a substituted trial board member or administrative law judge must be submitted as soon as possible.

(7) Service of subpoenas.

(A) At least five working days before the hearing, the secretary shall cause all subpoenas to be personally served.

(B) The secretary shall designate a person to deliver the subpoenas and that person shall sign each subpoena stating that the witness was served.

(C) The subpoena of an active city employee may be served through the director of the employee's department.

(8) Computation of time.

(A) In computing any period of time prescribed in this section, the day of the act or event from which the designated period of time begins to run is not included.

(B) The last day of the time period is included, unless it is a Saturday, Sunday, or official holiday observed by the city, in which event the period runs until 5:15 p.m. of the next day that is not a Saturday, Sunday, or official holiday observed by the city.

(C) Except as otherwise specified, time periods will be calculated based on calendar days.

(d) Hearings.

(1) A hearing must be conducted in two phases, as follows:

(A) Phase I.

(i) In Phase I, the trial board, by majority vote, or the administrative law judge shall determine, by a preponderance of the evidence, whether the employee committed any of the alleged rule violations.

(ii) If the trial board, by majority vote, or the administrative law judge determines that the employee committed none of the alleged rule violations, the trial board or administrative law judge may take whatever action is just and equitable, and the hearing will be closed.

(iii) If the trial board, by majority vote, or the administrative law judge determines that the employee committed at least one of the alleged rule violations, the hearing will proceed to Phase II.

(B) Phase II.

(i) In Phase II, the trial board or the administrative law judge shall hear evidence concerning the appropriateness of the discipline imposed for the sustained rule violations.

(ii) The trial board, by majority vote, or the administrative law judge may either sustain, reverse, modify, or amend the disciplinary action as is determined just and equitable, provided that the disciplinary action must be sustained if a reasonable person could have taken the same disciplinary action against the employee.

(iii) The trial board or the administrative law judge may consider only the evidence relating to the violations sustained in Phase I and the employee's previous employment record with the city, but may not consider the employee's subsequent performance with the city.

(2) The appealing employee:

(A) may request the hearing or deliberations, which are usually open to the public, to be closed; and

(B) shall not be compensated for time away from the employee's city position while attending a hearing, unless so ordered by the trial board or the administrative law judge.

(3) The trial board or the administrative law judge may exclude:

(A) redundant, irrelevant, or cumulative evidence;

(B) evidence that is not competent or properly authenticated;

(C) any exhibit not previously exchanged; and

(D) the testimony of a witness not previously identified as a witness.

(4) The secretary shall maintain a record of the hearing and shall, at the city's expense, appoint a court reporter to make a record of the hearing.

(5) The trial board or the administrative law judge will release city employee witnesses as soon as possible to return to city business.

(6) Placing witnesses under the rule.

(A) Upon request by either party, the witnesses on both sides shall be sworn and removed from the hearing room so they cannot hear the testimony as delivered by any other witness in the case.

(B) Witnesses shall be instructed that they are not to converse with each other or with any other person about the case, other than the attorneys in the case.

(7) After the parties have rested, the trial board or the administrative law judge may request a party to produce additional evidence as the trial board or administrative law judge deems necessary to decide the issues before them.

(e) Disposition.

(1) Dismissal. An appeal must be dismissed for, but not limited to, any of the following reasons:

(A) The appealing employee fails to appear in person at the hearing, unless:

- (i) good cause for the failure to appear is shown; and
- (ii) the city is not unduly prejudiced.

(B) The trial board or the administrative law judge lacks jurisdiction.

(C) The appealing employee fails to pay the amount owed to the administrative law judge prior to the beginning of the hearing.

(2) Board orders.

(A) The disposition of an appeal must be reduced to writing by the secretary and transmitted to the parties within three working days after the trial board or the administrative law judge has announced the ruling. This writing is the order of the trial board or the administrative law judge.

(B) The order is final unless a motion for rehearing is filed within 10 working days after the date on the written order.

(3) Relief. The trial board or the administrative law judge may grant the prevailing party relief that is just and equitable as is consistent with the city charter and other applicable law.

(4) Costs. The trial board or the administrative law judge may not authorize payment of attorney's fees, expenses, or costs or provide payment of damages beyond payment of salary and benefits that would have ordinarily been paid to the appealing employee.

(f) Post-hearing deadlines.

(1) Motion for rehearing.

(A) Within 10 working days after the date on the written order, a motion for rehearing may be filed by either party.

(B) A motion for rehearing may be granted by the trial board or the administrative law judge only if the order:

- (i) exceeds the authority of the trial board or the administrative law judge;
- (ii) contains provisions impermissible under applicable law;
- (iii) is unclear; or
- (iv) incorrectly states the disposition of the matter.

(C) A motion for rehearing must be considered by the same trial board or administrative law judge who heard the appeal, except that if any trial board member or the administrative law judge is unavailable, the secretary shall designate a replacement.

(2) Appeals to state district court.

(A) Either party may appeal the order of the trial board or administrative law judge to state district court within one year after:

- (i) the date on the last written order, if no rehearing is requested;

(ii) the date on the written order denying the rehearing, if a rehearing is requested and denied; or

(iii) the date on the written order issued after the rehearing, if a rehearing is requested and granted.

(B) The appeal to the district court must be decided upon review of the record of the hearing.

(C) An appeal by the city must be approved by the city manager and the city attorney.

(D) The appealing party shall, at its expense, furnish to the court a copy of the complete hearing record presented to the trial board or the administrative law judge, including but not limited to pleadings, hearing transcripts, exhibits, orders, and all evidence admitted during the hearing.

(E) If the appealing party fails to provide the court with any material required by Paragraph (2)(D) of this subsection, the appeal must be dismissed.

(g) Other matters.

(1) Reserved.

(2) If a court of law rules on an issue involved in the appeal, the order of the trial board or administrative law judge must conform with the court's ruling or must be vacated in deference to the court's ruling, whichever is applicable.

(3) The chair of the civil service board may order, with the consent of the parties, that any matters having common issues of fact be consolidated.

(4) No party or party representative shall communicate with any trial board member or administrative law judge regarding the issues involved in the appeal except at the hearing.

(5) The trial board, by majority vote, or the administrative law judge may seek advice regarding its jurisdiction or the nature and extent of its authority from the city attorney.

(6) A party may be heard through a representative if that representative is designated:

(A) in writing filed with the secretary and served on all parties;

(B) on the record at the hearing before evidence is accepted; or

(C) through the signature of the representative on any paper filed with the secretary on behalf of the party.

(7) The secretary shall ensure that the trial board or the administrative law judge receives any materials filed by the parties.

(8) Any paper served by a party on the secretary must include a certificate showing service to all other parties.

(9) Service upon the city must be accomplished by serving the assistant city attorney assigned to the hearing.

(10) Nothing in this section may be construed to authorize the practice of law except as permitted by the Supreme Court of Texas.

(11) By presenting to the trial board or the administrative law judge (whether by signing, submitting, or later advocating) a request for a hearing, a complaint, a written or oral motion, or any other document, the party is certifying that it is acting in good faith. (Ord. Nos. 19340; 20526; 21304; 21674; 22612; 24873; 24930; 26182; 27098; 28024; 29480)

#### **SEC. 34-41. RESERVED.**

(Repealed by Ord. 26182)

### **ARTICLE VII. WAGE SUPPLEMENTATION.**

#### **SEC. 34-42. RESERVED.**

(Repealed by Ord. 25389)

#### **SEC. 34-43. WAGE SUPPLEMENTATION PLAN.**

(a) Administration. The director of risk management is authorized and directed to develop and distribute necessary administrative directives for the fair and efficient administration of the injured employees' wage supplementation plan. Department directors shall authorize wage supplementation for their employees in accordance with the administrative directives. Determinations and decisions made by department directors are final, conclusive, and binding on all parties.

(b) Eligibility.

(1) A permanent employee who, as the result of an injury sustained in the course of employment with the city, is being paid weekly workers' compensation payments, or would be paid workers' compensation payments if the disability continued for a period of more than seven days, may receive payments, as injured employee wage supplementation, separate and distinct from and in addition to the weekly workers' compensation payments. An injured employee must complete an "Initiation of Wage Supplementation Form" provided by the city before being granted partial or full-day injury leave. An injured employee has 60 days from the receipt of the "Initiation of Wage Supplementation Form" to make any final election to accept or reject wage supplementation.

(2) To be eligible for wage supplementation payments, an injured employee who lives within the city's certified worker's compensation network service area must choose a treating physician who is a member of the network. An injured employee who lives outside the city's certified worker's compensation network service area has the right to treatment by a physician of the employee's choice under Section 408.022 of the Workers' Compensation Act, as amended, and treatment by a physician outside of the network will not disqualify that employee from receiving wage supplementation payments.

(c) Amount. The employee may receive full wage supplementation for the first seven days of time lost from the employee's position. After seven days, the wage supplementation will be in an

amount that is approximately equal to the difference between any workers' compensation payments and the employee's regular pay.

(d) Discontinuation. In no event may wage supplementation to any employee be continued:

- (1) after a compromise settlement agreement or an agreed judgment has been effected;
- (2) after weekly indemnity workers' compensation payments have ceased;
- (3) after 52 weeks of payments for each occurrence of an injury for which an employee received, or was eligible to receive, wage supplementation payments on or after October 1, 2003;
- (4) after an impairment rating has been assessed; or
- (5) whenever the employee owes the city reimbursement for overpaid wage supplementation.

(e) Medical statement required. Wage supplementation must be supported by appropriate medical statements from a treating physician, whether partial or full-day leave is granted. A request for an extension of wage supplementation beyond four weeks must be accompanied by a current medical narrative or report.

(f) Grounds for denial and termination. Wage supplementation benefits may not be paid to any injured employee who:

- (1) is assigned a preventable classification for the cause of the injury;
- (2) engages in any work, whether for pay or as a volunteer, while off work due to an injury for which the employee is requesting or receiving wage supplementation;
- (3) after being injured, terminates employment or is involuntarily terminated from employment for any reason;
- (4) fails or refuses to comply with the instructions or advice of a treating physician or other physician performing an independent medical examination for the city regarding treatment of the injured condition;
- (5) fails to act in a manner that is conducive to or consistent with being off work convalescing from a job-related injury;
- (6) refuses to perform limited, partial, or part-time duty when authorized by a treating physician or other physician performing an independent medical examination for the city;
- (7) refuses to accept or perform a different job with the city that, in the opinion of a treating physician or other physician performing an independent medical examination for the city, is within the employee's physical capacity and for which the employee is qualified or will be trained;
- (8) refuses to submit to any independent medical examination or treatment required by the city in accordance with workers' compensation laws;
- (9) refuses to return to regular duty after being released for regular duty by a treating physician or other physician performing an independent medical examination for the city;
- (10) is injured as the result of:

- (A) the breaking of rules, regulations, or laws by the employee; or
- (B) the gross negligence of the employee.

(11) fails to use city or department-mandated safety equipment or follow city or department-mandated safety procedures when the injury was sustained;

(12) fails to report the injury within 24 hours after its occurrence, unless the employee can show good cause for the delay;

(13) fails to keep the employee's immediate supervisor and workers' compensation representative informed, on a monthly basis and in accordance with departmental procedure, of medical examinations and treatments and related dates, future medical treatments, status regarding return to limited and full duty, and changes in the employee's ability to work;

(14) submits a workers' compensation claim that is denied; or

(15) sustains an injury while participating in any sports activity, regardless of whether the activity was organized or unorganized or sanctioned or unsanctioned by the department.

(g) Use of vacation and sick leave. An employee who is denied, has refused, or has exhausted wage supplementation while receiving workers' compensation payments may take accrued sick leave or vacation leave, but only in an amount necessary to make up the difference between workers' compensation payments and the employee's regular rate of pay.

(h) Leave without pay. An employee who has used all of the employee's accrued sick leave and wage supplementation payments, while still off work and receiving workers' compensation payments, may be granted leave of absence without pay in accordance with Section 34-28 of this chapter. (Ord. Nos. 24873; 24930; 25389; 25630; 28024; 29480)

#### **SEC. 34-44. RESERVED.**

(Repealed by Ord. 24873)

#### **SEC. 34-45. BENEFIT POLICY FOR OFF-DUTY SECURITY OR TRAFFIC CONTROL SERVICES.**

(a) The city will pay to a police officer who is injured while performing off-duty security or traffic control services for a private individual or organization, benefits that are equal to the benefits that the city would be required to pay the officer if the officer had been injured while on duty with the city if:

(1) the injury occurs:

- (A) while the officer is in the act of enforcing a federal or state law or a city ordinance; or
- (B) solely because of the officer's status as a peace officer; or

(C) while the officer is in the act of directing traffic on a public street or in an area immediately adjacent to a public street where traffic flow on the public street is affected by the officer's action; and

(2) the officer has followed the procedures required in the general orders of the police department for obtaining approval for off-duty employment; and

(3) the officer cooperates with the city attorney in proceedings to recover workers' compensation benefits from the employer for whom the officer was working at the time of the injury; and

(4) the officer agrees that if workers' compensation benefits are received from the off-duty employer, the officer will reimburse the city for benefits that the city paid under this policy that were intended to be equivalent to workers' compensation benefits.

(b) If the benefits paid to an officer under this policy that were intended to be equivalent to workers' compensation benefits exceed the amount the officer is awarded as workers' compensation benefits from the off- duty employer, the officer is not required to reimburse the city for the excess.

(c) The determination of whether an officer is entitled to benefits and the extent of benefits under this policy will be made by the director of risk management. (Ord. Nos. 19340; 22026; 24873; 25389; [30216](#))