

CITY OF LIVINGSTON
PERSONNEL RULES AND REGULATIONS

RESOLUTION NO. 87-30

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF LIVINGSTON

RESOLUTION ESTABLISHING PERSONNEL RULES AND REGULATIONS

WHEREAS, the City of Livingston currently has no Personnel Rules and Regulations; and

WHEREAS, the City of Livingston has included Personnel Rules and Regulations in the Memorandum of Understanding; and

WHEREAS, representatives of the Livingston Police Officers' Association affiliated with PORAC, Public Works and Park employees affiliated with AFSCME and members of the Management and Confidential Employees Association have all been given an opportunity to meet and confer on this document and many of their suggested amendments have been incorporated into the Personnel Rules and Regulations; and

WHEREAS, the City of Livingston is very interested in the combining of hiring practices, Employer-Employee Relation Rules and specific Personnel Rules and Regulations into one document establishing the City of Livingston Personnel Rules and Regulations.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Livingston does hereby establish Personnel Rules and Regulations to read as follows:

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SECTION 1. ADMINISTRATION

1.1 ADOPTION OF SYSTEM

In order to establish an equitable and uniform procedure for dealing with personnel matters, to attract to municipal service the best and most competent persons available, to assure that appointments and promotions of employees will be based on merit and fitness as determined by competitive test, and to provide a reasonable degree of security for qualified employees the following personnel system is hereby adopted.

1.2 PERSONNEL DIRECTOR

The City Manager shall be the Personnel Director with the adoption of this enabling resolution by the City Council. The City Manager may delegate any of the power and duties conferred upon him as Personnel Director under this chapter to any other officer or employee of the City or may recommend that such powers and duties be performed under contract as provided in Section 1.6 of these Rules and Regulations. The City Manager shall:

- A. Administer all the provisions of this chapter and of the Personnel Rules not specifically reserved to the Council.
- B. Prepare and recommend to the Council revisions and amendments to the Personnel Rules. The City Attorney shall approve the legality of such revisions and amendments prior to their submission to the Council.
- C. Prepare a position classification plan, including class specifications, and revisions of the plan. The plan, and any revisions thereof, shall become effective upon approval by the Council.
- D. Prepare a plan of compensation, and revisions thereof, covering all classifications in the competitive service. The plan, and any revisions thereof, shall become effective upon approval of the Council.

1.3 COVERAGE

Unless otherwise indicated, these provisions shall apply to all offices, positions and employments in the service of the City, which offices, positions

and employments are denominated the competitive service, except:

- A. Elective Officer.
- B. Members of appointive boards, commissions and committees.
- C. Persons engaged under contract to supply expert, professional or technical services for a definite period of time.
- D. Volunteer personnel, such as volunteer firemen, who receive no regular compensation from the City, but are governed by Title 7, Chapter 1 of the Livingston City Code.
- E. City Attorney.
- F. City Manager.

1.4 RULE MAKING

Personnel rules, prepared by the City Manager, subject to subsequent provisions of these rules and regulations and to revision by the Council, shall be adopted, and may be amended from time to time, by resolution of the Council. Rules shall be adopted, and may be amended from time to time, by resolution of the Council. Rules shall establish specific procedures and regulations governing the following phases of the personnel system in those matters which are not otherwise covered by ordinance:

- A. Preparation, installation, revision and maintenance of a position classification plan covering all positions in the competitive service, including employment standards and qualifications for each class.
- B. Preparation, revision and administration of a plan of compensation directly correlated with the position classification plan and providing a rate or range of pay for each class.
- C. Public announcement of all tests and the acceptance of applications for employment.
- D. Preparation and conduct of tests and the establishment and use of resulting

employment lists containing names of persons eligible for appointment.

- E. Certification and appointment of persons from employment lists, and the making of temporary and emergency appointments.
- F. Evaluation of employees during the probationary period.
- G. Transfer, promotion, demotion, and reinstatement of employees in the competitive service.
- H. Separation of employees from the City service through layoff, suspension, and dismissal.
- I. Standardization of hours of work, attendance and leave regulations, working conditions and the development of employee morale, welfare and training.
- J. Suitable provision for orderly and equitable presentations to the City Manager and to the Council by employees relating to general conditions of employment.
- K. Content, maintenance and use of personnel records and forms.
- L. Specific hiring procedures.

1.5 DEFINITIONS

The words and terms defined in this section shall have the following meanings in Sections 2 through 13:

- | | |
|--------------|--|
| CITY MANAGER | Chief administrative official appointed by the City Council to manage the operations of the City. |
| COUNCIL | The City Council of the City of Livingston |
| CLASS | A class is one position or group of positions having similar requirements and duties so that they can be equitably selected and compensated. |

COMPENSATORY TIME	Equivalent time off for hours worked in excess of the normal work week.
COMPETITIVE SERVICE	Permanent employees of the City holding a position below the level of Department Head.
CONTINUOUS EMPLOYMENT	Uninterrupted employment from the effective date of appointment except where the absence is paid for by Workmen's Compensation. An authorized absence with pay is not an interruption in service.
DEMOTION	A change in status of an employee from a position in one class to a position in a lower class for disciplinary reasons.
DEPARTMENT	An administrative unit of the City as determined by the City Manager.
DEPARTMENT HEAD	In charge of a Department.
DISMISSAL	Discharge of an employee from service with the City.
DIVISION	An administrative unit within a department established by the City Manager.
EMPLOYEE	A person appointed or hired to perform service for the City.
LAYOFF	Termination of employment without fault on the part of the employee because of lack of work, lack of funds, or in the interest of economy.
LEAD POSITION	An employee who supervises other employees in the same classification.
LEAVE OF ABSENCE	Approved absence from duty for a specified period with the right to return at the expiration of the period.

PART-TIME EMPLOYEE	An employee holding a temporary position which ordinarily requires less than 173.33 hours in each month and/or does not entitle the employee to permanent employee fringe benefits including retirement, etc.
PERMANENT EMPLOYEE	An employee who has been given a permanent appointment upon the completion of a probation period.
PERMANENT POSITION	Any position which will continue twelve consecutive months or more and that has been authorized by the classification plan approved by the City Council.
POSITION	A combination of duties regularly assigned to be performed by one person.
PROBATION	A period of time designated for each class during which an employee must demonstrate his ability and potential work achievement to the satisfaction of his supervisors in order to achieve permanent status in the City's service. The period for all classes except Police Personnel is six months. For Police Personnel, the probation period is one year.
PROMOTION	Advancement from a position in one class to a position in a higher class.
REALLOCATION	A change in the allocation of an individual position by raising it to a higher class, reducing it to a lower class, or moving it to another class at the same pay range.
RESIGNATION	The voluntary action of an employee which separates him from his position.
RETIREMENT	The voluntary resignation of an employee because of health, age, or discharge by the City upon reaching

retirement age.

SEPARATION

Any termination of employment.

SPECIFICATION

The official description of a class including (1) the title, (2) a definition, (3) a statement of the duties and responsibilities, and (4) the employment standards, such as education, experience, knowledge, skills, and abilities which may be required of applicants.

SUSPENSION

An involuntary absence without pay imposed by the City Manager or a Department Head.

TEMPORARY EMPLOYEE

An employee who has been appointed to a temporary position of limited duration.

TRANSFER

A change between positions within the same or comparable classes at the same salary.

VACANT POSITION

Any position which has been authorized by the Council and has no incumbent.

1.6 RIGHT TO CONTRACT FOR SPECIAL SERVICE

The City Manager shall consider and make recommendations to the City Council regarding the extent to which the City should contract for the performance of technical services in connection with the establishment or operation of the personnel system. The Council may contract with any qualified person or agency for the performance of all or any of the following responsibilities and duties imposed by this chapter:

- A. The preparation of personnel rules and subsequent revisions and amendments thereof.
- B. The preparation of a position classification plan, and subsequent revisions and amendments thereof.
- C. The preparation of a plan of compensation and subsequent revisions and amendments thereof.

D. The preparation, conduct and grading of competitive tests.

E. Special and technical services of advisory or informational character on matters relating to personnel administration.

SECTION 2. POSITIONS

2.1 NEW POSITIONS

New positions shall be created only by the City Council upon recommendation of the City Manager.

2.2. CLASSIFICATION OF POSITIONS

All positions in the City service shall be classified by the City Manager with Council approval on the basis of the duties and responsibilities of the position. The classification of positions shall be maintained in an official book of class specifications. By resolution, the Council may amend the classification of positions by the addition, division, consolidation or abolishment of classes.

2.3 ABOLITION OF POSITION

Whenever in the judgment of the City Manager or City Council it becomes necessary in the interest of economy or because the necessity for the position or employment involved no longer exists, the Council may abolish any position or employment in the competitive service and lay off, demote, or transfer any employee holding such position or employment without filing written charges and without the right of appeal.

SECTION 3 COMPENSATION

3.1 ESTABLISHMENT OF COMPENSATION PLAN

The City Manager shall recommend, subject to the provisions of these Rules and Regulations and to revision by the City Council, a plan to provide for the salaries and other compensations of employees of the City of Livingston. The Compensation Plan shall be adopted by resolution of the City Council and may be amended from time to time as deemed necessary or desirable by the City Council.

3.2 WORK WEEK

The normal work week for employees except sworn Police personnel shall be 40 hours; such employees shall be entitled to two days off in any seven day period. Sworn Police personnel shall work an average work week of 48 hours.

3.3 SALARY PAYMENT

Salaries shall be paid biweekly. Routine paychecks shall be for the purpose of compensating for regular and overtime hours only. Other compensation owed employees shall be paid on a separate check.

3.4 DEDUCTIONS IN COMPENSATION

- A. Any permanent employee employed in a position who works less than a full pay period, except when on earned vacation or paid sick leave shall be compensated on the basis of the number of hours worked in that pay period.
- B. The compensation of any permanent employee absent from duty without pay shall be on the basis of the number of hours worked in that pay period.

3.5 COMPENSATION FOR TEMPORARY EMPLOYMENT

Temporary employees shall be compensated at the hourly or daily rate which is equivalent to the first step of the salary range of the particular class in which the temporary employee is working. In special circumstances and upon recommendation of the Department Head, the City Manager may authorize payment at a daily rate equivalent to a higher step of the salary range included within the particular class.

3.6 SALARY OF NEW EMPLOYEES

The first step of the pay plan is the minimum rate and shall normally be the hiring rate for the class. In cases where it is difficult to secure qualified personnel or if a person of unusual qualifications is to be appointed, the City Manager may set the hiring rate up through Step E.

3.7 INCREASES WITHIN RANGE

- A. Every permanent employee who is employed in a class for which there is a salary range shall have an anniversary date. All salary adjustments

are made effective upon the anniversary date or at any time thereafter. The date of subsequent salary adjustment shall become the new anniversary date.

B. The steps of each salary range shall be interpreted as follows:

1. The second step (B) is merit advancement to employees achieving permanent status at the end of the probationary period.
2. The third step (C) is an incentive advancement to encourage employees to improve their work. Employees may be advanced to step (C) after the completion of one year of satisfactory service in step (B).
3. The fourth step (D) is for employees whose work merits an advancement in class. Employees may be advanced to the fourth step after the completion of at least one year of service in step (C).
4. The fifth step (E) is for employees whose work is average for their class. Employees may be advanced to step (E) after the completion of at least one year of service in step (D) and upon recommendation of the Department Head and the City Manager.
5. Employees may be advanced to step (F) after the completion of seven (7) years of service and upon recommendation of the Department Head and City Manager. This step shall be considered a longevity benefit and shall be set by agreement through the in force Memorandum of Understanding.

C. In any case, where, by reason of unusual circumstances, rigid adherence to the foregoing principles related to salary adjustments would cause a manifest injustice, the City Manager may make such order relating thereto as, in his discretion, is proper.

D. No advance in pay shall be automatic upon completion of the period of service outlined hereinabove, and all increases shall be made 1) on the basis of merit as established by the employee's work performance; 2) upon documentation by semi-annual evaluation; and 3) upon review and approval of the City Manager. An increase in pay shall be withheld in cases of inferior work, lack of application, or indifferent attitude.

E. Each step within a range shall become effective as of the beginning date of the current pay period.

3.8 SALARY ON PROMOTION OR RECLASSIFICATION

An employee who is promoted or reclassified from one class to another having a higher overlapping salary range shall be adjusted within the new range so as to guarantee a minimum five (5) percent increase. The employee's anniversary date shall change to the date of the promotion.

3.9 SALARY ON DEMOTION OR RECLASSIFICATION

An employee who is demoted from one class to another having a lower salary range must be assigned to a step within the salary range of the lower class which is equal or the first step higher than the salary rate received by the employee in the higher class. An employee who is reclassified from one class to another having a lower salary range must be assigned to a step within the salary range of the lower class which is equal to the salary rate received in the higher class. If the salary range of the lower class is less than the salary received before reclassification, the employee may be assigned to the fifth step of the lower class. Upon demotion or reclassification, for the purpose of further increases within the salary range, a new anniversary date shall be set. Demotion for disciplinary reasons shall not be governed by this provision.

3.10 SALARY ON TRANSFER

A person who is transferred from one position to another in the same class or to another in a class having the same salary range may be compensated at the same step in the salary range as he previously received. For the purposes of further increases within the salary range, the anniversary date shall not change.

3.11 CHANGES IN SALARY ALLOCATION

A person who is in a class which is reallocated to a higher salary range shall be compensated at the same step in the new salary range as he was receiving in the range to which the class was previously allocated. For the purpose of further increases within the salary range, the anniversary date shall not change.

3.12 ADJUSTMENTS IN SALARY RANGES

General adjustments in salary ranges of the salary ordinance made hereafter by virtue of general increases or decreases in cost of living or in salary levels shall be made by adjusting classes upward or downward to the appropriate standard salary range provided by resolution. Where the salary range for a given class or for several classes is revised upward or downward, the employees holding positions in classes affected shall have their existing salary adjusted to the same relative step in the new salary range.

3.13 MEMORANDA OF UNDERSTANDING

Hours of work, overtime, holidays, vacation and leave provisions, and other items that are negotiable within the bounds of Meyers-Millias Brown Act shall be observed as articulated by the memoranda of understanding entered into by the respective employee, organizations and the City of Livingston and consistent with the Federal Labor Standards Act.

SECTION 4. DISCRIMINATION BAN

4.1 DISCRIMINATION BAN

Discrimination against any person in the City employment, or any person seeking admission thereto because of race, color, national origin, political affiliation, religion or other non-merit factors is prohibited. Discrimination on the basis of age, sex, or physical disability is also prohibited. However, age, sex, or physical requirements may constitute a bona fide occupational qualification.

SECTION 5. RECRUITMENT AND SELECTION PROCEDURES

5.1 RECRUITMENT

The City Manager or his/her designee, hereafter referred to as the Personnel Director, shall establish the recruitment and selection procedures for employment with the City of Livingston.

The purpose of recruitment is to assure that interested persons are informed and qualified persons are attracted to compete. Job openings and examinations will be publicized to the maximum extent necessary to assure equal employment

opportunity. Vacancies shall be advertised to the extent that it will be available to members of the community. Additional distribution may be made to newspapers, radio stations, educational institutions, professional and vocational societies, public officials, and community organizations. All recruitment literature shall contain the phrase "Affirmative Action/Equal Opportunity Employer - Minorities, Women, and Handicapped are Encouraged to Apply."

- A. The Personnel Director shall publicize examinations by appropriate means, including posting on bulletin boards of announcements which shall state the class title, salary, nature of the work to be performed, required training and experience, when and where to file applications, and other pertinent information. In addition to the general employment standards in the class specifications, the Personnel Director may establish additional requirements which shall be included in the examination announcements and which must be met by each applicant before admission to examination or before appointment.

- B. The Personnel Director may disqualify an applicant or a candidate, or remove a name from the eligible list, or refuse to refer any person on an eligible list for employment for any of the following reasons:
 - 1. Failure to meet any of the requirements or qualifications established for the examination

 - 2. Physical unfitness to perform the duties of the class.

 - 3. Addiction to the use of narcotics or to the excessive use of intoxicating liquors.

 - 4. Conviction of a felony or a misdemeanor with a nexus to the position.

 - 5. False statement of material facts or actual or attempted deception, fraud, or misconduct in connection with an application or examination.

 - 6. Record of dismissal from public or private employment for any of the above causes, or resignation to avoid such dismissal.

- C. Whenever an applicant is rejected, written notice shall be given the applicant.
- D. Candidates and employees may be required to be fingerprinted.
- E. An applicant may be required to submit a statement of a licensed physician that the applicant is free from disqualifying disease or physical defects and meets established physical standards, or the applicant may be referred to a special medical examiner.
- F. The City shall be responsible for the maintenance of all recruitment and selection records. The following records shall be deemed to be the property of the City:
 - 1. The report of a particular recruitment and selection process for a particular vacant position(s) containing the names and scores of all applicants on each part of the process.
 - 2. A summary or narrative statement of the recruitment and selection process showing the method of evaluation used or the general nature of the selection process, the weights of the various parts, the time and place each part was given, the minimum scores required, if any, and the names of people who participated in the rating process.
 - 3. A record of the oral appraisal board, when used, showing the basis of rating, the rating form used and the composition of the oral appraisal board.
 - 4. A copy of the position announcement.
 - 5. Copy of all appropriate advertisements.
 - 6. Department head or designee's final selection report.
 - 7. Statistical data sheets.

5.2 EXAMINATIONS

- A. In qualifying persons for positions in the City service, promotional, open, and continuous examinations may be used. When practical and consistent with the best interests of the City service, promotional examinations shall be used; however, if the Personnel Director believes it desirable, both promotional and open examinations may be given concurrently.
1. Promotional Examination. Candidates for promotional examination must be regular employees in the classified service and must possess minimum employment standards of the examination announcement. In addition to types of tests listed in Rule 5.2, evaluations of performance in City service and accomplishments in special training courses may be included.
 2. Open Examination. Any person meeting requirements of the examination announcement may apply for open examination.
 3. Continuous Examination. Continuous examinations for a given class may be announced by a single notice. Such examinations may be administered from time to time as applicants are available or as appointments are necessary. A single eligible list shall be maintained, to which the names of candidates shall be added as they qualify and from which names shall be removed after one year.
- B. As the Personnel Director may determine, examinations may consist of any one or a combination of the following types of tests: written, oral, performance, physical, medical or psychological, evaluation of training and experience, or any other form designed to test fairly the qualifications of applicants.
1. Written. Written tests may be used to measure knowledge, ability, judgment, aptitude, or alertness, insofar as such traits are related to ability to perform the work in a class.
 2. Oral. Oral interviews may be used to evaluate personal fitness training and experience, knowledge, capacity, and judgment. In considering personal fitness, it shall be appropriate to evaluate pertinent personality traits, but the evaluation shall be done on a basis which is as objective as possible.

3. Performance. Performance tests may be used to evaluate the facility, speed, or accuracy with which typical tasks of the class are performed.
 4. Physical. Physical tests may be used to measure agility, strength, coordination, or general physical fitness.
 5. Training and Experience. Evaluation may be made of the relevance, level, recency, progression, and quality of education and experience offered by candidates, which may be done in an oral interview or by a review of written statements by candidates. Reports of superiors, former employers, and educational institutions may be considered in this process.
 6. Medical. An examination by a licensed physician may be required before or after appointment. The Personnel Director may establish physical or medical standards for any class; however, Police employees shall meet minimum POST standards. Failure of a candidate to achieve the minimum standard will disqualify him.
- C. The Personnel Director shall schedule examinations as the current and anticipated needs of the service require. Scheduled examinations may be postponed or cancelled or the final date for filing applications extended by the Director by notifying all persons directly affected and posting on official bulletin boards.
- D. The Personnel Director shall be responsible for administering and scoring tests.
1. Assistance. As needed the Personnel Director may appoint special examiners for any phase of the testing process. Special examiners may be paid reasonable expenses and/or a daily fee at a rate to be approved by the City Manager.
 2. Disqualification. The Personnel Director may disqualify any candidate who attempts to interfere with the fair, equitable, and orderly conduct of any part of the competitive examination process. Tardiness may be grounds for disqualification in the examination. Failure in one test of the examination may be grounds for failure in the entire examination.

3. Qualifying Score. The Personnel Director shall establish the lowest qualifying score on a test or examination or shall establish the maximum number of names to be placed on an eligible list to meet the needs of the City.
4. Notification. Each candidate taking an examination shall be given written notice of whether or not he/she qualified in the examination.
5. Review of Test Materials. Appropriate opportunity to inspect test materials shall be granted in accordance with procedures established by the Personnel Director.

5.3 ELIGIBLE LISTS

- A. As soon as possible after the conclusion of an examination, the Personnel Director shall prepare an eligible list consisting of names of persons qualifying, arranged in order of final scores, based upon the relative value assigned to each part of the examination before it was given. Names on continuous examination lists shall be in chronological order.
- B. Eligible lists shall become effective when certified by the Personnel Director. Eligible lists shall remain in effect one year, unless sooner cancelled for any reason by the Personnel Director and may be extended by action of the Personnel Director for additional six months' periods, but in no event shall a list remain in effect for more than two years. At any time during the life of an eligible list the Personnel Director may add names to the list by giving another examination.
- C. The name of an eligible may be removed from an eligible list upon his/her request, or by the Personnel Director for any of the following:
 1. Inability of postal authorities to deliver mail to the eligible within reasonable time.
 2. Appointment to a position in a class for which the list is deemed suitable by the Personnel Director.
 3. Failure, without valid reason, to appear or to arrange for an interview

within a reasonable time after requested to do so, or to appear for work after appointment.

4. Refusal to accept an offer of appointment without reason satisfactory to the Personnel Director.
 5. Resignation of an eligible on a promotional list. (If eligible requests, his/her name may be placed on an open competitive list for the class, if one exists.)
- D. Lists of persons qualified to fill specialized positions are from time to time developed on the basis of merit and fitness by public agencies other than the City. The Personnel Director may determine that such a list may be used as a basis for selection.

5.4 METHOD OF FILLING VACANCIES

- A. When practical and consistent with the best interests of the City service, vacancies in the classified service shall be filled by promotion from within, by re-employment of persons previously laid off, or by persons demoted from the class in lieu of lay-off. Following consideration of these means of filling a vacancy, the appointing authority shall refer to eligible lists resulting from open competitive examination, or, in the absence of such lists, may make a provisional appointment.
- B. Whenever a department head desires to fill a vacancy, he/she shall notify the Personnel Director who shall advise as to the availability of persons eligible for appointment.
- C. Names of persons eligible for appointment shall be furnished by the Personnel Director in the following order:
 1. Regular employees who have been demoted in good standing to a position in a lower class, provided they meet the employment standards for the position to be filled.
 2. Regular employees in the class who have been laid off.

3. Regular employees on an appropriate promotional eligible list.
 4. Former regular employees who have requested, and are eligible for, reinstatement.
 5. Persons on an appropriate eligible list resulting from open competitive examination.
- D. After interview and any investigation desired, any of the persons whose names are furnished may be appointed.

5.5 PROBATIONARY PERIOD

- A. All appointments from open or promotional eligible lists to positions in the classified service shall be for a probationary period of six (6) months (except for Police personnel which will be for a period of one (1) year), during which the department head shall observe and appraise the conduct, performance, attitude, adaptability and job knowledge of each employee and determine whether the employee is fully qualified for regular status. The City Manager may establish a longer probationary period for specified classes, to be uniform for all persons appointed to the positions in the classes to be made known to all such persons at the time of their initial appointments.
- B. The department head shall prepare employee performance appraisals on probationers as required by the City Manager. Fifteen days prior to the termination of the probationary period, the City Manager shall notify the department head. If the service of the probationer has been satisfactory, the Department Head shall recommend retention. If retention is not recommended, the probationer shall be released.
- C. During the probationary period, an employee may be released at any time without right of appeal. Written notice of release shall be furnished to the probationer.
- D. Any employee released during or at the conclusion of the probationary period following promotion shall be reinstated, at his/her former salary step, to the position from which he/she was promoted, except that if

the reasons for his/her release are cause for dismissal from the City service, he/she shall not be entitled to reinstatement to his/her former position.

5.6 APPEALS

Job applicants have the right to appeal any action in the recruitment and selection process that may have an adverse impact on their employment in the City.

A. Non-City Employee job applicants may appeal to the Personnel Director.

Any applicant whose application for admission to a competitive examination has been rejected may file a written request with the Personnel Director for reconsideration of his/her qualifications prior to the scheduled date of the examination. The Personnel Director shall attempt to resolve the issue and provide a written reply prior to the scheduled date of the examination. The Personnel Director's findings and decision shall be final.

B. Any applicant who has taken a written examination may appeal to the Personnel Director for review of their rating in any part of the examination to assure that uniform rating procedures have been equitably applied. Such appeal must be filed in writing within ten (10) calendar days after the date on which the notification of the results of the examination was mailed to the applicant. The Personnel Director shall attempt to resolve the issue and provide a written reply within ten (10) calendar days of receiving the appeal. The Personnel Director's findings and decision shall be final.

C. Consideration of appeals by the Personnel Director of decisions and ratings of non-written selection procedures will be made under the following conditions:

1. For alleged bias or fraud in the conduct of an interview, rating, or a procedure.

2. For alleged erroneous interpretation and application of the attributes, qualities and traits considered to be essential for satisfactory performance in the position for which the candidate is being examined.

Appeals must be presented in writing to the Personnel Director within ten (10) calendar days after the date on which the non-written selection examination results were mailed. The Personnel Director shall attempt to resolve the issue and to provide a written response prior to the scheduled date of the examination.

For appeals alleging bias or fraud under item (1) above, if not resolved in the mind of the applicant, such applicant may appeal in writing within five (5) days of receiving the Personnel Director's response to the City Manager. The City Manager will provide a written response within ten (10) calendar days. The City Manager's decision shall be final.

For appeals under item (2) above, the Personnel Director's findings and decision shall be final.

3. Individuals, regardless of employment status (complainants) who allege discrimination in any phase of the merit selection process shall informally discuss the complaint with the City Manager within 30 calendar days of the alleged discriminatory action. The informal discussion should occur prior to filing a formal complaint. The City Manager shall: Consult with the complainant, advise the complainant of all rights, including the right of appeal with other appropriate agencies, make necessary inquiries and investigations, review findings, counsel the complainant on issues of the case, seek informal resolution of problems through negotiation or conciliation, present findings and recommendations for adjustment to the appointing authority, and keep a record of all activities. Time frames may be adjusted by mutual agreement of the parties involved.

Informal resolution of complaints, through conciliation and negotiations, must be reached within 30 calendar days of the complaint being brought to the City Manager's attention. When circumstances so require, the number of days available for informal resolution may be

increased by the City Manager. Extensions or delays must have mutual agreement of the City Manager and the complainant.

If informal resolution occurs, the Affirmative Action Officer shall formalize its terms and make it part of the complaint file providing copies to the complainant and other appropriate parties. Any informal settlement that results in the City taking corrective measures on behalf of the complainant must have the concurrence of appropriate City officials. If informal resolution does not occur, the City Manager shall compile all pertinent materials in the case and submit a letter outlining details and recommendations of the case to the City Council. A letter shall also be written to advise the complainant of the decision and findings and of the right to file in writing with the City Council no later than ten (10) calendar days from the date of the complainant's receipt of the letter from the City Manager.

The City Council shall have ten (10) working days from the receipt of the complainant's letter to issue a final written decision that shall be final and binding upon the complainant and/or the City. Copies of the decision shall be provided to the appropriate City officials and the complainant.

D. Removal from Eligible List. An eligible, whose name has been removed from a list by the Personnel Department for any of the reasons specified in Section 5.1 (B) of the Resolution, may appeal such action to the Personnel Director who shall attempt to resolve the issue and to provide a written response within ten (10) calendar days of receiving the request. The Personnel Director's findings and decision shall be final.

E. City employee applicants who allege adverse impact on their ability to compete for other employment opportunities in the City shall use the same process to resolve their complaint as non-City employees with the following exception:

If the City employee is not in agreement with the decision of the Personnel Director or the City Manager, they have the right to file a grievance in accordance with Section 10 of the Personnel Rules and Regulations.

- F. No such appeal, whether it be in regards to application disqualification, selection process, removal from eligible list, or discrimination, shall stay or prevent promulgation of an eligible list nor an appointment(s) by a hiring authority.
- G. Employees who are subject to State Merit System Rules and Regulations shall be governed by those rules and regulations regarding merit selection and promotion procedures and these regulations as is applicable.

SECTION 6. LAYOFF AND REINSTATEMENT

6.1 LAYOFFS

- A. Whenever a reduction in the workforce becomes necessary, layoffs shall be made on the basis of demonstrable skill, reliability and ability. Where demonstrable skill, reliability and ability are substantially equal, seniority as defined in section 6.3 shall control. Layoffs shall be made by classification.
- B. No regular employee shall be laid off from any classification while there are provisional, probationary, part-time, or seasonal employees working in the same classification.
- C. In the event an employee becomes subject to layoff in his classification, he shall be permitted to take a position in the next lower or equivalent allied classification at that classification's rate of pay provided, however, that he shall not be permitted to take the position of any employee with demonstrably superior skill, reliability or ability. Where demonstrable skill, reliability and ability are substantially equal, seniority as defined in Section 6.1 shall control. The actual salary shall not be lower than the salary currently being received by the employee. Any employees in such lower or equivalent allied classification subject to layoff by virtue of the provisions of this Section, shall be laid off in accordance with the provisions of paragraph "A" hereof.

6.2 REINSTATEMENT

- A. The names of regular employees who have been laid off shall be placed on a layoff list, maintained by the Personnel Department and shall be eligible for re-employment for a period of two (2) years. The City shall

rehire in the reverse order of layoff, provided such employees are otherwise qualified to perform duties of the positions and return to work within fourteen (14) calendar days after notification of re-employment.

- B. Where an employee has accepted a position in a lower or equivalent allied classification by virtue of the provisions of paragraph "C" Section 6.1 he shall be recalled to his former position when the same becomes available in the reverse order of reduction.
- C. Where by virtue of a reduction in work force, either a full-time or a part-time employee takes a position in lower classification as provided in "C" of Section 6.1, such employee shall be credited with classification seniority earned prior to transfer. Where, however, a full-time employee takes a part-time position in the same classification, he shall not be laid off until all part-time employees in such classification have been laid off.
- D. Subject to the restrictions in "A" of this section, no new bargaining unit employee shall be hired in any classification until all bargaining unit employees who have been laid off from a higher or equal and like or similar classification have been recalled.

6.3 SENIORITY

- A. Seniority is hereby defined as the employee's length of continuous service with the City since his last date of hire, except as otherwise provided herein.
- B. Continuous service as used in paragraph "A" hereof means an employee's total continuous length of service with the City since his last date of hire without break or interruption; provided that layoff of one (1) year or less, any suspension for disciplinary purposes, absence on authorized leave with or without pay and absence while receiving temporary total disability benefits under the California Worker's Compensation Act, shall not constitute a break or interruption in service within the meaning of this Article.
- C. After an employee satisfactorily completes his initial probationary period

of employment with the City, his seniority shall be effective from the date on which the employee was hired.

- D. A list of employees arranged in order of their seniority as defined herein shall be maintained and made available for examination by employees; provided that the seniority list be revised and updated at the end of each fiscal year. A copy of the same shall be transmitted to the Unions and/or associations.
- E. Where two or more employees were appointed on the same date, their seniority standing shall be determined in the order in which they filed their application for such employment in accordance with the date of filing such application which shall appear on the application form.

SECTION 7. RESIGNATION

7.1 RESIGNATION

An employee wishing to resign City employment in good standing shall file with his Department Head at least two weeks before leaving the service, a written resignation stating the effective date and reasons for leaving. The resignation shall be forwarded to the City Manager with a statement by the Department Head as to the resigned employee's service performance and other pertinent information concerning the cause for resignation. Failure to comply with this rule shall be entered on the service record of the employee and may be cause for denying future employment by the City. The absence of an employee who fails to give notice shall be reported to the City Manager's office immediately.

7.2 IMPLIED RESIGNATION

Except as provided in a Memorandum of Understanding, an employee who willfully absents himself from his work for a period in excess of two working days without the permission of his superior or refuses to report for work when requested by his superior without good cause may be deemed by the City Manager to have resigned his position.

SECTION 8. EVALUATIONS

8.1 PERFORMANCE EVALUATIONS

Each classified employee, at a minimum, shall receive a performance evaluation

upon completion of his/her probation period, upon his/her subsequent anniversary date, and upon termination of employment. A performance evaluation may be made at any time as a means of notifying an employee of his/her performance and the City will attempt to evaluate performance bi-annually whenever possible. Performance evaluations are to be made by the Department Head of each employee and are to be reviewed by the City Manager. Each employee shall have an opportunity to see his/her evaluation and defend his/her position before the Department Head. A corrective interview may be held in the presence of the City Manager if the employee's performance evaluation is substandard, provided, however, that the employee may have a representative from outside the Department present at said interview. It is further provided that the employee shall have the right to respond in writing to the adverse evaluation entered into his/her personnel file.

SECTION 9. DISCIPLINARY ACTION

9.1 PROCEDURE FOR PUNITIVE DISMISSAL, SUSPENSION, DEMOTION OR REDUCTION IN PAY

- A. All employees who have not attained the status of permanent employees in the competitive service may be dismissed, suspended, demoted or reduced in pay upon the judgment of the Department Head or the City Manager.
- B. Each of the following may constitute cause for discipline of an employee:
1. Unexcused absence
 2. Abuse of City property
 3. Inexcusable neglect of duty
 4. Abuse of sick leave
 5. Conviction of a felony or conviction of a misdemeanor involving moral turpitude.
 6. Use or possession of alcoholic beverages or illegal drugs during working hours or reporting to work under the influence of alcoholic beverages or illegal drugs.

7. Insubordination
8. Violation of a safety rule or practice
9. Incompetency
10. Fighting with anyone while on the job
11. Driving a City vehicle without a valid California motor vehicle operator's license for the vehicle driven.

C. The following procedural steps shall be followed with respect to the action of punitive dismissal, suspension, of more than three days, demotion, or reduction in pay of a permanent employee in the competitive service.

First, prior to taking action of dismissal, suspension, or demotion, written notice of the proposed action shall be given the employee ten (10) days in advance of taking the action. Said notice shall contain the following:

1. The proposed action to be taken and the date set for the action.
2. The reason for the proposed action.
3. A copy of the charges and materials upon which the proposed action is based.
4. A statement advising the employee that he has a right to respond to the charges either in writing or orally to the person imposing the proposed action prior to the time the action is taken; that the employee has the right to be represented at all stages of the proceedings by counsel of his choice at the employee's expense.

Second, on the date of taking action of dismissal, suspension or demotion of the employee, he shall be notified in writing of the action taken. The employee shall then have a right to appeal to the City Council within five (5) days from the date of written notification. If the City Council

assumes jurisdiction over the appeal, a public hearing will be held within thirty (30) days of receipt of said appeal. The City Council shall issue their findings and decision within five (5) days of said hearing. In the event the City Council refuses to assume jurisdiction over the appeal, the City Council will give written notice of such refusal to the employee within twenty (20) days of receipt of said appeal. A copy of the notice shall be provided to the Union office and Chief Steward or equivalent.

If satisfactory settlement is not reached, or if the City Council refuses to assume jurisdiction over the appeal, the Employee or Union Association may, within fifteen (15) days from date of the City Council's findings and decision, or date of the City Council's refusal of jurisdiction, request arbitration by providing the employer written notification thereof. The decision of the arbitrator shall be final and binding.

The arbitration proceedings shall be conducted by an arbitrator, to be mutually selected by the parties within ten (10) calendar days after the submission of written demand for arbitration. If the parties are unable to mutually agree as to the selection of an arbitrator within such time limit and either party continues to demand arbitration, either party may request the California State Conciliation Service to provide a list of five (5) arbitrators. Within ten (10) days after receipt of said list, the parties shall meet at City Hall for the purpose of selecting the arbitrator. Each party shall have the right to strike two names from the list of arbitrators as submitted. The party requesting arbitration shall strike the first name and the other party shall then strike one name with the same process being repeated so that the person remaining on the list shall be the arbitrator. The arbitrator hearing shall be held within twenty (20) days after selection of the arbitrator or as soon thereafter as the arbitrator is available.

There shall be no appeal from the arbitrator's decision. It shall be final and binding on the Union/Association, the City of Livingston, and on all bargaining unit employees. The arbitrator shall be requested by the parties to issue his decision within thirty (30) calendar days after the conclusion of the hearing.

The arbitrator's expenses shall be borne in full by the losing party. In the event that the arbitrator makes a compromise decision, those costs shall be apportioned to the parties by the arbitrator based on the relative merits of their respective cases. Each party shall be responsible for compensating its own representatives and witnesses. If a party desires that a record of the testimony be made at the proceedings, it may cause such a record to be made at its expense provided, however, that it supplies the arbitrator and the other party or parties with copies of such record at no expense to the other party or parties.

Any time limitation provided herein may be waived in writing by mutual agreement of the aggrieved employee or his designated representative and of the Department Head or his designated representative. If either party fails to comply with any time limitation or extension thereof, absent written waiver of same, the appeal shall automatically be resolved in favor of the other party.

An aggrieved employee shall have the right to process his grievance individually, by the Union and/or by an Attorney at Law.

It is the intention that the arbitrator's decision shall not be subject to judicial review except for fraud or similar misconduct or unless an error appears on the face of the award and causes substantial injustice.

- D. For suspension of three days or less, the procedure shall be as follows:
1. The employee shall be given written notice containing the following:
 - a. The proposed action to be taken and the date set for action.
 - b. The reason for the proposed action.
 - c. A statement that any materials upon which the proposed action is based are available for the employee's inspection.
 - d. A statement advising the employee that he has a right to a hearing before the City Manager if requested within three (3) working days

after receipt of said notice or automatically if a member of the class affected by the Public Safety Officers' Bill of Rights, Sections 3300 through 3311 of the Government Code of California.

2. If the employee requests a hearing, the City Manager shall schedule a hearing and advise the employee of the time and place of the hearing.
3. The employee shall have a right to be represented at the hearing by a Union representative or other person of his choice.
4. The decision of the City Manager shall be final.

9.2 INVESTIGATION AND INTERROGATION OF POLICE OFFICERS

In the investigation and interrogation of police officers, the rights afforded under the Public Safety Officers' Bill of Rights, Sections 3300 through 3311 of the Government Code of California shall apply.

SECTION 10. GRIEVANCE PROCEDURE

10.1 DEFINITION

"Grievance" shall mean any disagreement concerning the interpretation or application of a written memorandum of understanding or of personnel rules, department rules and regulations governing personnel practices or working conditions that is not specifically provided a remedy in any of the above documents. The procedure shall be established in the Personnel Rules. An impasse in meeting and conferring upon the terms of a proposed memorandum of understanding is not a grievance.

It is the policy of the City that all grievances of employees relating to working conditions be resolved at the lowest level of supervision possible.

10.2 STEPS

Grievances as defined in subsection 10.1 above shall be processed in the following manner only:

STEP 1: Any employee who believes that a grievance exists shall discuss the grievance with such management official in the employee's department as the Department Head may designate within fifteen (15) working days of the event which gave rise to the grievance. If the issue is not resolved within the department, the procedures hereinafter specified may be invoked.

STEP 2: Any employee or the Union representative within seven (7) working days of the completion of Step 1 shall notify the Department Head or the designated representative in writing that a grievance still exists. Such notification shall state the particulars of the grievance and the nature of the resolution which is sought. The Department Head or the designated representative shall thereupon investigate the issue(s) involved, meet within seven (7) working days with the grievant and attempt to reach a satisfactory resolution of the problem and reply to the grievance in writing. No grievance may be processed under Step 3 and 4 below which has not first been filed and investigated in accordance with this Step 2.

STEP 3: Any grievance which has not been resolved by the above procedures shall be referred to the City Manager within seven (7) working days by the grievant or by the Department Head. Any such referral shall be in writing, and the specific issues involved shall be detailed in such referral together with a statement of the nature of the relief sought. The City Manager shall personally investigate or designate a personal representative, who shall not be the Department Head in question, to investigate the merits of the grievance, to meet with the grievant and with the officials of the Union or Association, and to settle such grievance or to make recommendations thereon to the City Manager, who shall reply to the grievant in writing either personally or through the personal representative within seven (7) working days.

STEP 4: If the grievance is still unresolved, either party may, within ten (10) calendar days after the reply of the City Manager is due, by written notice to the other, request a hearing before an arbitrator whose decision shall be final and binding on the parties. The arbitrator shall hear the appeal and shall make his decision within thirty (30) calendar days. The losing party shall pay the costs of arbitration. The arbitrator shall be selected as provided in Section 9.1 (C) of these Personnel Rules and Regulations.

STEP 5: Time limits as set forth above may be extended by mutual agreement between the parties, but neither party shall be required to agree to any time extensions.

SECTION 11. EMPLOYER-EMPLOYEE ORGANIZATION RELATIONS

11.1 STATEMENT OF PURPOSE

This Section implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.) captioned "Local Public Employee Organizations," by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of State law, City ordinances, resolutions and rules which establish and regulate the merit and civil service system, or which provide for other methods of administering employer-employee relations. This Section is intended, instead, to strengthen merit, civil service and other methods of administering employer-employee relations through the establishment of uniform and orderly methods of communications between employees, employee organizations and the City.

It is the purpose of this Section to provide procedures for meeting and conferring in good faith with Recognized Employee Organizations regarding matters that directly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in appropriate units and that are not preempted by Federal or State law. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others: The exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

11.2 DEFINITIONS

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

- A. "Appropriate Unit" means a unit of employee classes or positions, established pursuant to Subsection 11.8 hereof.
- B. "City" means the City of Livingston, and, where appropriate herein, refers to the City Council or any duly authorized City representative as herein defined.
- C. "Confidential Employee" means an employee who, in the course of his or her duties, has access to confidential information relating to the City's administration of employer-employee relations.
- D. "Consult/Consultation in Good Faith" means to communicate orally or in writing for the purpose of presenting and obtaining views or advising of intended actions; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of such meet and confer process, does not involve an exchange of proposals and counterproposals with an exclusively recognized employee organization in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to impasse procedures.
- E. "Day" means calendar day unless expressly stated otherwise.
- F. "Employee Relations Officer" means the City Manager or his duly authorized representative.
- G. "Impasse" means that the representatives of the City and a Recognized Employee Organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and concerning which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.
- H. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of City policies and programs.
- I. "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, or (2) a verified authorization petition or petitions recently signed and personally dated

by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization. The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words "recently signed" shall mean within one hundred eighty (180) days prior to the filing of a petition.

- J. "Exclusively Recognized Employee Organization" means an employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate representation unit pursuant to this Section, having the exclusive right to meet and confer in good faith concerning statutorily required subjects pertaining to unit employees, and thereby assuming the corresponding obligation of fairly representing such employees.
- K. "Supervisory Employee" means any employee having authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

11.3 FILING OF RECOGNITION PETITION BY EMPLOYEE ORGANIZATION

An employee organization that seeks to be formally acknowledged as the Exclusively Recognized Employee Organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer containing the following information and documentation:

- A. Name and address of the employee organization.
- B. Names and titles of its officers.

- C. Names of employee organization representatives who are authorized to speak on behalf of the organization.
- D. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the City.
- E. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.
- F. Certified copies of the employee organization's constitution and bylaws.
- G. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.
- H. A statement that the employee organization has no restriction on membership based on race, color, creed, sex, national origin, age, or physical disability.
- I. The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein.
- J. A statement that the employee organization has in its possession proof of employee support as herein defined to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party.
- K. A request that the Employee Relations Officer formally acknowledge the petitioner as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

The Petition, including the proof of employee support and all accompanying documentation, shall be declared to be true, correct and

complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

11.4 CITY RESPONSE TO RECOGNITION PETITION

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

- A. There has been compliance with the requirements of the Recognition Petition, and
- B. The proposed representation unit is an appropriate unit in accordance with Subsection 11.8.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, he shall so inform the petitioning employee organization, shall give written notice of such request for recognition to the employees in the unit and shall take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization and, if such determination thereafter remains unchanged, shall inform that organization of the reasons therefor in writing. The petitioning employee organization may appeal such determination in accordance with Subsection 11.10.

11.5 OPEN PERIOD FOR FILING CHALLENGING PETITION

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Subsection 11.3. If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the

appropriate unit or units in accordance with the standards in Subsection 11.8. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination or to appeal such determination pursuant to Subsection 11.10.

11.6 ELECTION PROCEDURE

The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Employee Relations Officer and the concerned employee organization(s), in accordance with its rules and procedures subject to the provisions of this Section. All employee organizations who have duly submitted petitions which have been determined to be in conformance with this Section shall be included on the ballot. The ballot shall also reserve to employees the choice of representing themselves individually in their employment relations with the City. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

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

In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the State Conciliation Service.

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

11.7 PROCEDURE FOR DECERTIFICATION OF EXCLUSIVELY RECOGNIZED EMPLOYEE ORGANIZATION

A Decertification Petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the month of January of any year following the first full year of recognition or during the thirty (30) day period commencing one hundred eighty (180) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

- A. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.
- B. The name of the established appropriate unit and of the incumbent Exclusively Recognized Employee Organization sought to be decertified as the representative of that unit.
- C. An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.
- D. Proof of employee support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Subsection.

An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this Section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent that includes the allegation and information required under paragraph (C) of Subsection 11.3, and otherwise conforms to the requirements of Subsection 11.3.

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Section. If his determination is in the negative, he shall offer to consult thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefor in writing. The petitioning employees or employee organization may appeal such determination in accordance with Subsection 11.10. If the determination of the Employee Relations Officer is in the affirmative, or if his negative determination is reversed on appeal, he shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees.

The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held on or about fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Subsection 11.6.

During the "open period" specified in the first paragraph of this Subsection, the Employee Relations Officer may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to that organization and all unit employees that he/she will arrange for an election to determine that issue. In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this Subsection, which the Employee Relations Officer shall act on in accordance with this Subsection.

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

11.8 POLICY AND STANDARDS FOR DETERMINATION OF APPROPRIATE UNITS.

The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the City

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

- A. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.
- B. History of representation in the City and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.
- C. Consistency with the organizational patterns of the City.
- D. Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.
- E. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classification among two or more units.

Notwithstanding the foregoing provisions of this Subsection, management and confidential employees shall only be included in a unit consisting solely of management and confidential employees, and such management and confidential employee unit shall not be represented by a recognized employee organization that represents supervisory employees or nonsupervisory employees of the City; supervisory employees shall only be included in a unit consisting solely of supervisory employees, and such supervisory employees shall not be represented by a recognized employee organization that represents management/confidential employees or nonsupervisory employees of the City; and professional employees shall not be denied the right to be represented in a separate unit from nonprofessional employees.

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

11.9 PROCEDURE FOR MODIFICATION OF ESTABLISHED APPROPRIATE UNITS

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Subsection 11.7. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Subsection 11.3, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Subsection 11.8. The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Section.

The Employee Relations Officer may on his/her own motion propose during the period specified in Subsection 11.7 that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Subsection 11.8, and shall give written notice of such determination to the affected employee organizations. The Employee Relations Officer's determination may be appealed as provided in Subsection 11.10. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Subsection 11.3.

11.10 APPEALS

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer under this Section may, within ten (10) days of notice thereof, request the intervention of the California State Conciliation Service pursuant to Government Code Sections 3507.1 and 3507.3, or may, in lieu thereof or thereafter appeal such determination to the City Council for final decision within fifteen (15) days of notice of the Employee Relations Officer's determination or the termination of proceedings pursuant to Government Code Sections 3507.1 and 3507.3, whichever is later.

An employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Subsection 11.3); Challenging Petition (Subsection 11.5) or Decertification of Recognition Petition (Subsection 11.7) -- or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Subsection 11.7) -- has not been filed in compliance with the applicable provisions of this Section may, within fifteen (15) days of notice of such determination, appeal the determination to the City Council for final decision.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the Employee Relations Officer. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any decision of the City Council determining the substance of the dispute shall be final and binding.

11.11 SUBMISSION OF CURRENT INFORMATION BY RECOGNIZED EMPLOYEE ORGANIZATIONS.

All changes in the information filed with the City by an Exclusively Recognized Employee Organization under items (a.) through (h.) of its Recognition Petition under Subsection 11.3 of this Section shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

11.12 PAYROLL DEDUCTIONS ON BEHALF OF EMPLOYEE ORGANIZATIONS.

Upon formal acknowledgment by the City of an Exclusively Recognized Employee Organization under this Section only such Recognized Employee Organization may be provided payroll deductions of membership dues and insurance premiums for plans sponsored by such organization upon the written authorization of employees in the unit represented by the Exclusively Recognized Employee Organization on forms provided therefor by the City. The providing of such service to the Exclusively Recognized Employee Organization by the City shall be contingent upon and in accordance with the provisions of Memoranda of Understanding and/or applicable administrative procedures.

11.13 EMPLOYEE ORGANIZATION ACTIVITIES -- USE OF CITY RESOURCES.

Access to City work locations and the use of City paid time, facilities, equipment and other resources by employee organizations and those representing them shall be authorized only to the extent provided for in Memoranda of

Understanding and/or administrative procedures, shall be limited to lawful activities consistent with the provisions of this Section that pertain directly to the employer-employee relationship and not such internal employee organization business as soliciting membership, campaigning for office, and organization meetings and elections, and shall not interfere with the efficiency, safety and security of City operations.

11.14 ADMINISTRATIVE RULES AND PROCEDURES.

The City Manager is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Section after consultation with affected employee organizations.

11.15 INITIATION OF IMPASSE PROCEDURES.

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

- A. To review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding; and
- B. If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedures provided herein.

11.16 IMPASSE PROCEDURES.

Impasse procedures are as follows:

- A. If the parties agree to submit the dispute to mediation, and agree on the selection of a mediator, the dispute shall be submitted to mediation. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues.
- B. If the parties agreed to submit the impasse directly to the City Council, or if the parties did not agree on mediation or the selection of a mediator, or having so agreed, the impasse has not been resolved through such mediation, the City Council shall take such action

regarding the impasse as its discretion deems appropriate as in the public interest. Any legislative action by the City Council on the impasse shall be final and binding.

11.17 COSTS OF IMPASSE PROCEDURES.

The costs for the services of a mediator utilized by the parties, and other mutually incurred costs of mediation, shall be borne equally by the City and the exclusively recognized employee organization.

11.18 CONSTRUCTION.

This Section shall be administered and construed as follows:

- A. Nothing in this Section shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by Federal or State law.
- B. This Section shall be interpreted so as to carry out its purposes as set forth in Subsection 11.1.
- C. Nothing in this Section shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout or other total or partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions by them are in violation of their conditions of employment except as expressly otherwise provided by legally preemptive State or contrary local law. In the event employees engage in such actions, they shall subject themselves to discipline up to and including termination, and may be permanently replaced, to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit any rights accorded them under City law or contract.

11.19 NEPOTISM.

Neither the Council nor the Mayor shall appoint to a position with the City

any person who is a relative by blood or marriage within the second degree of any one or more of the members of the Council. The City Manager and any other officer having appointive power shall not appoint to a salaried position with the City (1) any relative of such officer within such degree or (2) any relative within such degree of any department head or other supervisory personnel where the department head or supervisory personnel will have direct supervision over such relative. No person shall be appointed to a supervisory position in a City department who is related by blood or marriage within the second degree to any other supervisor, including the department head within the same department.

11.20 SEVERABILITY.

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

SECTION 12. TRAINING

12.1 TRAINING PROGRAMS

For the purpose of improving the effectiveness and broadening the knowledge of municipal officers and employees in the performance of their duties, the City Manager shall be responsible for providing training programs as he deems necessary. Where a training program is offered by the City and the employee is requested or required by the City to attend, the City shall pay the cost thereof. If an employee requests the attendance at a training program primarily for the purpose of potential advancement within the competitive service, one-half of the cost may be paid by the City if prior approval is obtained from the City Manager subject to the memorandum of understanding in force at the time of the request.

SECTION 13. REPORTS AND RECORDS

13.1 RECORDS MAINTENANCE

The City Manager shall require information relating to personnel actions to

be kept and reported on such forms as he may direct. All personnel records shall be maintained by the City for at least five (5) years after the termination of the employee's employment.

13.2 CONFIDENTIAL NATURE OF PERSONNEL RECORDS

All personnel records, including applications, examination papers, and eligible lists, shall be considered confidential and may be made available to subject employees and department heads. The public only shall have access with the approval of the City Manager.

SECTION 14. MISCELLANEOUS

14.1 OTHER EMPLOYMENT

No full-time employee shall engage in any outside employment without first obtaining the permission of the City Manager in writing. No full-time employee shall engage in outside activity which is incompatible or in conflict with his duties and employment to the City.

14.2 OBSERVANCE OF SAFETY RULES AND REGULATIONS

Each employee shall comply with all safety rules and regulations in effect and any subsequent rules and regulations that may be adopted. It is the responsibility of each employee to report all accidents and safety hazards to the appropriate management official immediately. Any employee having knowledge of or who is witness to an accident shall, if requested, give full and truthful testimony to the same.

14.3 ALCOHOL, DRUG AND CHEMICAL SUBSTANCE ABUSE

It is the responsibility of all employees to protect the life or property of their fellow workers, their fellow citizens, and their employer. The use of alcohol, drugs, and/or chemical substances by City employees while in the course and scope of employment, regardless of location, is prohibited, with only these exceptions:

- A. Medications or drugs prescribed by a licensed health care professional;
- B. Where expressly permitted by departmental regulations.

- C. When representing the City at functions where the use of alcoholic beverages is appropriate in the social or business setting.

Any employee who does not give effective performance, demonstrating proper personal conduct, and demonstrating continuing fitness for his/her position, will be subject to suspension, demotion, or even dismissal.

14.4 GRATUITIES

No officer or employee of the City of Livingston shall solicit or accept any gratuity for services rendered in the performance of his/her duties.

14.5 POLITICAL ACTIVITY

No employee shall take an active part while on duty or in uniform in any municipal political campaign or contribute thereto in behalf of any candidates, nor shall such person seek signatures to any petition seeking to advance the candidacy of any person for any municipal office. Nothing in this section shall be construed to prevent any such persons from seeking election or appointment to public office.

14.6 CONFLICTS OF INTEREST

No employee, whether paid or unpaid, shall engage in any business transaction or shall have a financial interest, direct or indirect, which is incompatible with the proper discharge of his/her independence of judgment or action in the performance of his/her official duties.

SECTION 15. SAVINGS CLAUSE

15.1 SEVERABILITY OF PROVISIONS

If any article or section of this resolution or any addendum or amendment thereto should be held to be invalid by operation of law or by a tribunal of competent jurisdiction, or if compliance or enforcement of any article or section should be restrained by such tribunal or the enactment of superseding rule, regulation, law or order, such article or provision shall be


immediately suspended and be of no force and effect. Invalidation of a part or portion of this resolution shall not invalidate any remaining portions unless those remaining portions were contingent upon the operation of the invalidated section.

Passed and adopted this 19th day of May, 1987, by the following vote:

AYES: Mayor Garcia and Councilmen Marques, Soria, Wells and Winton

NOES: None

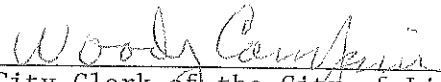
ABSENT: None



Mayor of the City of Livingston

ATTEST:

I, hereby certify, that the foregoing resolution was regularly introduced, passed and adopted at a regular meeting of the City Council of the City of Livingston this 19th day of May, 1987.



City Clerk of the City of Livingston