

EMPLOYMENT AGREEMENT

THIS AGREEMENT is between the City of Milpitas, a municipal corporation (the “City” or “Employer”) and Steven McHarris (“Employee”). It is effective on the latest date next to the signatures on the last page (“the Effective Date”).

This Agreement is entered into on the basis of the following facts, among others:

- A. The City desires to employ the qualified professional services of Employee as City Manager of the City, as provided by the Milpitas Municipal Code.
- B. After serving the City of Milpitas as Deputy City Manager followed by the June 4, 2019 appointment to Interim City Manager for the City of Milpitas, Employee desires to continue employment by the City as its City Manager.
- C. The City Council and Employee desire to establish a reasonable, professional and trustworthy employment relationship, subject to the terms and conditions set forth in this Agreement pertaining to compensation and benefits, performance evaluations, and related matters.

BASED UPON THE FOREGOING, THE CITY AND EMPLOYEE AGREE AS
FOLLOWS:

1. **Employee Appointed.** The City appoints and employs Employee as City Manager, and Employee continues to accept the appointment and employment as of the Effective Date.

2. **Duties of Employee.** Employee shall perform the duties established for the City Manager by State law, the Milpitas Municipal Code, the City Manager job description, the directions of the City Council, or as otherwise provided by law, ordinance, or regulation.

The provisions of the Municipal Code pertaining to the City Manager and the City Manager job

description, as may be amended from time to time, are attached hereto as Exhibit A and are hereby made a part of this Agreement.

(a) Full Energy and Skill. Employee shall faithfully, diligently, and to the best of Employee's abilities, perform all duties that may be required under this Agreement. Employee agrees that Employee has a duty of loyalty and a general fiduciary duty to the City. Employee shall devote the whole of Employee's working time, skill, experience, knowledge, ability, labor, energy, attention, and best effort exclusively to the City's business and affairs. Prior to undertaking any secondary activities for which Employee receives compensation, Employee shall disclose those activities to the Council.

(b) No Conflict. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of Employee's duties. Further, Employee shall not, during the term of this Agreement, individually, as a partner, joint venture, officer or shareholder, invest or participate in any business venture conducting business in the corporate limits of the City of Milpitas.

(c) Outside Activities. Consistent with subdivision 2(a) above, the Employee's primary employment is with the City. Any outside activities for which the Employee receives compensation from a third party shall be disclosed, in advance, to the City Council. Employee is expected to take personal leave (i.e., vacation time) for any outside activities of this nature.

3. Hours of Work. The City Manager is an exempt employee but is expected to engage in those hours of work that are necessary to fulfill the obligations of the City Manager's position. The City Manager does not have set hours of work as the City Manager is expected to be reasonably available to the City Council with support and coverage by the

Assistant or Deputy City Manager at all times. It is recognized that the City Manager must devote a great deal of time to the business of the City outside of the city's customary office hours, and to that end the City Manager's schedule of work each day and week shall vary in accordance with the work required to be performed and in accordance with any specific direction provided by the City Council.

4. **Term.** The term of this Agreement shall be from the Effective Date through June 3, 2022 unless terminated earlier by either party in accordance with the provisions set forth in Section 12, or unless extended as authorized by this Section. The City Council shall meet annually on or around each anniversary of the Effective Date to consider an annual extension to the Agreement.

5. **City Council Commitments.** The City Council shall abide by all provisions of the City's Municipal Code regarding the administration of personnel issues, with a copy of the relevant provisions of the City's Municipal Code, as may be amended from time to time, attached hereto as Exhibit A.

6. **Annual Evaluation.** In the first year of the term of this Agreement, the City Council shall conduct an evaluation of Employee's performance within 60 days to establish working relationships, norms, opportunities to be successful, and goals for coming year, then followed on a six-month basis for the first year of agreement. The second six-month evaluation shall be conducted within 60 days of the Employee's anniversary date as the City Manager. Each year thereafter, within 60 days of the Employee's anniversary date as the City Manager, the City Council shall conduct an evaluation of Employee's performance and provide guidance and direction in accordance with the specific criteria developed by the City Council in consultation with a professional facilitator. The facilitator shall be selected by mutual collaboration between the City Council and Employee which collaboration shall also establish a mutually agreed upon

evaluation process. At the time of Employee's annual performance evaluation, Employee may be eligible to receive an increase in Base Salary, as determined by the City Council in its sole discretion. Employee may be eligible for the first increase on Employee's first anniversary date, and then annually dependent on a performance evaluation to precede any consideration of a salary adjustment. Employee is not automatically entitled to any increase, which is subject to the sole discretion of the Council. In addition to an established annual evaluation, the Council has the discretion to provide Employee with an evaluation of performance at other times chosen by the Council.

7. Compensation.

(a) Base Salary. Employee shall receive the annual Base Salary of Three Hundred Thirty Four Thousand Three Hundred Sixty-Seven Dollars and Thirty-Five Cents (\$334,367.35), payable on a pro-rata basis in the same manner as all full time City employees, and subject to all applicable payroll taxes and withholdings.

(b) COLA Adjustments/Compaction. Whenever a cost of living adjustment or other non-merit based salary increase is provided to other miscellaneous unrepresented executive staff, the City Council shall consider whether it is reasonable and appropriate to grant the highest cost of living increase received by any miscellaneous unrepresented employee groups to the Employee's Base Salary to avoid compaction and maintain a buffer of 10% minimum between the Employee's Base Salary and the next highest salary for miscellaneous unrepresented executive staff. No salary adjustment is guaranteed, but is subject to the discretion of the City Council. Employee shall be obligated to inform the Employer whenever a recommended cost of living increase provided to other miscellaneous unrepresented executive staff will cause a potential compaction issue so that the Employer can determine whether a cost of living increase is appropriate for other miscellaneous unrepresented executive staff.

(c) Reduction in Salary or Benefits. If the City reduces the Employee's Base Salary, or any benefit described in Sections 8 to 11 of this Agreement, in a percentage that is greater than the average reduction of all miscellaneous unrepresented executive staff, such action shall constitute a termination of this Agreement without Cause under Section 12 of this Agreement.

8. Regular Benefits and Allowances. Employer agrees to provide and pay the City allowance for vision, dental and comprehensive medical health insurance for Employee and his/her dependents, if any, equal to that which is provided to all other full-time miscellaneous unrepresented executive staff of Employer. The City contribution toward health insurance shall be equal to that which is provided to all other miscellaneous unrepresented executive staff of Employer as specified in the applicable Unrepresented Employee Benefit Handbook ("Benefit Handbook"), dated July 1, 2019, or any amendment thereto or replacement thereof. Similarly, Employee shall receive short term and long term disability insurance coverage while this Agreement is in force, subject to any contributions required of unrepresented miscellaneous unrepresented executive staff.

9. Additional Deferred Compensation. As part of Employee's annual base compensation, City agrees to provide a Section 457 deferred compensation program which will be administered by the International City Management Association – Retirement Corporation (ICMA-RC), and to pay into such program for Manager's benefit monthly, commencing with the Effective Date of this Agreement, five (5) percent of annual base compensation subject to any limitations on annual contributions. In addition, the City shall adopt a qualified 401(a) defined contribution plan offered through ICMA-RC Corporation for the Employee to which the City shall contribute the equivalent of five (5) percent of annual base compensation, distributed

evenly on a monthly basis, commencing with the Effective Date of this Agreement. These contributions shall not be reportable to CalPERS.

10. Retirement Benefits.

(a) Employer agrees to enroll Employee into the California Public Employees Retirement System (“CalPERS”) consistent with other City employees.

11. Additional Benefits and Allowances. In addition to the benefits already

specified in this Agreement, Employee shall receive the same benefits afforded to miscellaneous unrepresented executive staff, including and not limited to:

(a) Vacation; Sick Leave

(i) Vacation. Employee shall accrue and be eligible to use vacation days in accordance with the City’s established vacation policy.

(ii) Sick Leave. Employee shall be entitled to use and accrue sick leave in accordance with established City policy.

(b) Automobile. Employee shall receive a monthly vehicle allowance of five hundred fifty dollars (\$550.00) per month, for automobile trips which shall be equal to that which is provided to all other miscellaneous unrepresented executive staff of Employer as specified in the applicable Unrepresented Employee Benefit Handbook (“Benefit Handbook”), dated July 1, 2019, or any amendment thereto or replacement thereof.

(c) Professional Development. Employer expects the Employee to continue to develop the professional technical and leadership skills and knowledge necessary to serve as City Manager. To that end, Employee is expected to continue membership with the International City Managers Association, American Planning Association/American Institute of Certified Planners, and attend the Harvard Kennedy School State and Local Government 3-week executive leadership summer program upon notification of acceptance by Harvard (but all subject

to the City Council's budget approval). Employee is expected to attend national, state or local regular conferences, trainings and other educational opportunities to continue to hone the skills consistent with the City Manager job description. The City will allow Employee reasonable time away to participate in these professional development opportunities and Employer shall pay for these training opportunities as provided for in this subsection subject to City Council's budget approval.

(d) Executive Coaching. Subject to City Council review and approval, Employee shall obtain a professional executive coach, who can provide professional advice, mentorship, guidance, and training to the Employee within three (3) months of the Effective Date of this Agreement. All costs of the executive coach shall be budgeted and paid by Employer. When seeking approval, Employee shall disclose all costs associated with executive coaching.

12. Termination of Employment.

(a) No Property Interest/Cause Defined. Employee understands and agrees that Employee has no constitutionally-protected property or other interest in Employee's employment as City Manager. Employee understands and agrees that Employee works at the will and pleasure of the City Council, and that Employee may be terminated, or asked to resign, at any time, with or without Cause, by a majority vote of its members. Notice of termination shall be provided to the City Manager in writing. As used in this Agreement, Cause shall only mean any of the following:

(i) Conviction of, or plea of guilty or nolo contendere to, any crime or offense (other than minor traffic violations or similar offenses) which is likely to have a material adverse impact on the City or on the Employee's reputation;

(ii) Proven failure of the Employee to observe or perform any of his duties and obligations, if that failure continues for a period of thirty (30) business days from the date of his receipt of notice from the City Council specifying the acts or omissions deemed to amount to that failure;

(iii) Conviction of any crime involving an “abuse of office or position,” as that term is defined in Government Code Section 53243.4;

(iv) Repeated failure to carry out a directive or directives of the City Council made by the City Council as a body at a Brown Act compliant meeting; and

(v) Any grossly negligent action or inaction by Employee that materially and adversely: (a) impedes or disrupts the operations of City or its organizational units; (b) is detrimental to employees or public safety; or (c) violates the City’s properly-established rules or procedures.

(b) Termination Immediately Before or Following City Council Election. No action by the City Council to terminate Employee, other than for Cause, will be made within ninety (90) days before a City Council election or within six (6) months immediately following a City Council election. Nothing in this subsection alters the “at will” status of Employee’s employment with City.

(c) Notice Required Of Employee. Employee may voluntarily terminate employment at any time by giving not less than sixty (60) days notice.

(d) Severance Pay. If Employee is asked to resign or is terminated without Cause, then Employee shall be eligible to receive a cash payment equivalent to the sum of Employee’s then-current monthly salary multiplied by nine (9) and the cash value, as determined by the City, of Employee’s monthly non-salary COBRA-eligible benefits multiplied by nine (9). Any severance and benefits paid shall be subject to state law requirements codified at Government

Code Section 53260. This cash payment will be made on a pro-rated, monthly basis over the number of months involved, subject to termination of the severance requirement set forth below. Employee shall also be paid for any accrued, but unused, vacation. In the event of termination or resignation from employment or the non-renewal of this Agreement, sick leave upon termination shall be treated in accordance with the Benefit Handbook. Eligibility for such severance payment is expressly conditioned upon Employee's execution of (i) a waiver and release of any and all of Employee's claims against City, and (ii) a covenant not to sue. All normal payroll taxes and withholdings as required by law shall be made with respect to any amounts paid under this section. Employee expressly agrees to provide notice to the City within two (2) business days of accepting employment elsewhere, and the City's obligation to pay any severance benefit to Employee shall terminate upon Employee's acceptance of such alternative employment.

(e) Ineligibility for Severance under Certain Conditions. If the termination of Employee is for Cause (as defined above) or if Employee voluntarily resigns, Employee is not eligible for and will not receive any severance. If Employee is terminated without Cause, then Section 7(d) above shall control.

(f) Communications Upon Termination. In the event the Employer terminates the Employee for any reason or no reason, the Employer and Employee agree to undertake reasonable efforts to issue a joint press release or statement, the content of which is mutually agreeable to the Employer and Employee. The joint press release or statement shall not contain any text or information that is reasonably considered to be disparaging to either party. For purposes of this subdivision only, "party" includes City Council members in office at the time of termination and miscellaneous unrepresented executive employees. If the parties are able to agree on a joint statement, either party may verbally repeat the substance of the joint press release or statement in response to any inquiry.

13. Statutory Requirements. This Agreement shall be deemed to incorporate by reference the provisions of Sections 53243 *et seq.* of the Government Code, as it may be amended or renumbered.

14. Payment of Expenses of Employment. The City shall pay the following usual and customary employment expenses.

(a) The cost of any fidelity or other bonds required by law for the City Manager.

(b) Subject to Section 12 of this Agreement, the cost to defend and indemnify Employee as required by the California Government Claims Act (Government Code §810 *et seq.*), or otherwise. City will determine, in its sole discretion, whether to compromise and settle any such claim or suit against Employee and the amount of any settlement or judgment rendered thereon.

(c) Subject to budget approval, the cost of attending conferences or other events (i.e. retirement dinners, out-of-town meetings, professional memberships and seminars, etc.) necessary for the proper discharge of Employee's duties. The City will not reimburse Employee for any expenses related to membership in service clubs, and will not encourage or require service club membership.

15. Miscellaneous.

(a) Notices. Notices given under this Agreement shall be in writing and shall be:

- (i) served personally; or
- (ii) sent by facsimile (provided a hard copy is mailed within one (1) business day); or

- (iii) delivered by first-class United States mail, certified, with postage prepaid and a return receipt requested; or
- (iv) Sent by Federal Express, or some equivalent private overnight delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

CITY:

City of Milpitas
 Attn: Mayor
 455 E. Calaveras Blvd.
 Milpitas, CA 95035

EMPLOYEE:

Steven McHarris

(b) Compliance with Government Code §§53243, 53243.1, & 53243.2.

If Employee is convicted of a crime involving an abuse of the Employee's office or position, all of the following shall apply:

- (i) if Employee is provided with administrative leave pay pending an investigation, Employee shall be required to fully reimburse the City for such amounts paid;
- (ii) if the City pays for the criminal legal defense of Employee (which would be in its sole discretion, as it is not generally required to pay for a criminal defense), Employee shall be required to fully reimburse City such amounts paid; and

(iii) if this Agreement is terminated, any cash settlement related to the termination that Employee may receive from the City shall be fully reimbursed to the City or void if not yet paid to Employee.

(iv) For this subsection, “abuse of office or position” means either (1) an abuse of public authority, including waste, fraud, and violation of the law under color of authority, or (2) a crime against public justice, including but not limited to a crime described in Title 7 (commencing with Section 92) of Part 1 of the Penal Code.

(c) Entire Agreement/Amendment. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated, and signed by the parties and attached hereto.

(d) Attorney's Fees. If any legal action or proceeding is brought to enforce or interpret this Agreement, the prevailing party shall be entitled to recover his or its attorneys’ fees and costs. Nothing in this subsection shall be read to prevent the parties from agreeing to some alternative method of dispute resolution.

(e) Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of that severability would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.

(f) Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking, or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking, or condition. To be effective, a waiver must be in writing, signed and dated by the parties.

(g) Representation by Counsel. The parties acknowledge and agree that they were, or had the opportunity to be, represented individually by legal counsel with respect to the matters that are the subject of this Agreement and that they are fully advised with respect to their respective rights and obligations resulting from signing this Agreement.

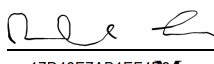
(h) Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California. Employee and City agree that venue for any dispute shall be in Santa Clara County, California.

(i) Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents of any such section or subsection.

(j) No Assignment. Employee may not assign this Agreement in whole or in part.


Dated: May-22-2020

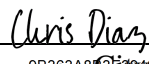
CITY OF MILPITAS

DocuSigned by:
By 
17D48E7AB1EF4B6 Mayor

Dated: May-23-2020

EMPLOYEE

DocuSigned by:

80C06400328A4D8... Employee

Approved as to Form:
DocuSigned by:

9B363A8E31846E City Attorney



CITY MANAGER

City of Milpitas

Effective: June 1985
 Revised: February 2018
 EEOC: Officials/
 Administrators
 FLSA: Exempt
 Unit: Unrepresented

DEFINITION

To serve as the chief executive officer, responsible to the Mayor and Council for the proper administration of all affairs of the City. Under policy direction, to coordinate City services and activities among City departments and with outside agencies; and to provide highly responsible and complex administrative support to the City Council.

SUPERVISION RECEIVED AND EXERCISED

- Receives policy direction from the City Council.
- Exercises direct and indirect supervision over department heads and staff.

EXAMPLES OF DUTIES - Duties may include, but are not limited to, the following:

- Coordinate the general activities and operation of the City government.
- Direct and participate in the development and implementation of goals, objectives, policies, and procedures.
- Attend all meetings of the City Council unless otherwise excused.
- Direct and participate in, with department head cooperation, the preparation and administration of the City budget.
- Prepare long term plans of capital improvements including financing plans.
- Plan, coordinate, and direct the work of the City departments.
- Confer with department heads concerning administrative and operational issues, work plans, and strategic plans; assess operational needs; make appropriate decisions and recommendations.
- Establish general administrative goals and objectives for the City and directs the preparation of related plans and procedures.
- Prepare and propose the annual budget, providing for a balancing of revenues and expenditures; keep City Council advised of financial conditions, program progress, and present and future needs of the City.
- Respond to City Council inquiries regarding matters related to the City and ensure that council directives are carried out.
- Meet with and advise the City Council in the determination of policies and reports on financial status and general conditions of the City; recommend legislation and policies required in the public interest.

- Educate and inform stakeholders on the merits, challenges, and alternative solutions for City programs, policies and activities.
- Oversee the enforcement of all City ordinances.
- Direct the preparation of plans and specifications for work which the City Council orders.
- Interpret, analyze, and explain policies, procedures, and programs.
- Confer with residents, taxpayers, businesses, and other individuals, groups, and outside agencies having an interest or potential interest in affairs of City concern.
- Respond to media inquiries, City Council concerns and issues, and community needs.
- Respond to the most difficult, sensitive, and/or controversial issues, complaints and requests for information.
- Investigate complaints regarding the management of City departments; conduct or direct investigation into complaints, problems, and service levels; resolve public complaints.
- Represent the City to all departments, in the community, and at professional meetings.
- Coordinate City activities with other governmental agencies and outside organizations; attend and participate in professional group meetings; stay abreast of new trends and innovations in the field of city management and administration.
- Select, supervise, train, and evaluate staff.
- Perform the duties of the City Manager as described in the Milpitas Municipal Code.
- Perform related duties as assigned.

QUALIFICATIONS

Knowledge of:

- Modern municipal administrative principles and practices, organization, and functions.
- Current social, political, and economic trends and operating problems of municipal government.
- Applicable Federal and State laws, rules, and regulations regarding local government operations.
- Principles of effective public relations and interrelationships with community groups and agencies, private businesses and firms, and other levels of government.
- Laws and regulations regarding City management, City contracts for public services, budget, finance, and public personnel administration.
- Effective supervisory, leadership, and management techniques.

Ability to:

- Communicate clearly and concisely, both orally and in writing.
- Analyze, interpret, summarize, and present administrative and technical information and data in an effective manner.
- Appraise situations and people accurately and quickly, and adopt an effective course of action.
- Manage and provide leadership; serve effectively as the administrative officer of the City Council.
- Select, supervise, train, motivate, coach, and evaluate staff.

- Develop and implement effective City organizational policies and procedures.
- Establish priorities and direct the allocation of City resources.
- Build and maintain positive working relationships with those contacted in the course of work, including City Council, co-workers, department heads, other city employees, and the public using principles of good customer service.
- Work with various cultural and ethnic groups in a tactful and effective manner.

EDUCATION AND EXPERIENCE

Any combination of experience and education that would likely provide the required knowledge and abilities is qualifying. A typical way to obtain the knowledge and abilities would be:

Education:

- Equivalent to a Master’s degree from an accredited college or university with major course work in business administration, public administration, political science or a closely related field; or a Bachelor’s degree in business administration, public administration, political science or a closely related field with at least two years of city management experience.

Experience:

- Four to seven years of experience in city government, management and administration, including significant responsibility within the operation of a City Manager's Office

CERTIFICATE

- Possession of a valid Class C California Driver’s License.

SPECIAL REQUIREMENTS:

Essential duties require the following physical abilities and work environment:

Work in a general office environment; sit and/or stand for long periods of time, repetitive keyboarding; reach, squat, lift, and carry up to 25 pounds; able to travel to various locations within and outside the City of Milpitas.

Approved by:

City Manager

Date

Human Resources Director

Date

Title VI - PERSONNEL

Chapters:			
VI-1	City Manager	419	
VI-3	Departments, Assignments and Appointments	423	
VI-10	Public Safety Dispatcher Training and Selection	424.1	
VI-101	Personnel System	425	
VI-102	Provisions for Reducing City Work Force	430	

Chapter 1 - CITY MANAGER

Sections:

Section 1 - Establishment

The office of City Manager and the City Manager form of government is hereby established in the City of Milpitas pursuant to the provisions of Section 34851a et seq., of the Government Code of the State of California.

(Ord. 63 (part), 8/20/57)

Section 2 - Duties and Responsibilities

VI-1-2.01 - Manager Responsible to the Council

The City Manager shall be the chief executive officer of the City Council of the City of Milpitas and shall act as the agent for and on behalf of the Council in the discharge of its administrative functions. He shall be responsible to the City Council for the administration of all affairs of the City except as otherwise provided herein.

(Ord. 63 (part), 8/20/57)

VI-1-2.02 - Manager Shall Attend All City Council Meetings and Make Reports

The City Manager shall attend all regular and special meetings of the City Council. He shall report to the Council as requested by the City Council and as he deems necessary. He shall keep the Council advised of the financial condition and future needs of the city and shall make such recommendations as he may deem desirable.

(Ord. 63 (part), 8/20/57)

VI-1-2.03 - Appointment and Removal of Employees by Manager

The City Manager shall be the "appointing officer" of the City, and shall have the power to appoint and dismiss all subordinate appointive officers and employees, subject to the provisions of the City's Municipal Code. Provided, however, that the provisions of this Section shall not apply to the City Attorney.

(Ord. 52.5 (part), 11/18/97: Ord. 63 (part), 8/20/57)

VI-1-2.04 - Council Dealing with Administrative Staff through City Manager

Except for purposes of inquiry, the City Council and its members shall deal with the administrative staff solely through the City Manager.

(Ord. 63 (part), 8/20/57)

VI-1-2.05 - Preparation and Administration of the Budget

The City Manager shall prepare the budget annually and submit it to the City Council, and he shall be responsible for its administration after adoption. He shall supervise the expenditures of and act as the purchasing agent for all the departments, divisions and services of the city government. The City Manager shall prepare and submit to the City Council a complete report as of the end of each fiscal year on the finances and administrative activities of the City during the preceding year.

(Ord. 63 (part), 8/20/57)

VI-1-2.06 - Performance of Other Duties

The City Manager shall perform such other duties as are consistent with this chapter and as may be prescribed by ordinance, resolution, or order of the City Council.

(Ord. 63 (part), 8/20/57)

VI-1-2.07 - Designation of Administrative Officer when Manager is Absent or Disabled

The City Manager may designate in writing a qualified administrative officer of the City to perform his duties during his temporary absence or disability. In the event of the failure of the City Manager to make such designation, the Council may by resolution appoint an officer of the City to perform the duties of the City Manager until he shall return or his disability shall cease.

(Ord. 63 (part), 8/20/57)

VI-1-2.08 - Creation of Departments and Subdivisions

The work of the city government may be distributed among such departments, divisions, and services thereof as may be established by ordinance of the City Council upon recommendation of the City Manager. Pending the passage of an ordinance distributing such work, the Manager may establish temporary departments, divisions, and services.

(Ord. 63 (part), 8/20/57)

VI-1-2.09 - Furnishing Bond

The City Manager shall furnish a bond to the City of Milpitas conditioned upon the faithful performance of his duties in a penal sum and with such corporate surety as the Council may require. The premium for said bond shall be paid by the City of Milpitas.

(Ord. 63 (part), 8/20/57)

VI-1-2.10 - Appointment and Removal

The City Manager shall be appointed by a majority of the City Council and shall serve until he or she is removed by a majority of the members or until his or her resignation.

(Ord. 52.4, 2/2/93; Ord. 63 (part), 8/20/57)

VI-1-2.11 - Notice of Resignation

The City Manager may resign from his position upon at least thirty (30) days' notice in writing to the City Council.

(Ord. 63 (part), 8/20/57)

VI-1-2.12 - Compensation

The compensation, annual leave, sick leave and other recompense of the City Manager and perquisites of his office shall be as determined by order or resolution of the City Council.

(Ord. 63 (part), 8/20/57)

VI-1-2.13 - Assigning Additional Duties

Wherever any order, resolution or ordinance of the City Council of the City of Milpitas has heretofore or hereafter assigned any power or duty or granted any right or privilege to the City Administrator of the City of Milpitas, the City Manager of the City of Milpitas shall be empowered and shall be assigned said power or duty and shall be granted said right or privilege.

(Ord. 63 (part), 8/20/57)

VI-1-2.14 - Signatures.

The City Manager and his or her designee, upon approval of the City Council, shall have the authority to sign and execute the following instruments:

- (a) All warrants drawn on the City Treasury.
- (b) All written contracts and conveyances made or entered into by the City.
- (c) All instruments requiring the City seal.

(Ord. 63.2, 6/15/99)

Section 3 - Transfer of Duties to City Manager

VI-1-3.01 - City Clerk

Pursuant to the provisions of Section 34004 of the Government Code of the State of California, the City Council of the City of Milpitas does hereby transfer from the City Clerk of the City of Milpitas to the City Manager of the City of Milpitas, any duty imposed upon said Clerk by any law of the State of California or any rule or regulation adopted under the authority of any such law except as hereinafter provided, and any duty imposed upon the City Clerk by any ordinance or resolution of the City of Milpitas, or any rule or regulation adopted under the authority of any ordinance or resolution of the City of Milpitas except as hereinafter provided:

(Ord. 52.2, 1/16/63)

3.01-1 Exception: The City Clerk may sign and execute any evidence of indebtedness, bond, indenture, or document specified by law or contract to be signed or executed by the City Clerk in connection with the issuance, sale or redemption of bonds, and evidences of indebtedness, and the qualification for or acceptance of grants, the proceedings for the authorization or incurring of which have been conducted by, or pursuant to the authority of the City Council.

(Ord. 52.2, 1/16/63)

3.01-2 Exception: The City Clerk shall have concurrent authority (with the City Manager) to administer oaths or affirmations and take and certify affidavits and depositions pertaining to city affairs and business pursuant to the authority granted by 40814 of the Government Code of the State of California.

(Ord. 52.2, 1/16/63)

VI-1-3.02 - Treasurer

Pursuant to the provisions of 34004 of the Government Code of the State of California, the City Council of the City of Milpitas does hereby transfer from the City Treasurer of the City of Milpitas to the City Manager of the City of Milpitas, any duty imposed upon said Treasurer by any law of the State of California or any rule or regulation adopted under the authority of any such law except as hereinafter provided, and any duty imposed upon the City Treasurer by any ordinance or resolution of the City of Milpitas, or any rule or regulation adopted under the authority of any ordinance or resolution of the City of Milpitas except as hereinafter provided:

(Ord. 52.2, 1/16/63)

3.02-1 Exception: The City Treasurer may continue to sign voucher checks of the City of Milpitas to the extent granted by resolution of the City Council enacted under authority of 37203 of the Government Code.

3.02-2 Exception: The City Treasurer may sign and execute any evidence of indebtedness, bond, indenture, or document specified by law or contract to be signed or executed by the City Treasurer in connection with the issuance, sale or redemption of bonds, and evidences of indebtedness, and the qualification for or acceptance of grants, the proceedings for the authorization or incurring of which have been conducted by, or pursuant to the authority of, the City Council.

(Ord. 52.2, 1/16/63)

VI-1-3.03 - Performance of Duties Transferred

It shall be the duty of the City Manager to perform such duties as have been transferred to him, pursuant to the provisions of this section.

(Ord. 52.2, 1/16/63)

VI-1-3.04 - City Manager Empowered to Appoint Clerk and Treasurer

Pursuant to the provisions of Section 36510 of the Government Code of the State of California, the City Manager of the City of Milpitas is hereby empowered to appoint the City Clerk and the City Treasurer.

(Ord. 52.3, 9/18/73)

Section 4 - Employment Contracts

VI-1-4.00

Nothing herein contained shall be construed to prevent the City Council from entering into a written contract of employment with the City Manager. Said contract may, in addition to such other provisions as shall not be in conflict with the provisions of this Chapter, provide for severance pay to the City Manager in the event his employment is terminated by City. No contract of employment, however, shall exceed a term of four years. No contract of employment shall contain any provision inconsistent with the provisions of this Chapter.

(Ord. 63.1, 9/5/78)

VI-1-4.01 - Declaratory of Existing Law

The Council finds and determines that the provisions of this Section VI-1-4.00 are declaratory of existing law and do not constitute a change in said law.

(Ord. 63.1, 9/5/78)

Chapter 3 - DEPARTMENTS, ASSIGNMENTS AND APPOINTMENTS

Sections:

VI-3-1.00 - Establishment of Departments of City

Pursuant to the provision of Section VI-1-2.08 of the Milpitas Municipal Code, the work of the City government shall be distributed among the following departments of the City:

- A. City Manager;
- B. City Attorney;
- C. Finance;
- D. Human Resources;
- E. Information Services;
- F. Planning and Neighborhood Services;

- G. Public Works;
- H. Engineering;
- I. Police;
- J. Fire;
- K. Building and Safety; and
- L. Recreation and Community Services.

(Ord. No. 197.14, § 1, 6/6/17; Ord. No. 197.13, § 2, 6/2/15; Ord. No. 197.12, § 2, 6/5/12; Ord. No. 197.11, § 2, 6-16-09; Ord. 197.10 (1), 6/19/07; Ord. 197.9, 6/6/06; Ord. 197.7, 7/3/01; Ord. 197.6, 9/5/95; Ord. 197.5, 3/21/95; Ord. 197.4, 5/4/94; Ord. 197.3 (A), 8/5/86; Ord. 197.2, 3/16/79; Ord. 197.1 (part), 9/5/78)

VI-3-2.00 - Divisions and Distribution of Work

Subject to other provisions of law, the work of the City government shall be assigned to such departments and such divisions within such departments as the City Manager shall establish and determine.

(Ord. 197.1 (part), 9/5/78)

VI-3-3.00 - Appointment and Removal of Department Heads

The City Manager shall appoint, and at his or her pleasure may dismiss, all City Department Heads. The City Manager's power to appoint and dismiss as described in this Ordinance may not be amended or limited, except as expressly imposed by formal action of the City Council.

(Ord. 52.5 (part), 11/18/97; Ord. 197.1 (part), 9/5/78)

VI-3-4.00 - Severance Payments for Specified "At-Will" Positions

1. Application. The ordinance codified in this Section shall permit the payment of severance to City employees serving in any of the following positions on an "at-will" (i.e., exempt) basis: Department Heads; Chief Building Official; and City Engineer (hereafter "qualifying positions").
2. Severance Schedule. In exchange for a general release in a form subject to approval by the City Attorney, the City Manager may grant severance pay pursuant to this Section on the following schedule. Severance pay shall be based on an employee's base salary at the time of separation and is subject to all applicable withholding as determined by the City or appropriate taxing authorities:

For employees with up to one year of City service in a qualifying position: Four weeks' salary.

For employees with greater than one year, but no more than five years, of City service in a qualifying position: Four weeks' salary, plus two weeks' salary for each additional year of City service in a qualifying position (maximum twelve weeks' salary).

For employees with greater than five years of City service in a qualifying position: Twelve weeks' salary, plus one week's salary for each additional year of City service in a qualifying position not to exceed a total of four additional weeks' salary.

3. Criteria and Administration.

- (a) The maximum amount of severance payable under this Section sixteen weeks' salary. The minimum City service required in a qualifying position in order to receive this amount is nine years.
- (b) A year of City service means at least 2080 hours during a twelve-month period in a paid status.
- (c) Severance payments under this Section shall not be paid until after the City Attorney approves the release and after any statutory waiting periods have expired (e.g., the seven-day waiting period under the ADEA).
- (d) Severance payments may be made under this Section only after an employee is dismissed without cause or is laid off. Employees who voluntarily resign, retire, or who are dismissed "for cause" are ineligible for severance payments made under this section. Dismissal "for cause" includes any dismissal made for reasons of fraud, dishonesty, insubordination, theft, misappropriation or misuse of City property, excessive absenteeism, actions prohibited by the City's anti-discrimination policies, or conduct that would constitute a crime. The City Manager shall have the discretion to determine whether dismissals are "for cause" under this section.

(Ord. 197.8, 6/4/02)

Chapter 10 - PUBLIC SAFETY DISPATCHER TRAINING AND SELECTION

Sections:

VI-10-1.00 - Purpose

The City of Milpitas declares that it desires to qualify to receive aid from the State of California under the provisions of Section 13522, Chapter 1, of Title 4, Part 4, of the California Penal Code.

(Ord. 235 (part), 4/3/90)

VI-10-2.00 - State Standards

Pursuant to Section 13510(c), Chapter 1, the City of Milpitas will adhere to standards for recruitment and training established by the California Commission on Peace Officer Standards and Training (POST).

(Ord. 235 (part), 4/3/90)

VI-10-3.00 - Adherence to Standards

Pursuant to section 13512, Chapter 1, the Commission and its representatives may make such inquiries as deemed appropriate by the Commission to ascertain that the City of Milpitas public safety dispatcher personnel adhere to standards for selection and training established by the Commission on Peace Officer Standards and Training.

(Ord. 235 (part), 4/3/90)

Chapter 101 - PERSONNEL SYSTEM

Sections:

[Section 1. - Adoption of Personnel System]

VI-101-1.00 - Adoption of Personnel 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.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

[Section 2. - Personnel Officer]

VI-101-2.00 - Personnel Officer

VI-101-2.01 - Duties and Responsibilities

The City Manager shall be ex-officio personnel officer. The City Manager may delegate any of the powers and duties as personnel officer 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 VI-101-15 of this Chapter. The Personnel Officer shall:

2.01-1 Administer all the provisions of this Chapter and of the personnel rules not specifically reserved to the Council.

2.01-2 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.

2.01-3 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.

2.01-4 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 by the Council.

(Ord. 111.8 (C)(part), (D), 4/17/90; Ord. 111 (part), 8/6/63)

[Section 3. - Competitive Service]

VI-101-3.00 - Competitive Service

The provisions of this Chapter shall apply to all offices, positions, and employments in the service of the City, except the following "exempt" positions.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-3.01 - Positions Exempt from Competitive Service

3.01-1 All elected officials.

3.01-2 Members of appointive boards, commissions and committees.

3.01-3 Persons engaged under contract to supply expert, professional or technical services for a definite period of time.

3.01-4 Volunteer personnel, such as volunteer firemen, who receive no regular compensation from the City.

3.01-5 The City Attorney, the City Clerk, and City Treasurer.

3.01-6 The City Manager and Assistant City Manager.

3.01-7 Department Heads, Directors, Division Heads and other employees with significant responsibility for formulating and administering City policies and programs.

(Ord. 111.8 (C)(part), (E), 4/17/90; Ord 111.2, 6/22/70; Ord. 111 (part), 8/6/63)

[Section 4. - Adoption of Rules]

VI-101-4.00 - Adoption of Rules

Personnel rules, prepared by the City Manager subject to this Chapter and to revision by the Council, shall be adopted, and may be amended from time to time, by resolution of the Council. The rules shall establish specific procedures and regulations governing the following phases of the personnel system:

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-4.01 - Coverage of Such Rules

4.01-1 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.

4.01-2 Preparation, revision, and administration of a plan of compensation directly correlated with the position classification plan, providing a rate or range of pay for each class.

4.01-3 Public announcement of all tests and the acceptance of applications for employment.

4.01-4 Preparation and conduct of tests and the establishment and use of resulting employment lists containing names of persons eligible for appointment.

4.01-5 Certification and appointment of persons for employment lists, and the making of temporary and emergency appointments.

4.01-6 Transfer, promotion, demotion, and reinstatement of employees in the competitive service.

4.01-7 Separation of employees from the City service through lay-off, suspension, and dismissal.

4.01-8 Standardization of hours of work, attendance and leave regulations, working conditions and the development of employee morale, welfare, and training.

4.01-9 Suitable provision for orderly and equitable presentations to the City Manager and to the City Council by employees relating to general conditions of employment.

4.01-10 Content, maintenance, and use of personnel records and forms.

4.01-11 Not codified.

4.01-12 Any other procedures and regulations necessary to carry out the provisions of this Chapter.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

[Section 5. - Appointments]

VI-101-5.00 - Appointments

VI-101-5.01 - Competitive

Examinations

Appointments to vacant positions in the competitive service shall be made in accordance with the personnel rules. Appointments and promotions shall be based on merit and fitness to be ascertained so far as practicable by competitive examinations. Examinations shall not be required for the reinstatement of employees to the same or comparable class, for which they are qualified and from which they were separated as a result of resignation in good standing or reduction in force.

Provided however, the City Council shall be entitled to establish preference in the competitive examination procedure for veterans of the United States armed forces as defined by and under rules and regulations adopted by the City Council by resolution.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111.7, 2/18/86; Ord. 111 (part), 8/6/63)

VI-101-5.02 - Power to Make Appointments

Appointments shall be made by the City Council, City Manager, Department Heads, Personnel Officer or the officer in whom the power to make appointments is vested by law.

(Ord. 111.8 (C)(part), (F), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-5.03 - Temporary appointment

In the absence of appropriate employment lists, a temporary appointment may be made in accordance with the Personnel Rules.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-5.04 - Emergency appointments

Emergency appointments shall be made in accordance with state law and the personnel rules.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 6 - Probationary Period

All regular appointments, including promotional appointments, shall be for a probationary period of not less than six months.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 7 - Status of Present Employees

VI-101-7.01 - Exemption From Qualifying

Any person holding a position included in the competitive service who, on the effective date of this Chapter, shall have served continuously in such position for a period equal to the probationary period prescribed in the rules for his class, shall assume regular status in the competitive service in the position held on such effective date without qualifying test, and shall thereafter be subject in all respects to the provisions of this Chapter and the personnel rules.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-7.02 - Present Employee in Probationary Period

Any other persons holding positions in the competitive service shall be regarded as probationers who are serving out the balance of their probationary periods as prescribed in the rules before obtaining regular status. The probationary period shall be computed from the date of appointment or employment.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 8 - Applicability of Rules to Certain Exempt Positions

The provisions of the personnel rules relating to attendance and leaves shall apply to the incumbents of full-time exempt positions.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 9 - Appointments Subject to Ordinance

The City Council, City Manager, and any other officer in whom is vested the power to appoint, make transfers, promotions, demotions, reinstatements, lay-offs, and to suspend or dismiss employees, shall retain such power, subject to the provisions of this chapter and the personnel rules.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 10 - Suspension

Any person holding a position or employment in the competitive service shall be subject to disciplinary suspension without pay by the appointing power, provided that such suspensions are in accordance with the provisions of this chapter and the personnel rules relating to appeals procedure.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 11 - Right of Appeal

Except as otherwise provided in a Memorandum of Understanding approved by the City Council, any employee shall have the right to appeal any disciplinary action, suspension, demotion, reduction or alleged violation of the personnel ordinance or rules. The administration of appeals shall be governed by the personnel rules.

(Ord. 111.8 (C)(part), (G), 4/17/90: Ord. 111.7 (part), 1/6/87: Ord. 111 (part), 8/6/63)

Section 12 - Improper Political Activity

Any person holding an office or employment in the competitive service shall not:

- (a) Deleted by Ord. 111.3.
- (b) During hours of work, or when dressed in the uniform required in any department of the City government or when wearing any City insignia required or permitted in any department of the City government or while identifying himself as an officer or employee of the City of Milpitas, participate in any City, District, County, State, Federal or other political activity or participate in any nomination, campaign or election (except as expressly authorized by the City Manager of City.)
- (c) Use his office or employment or title or City uniform or City insignia in connection with any City, District, County, State, Federal or other political activity or in connection with any nomination, campaign or election (except as expressly authorized by the City Manager).

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111.3, 6/18/74; Ord. 111.1, 5/28/68; Ord. 111 (part), 8/6/63)

Section 13 - Activities Not Affected

This chapter does not prevent any officer or employee from:

- (a) Becoming or continuing to be a member of a political club or organization.
- (b) Attendance at a political meeting.
- (c) Enjoying entire freedom from all interference in casting his vote.
- (d) Seeking or accepting election or appointment to public office while on leave of absence.
- (e) Seeking signatures to any initiative or referendum petition directly affecting his rates of pay, hours of work, retirement, civil service, or other working conditions provided such activity is not carried on during hours of work.
- (f) Distributing badges, pamphlets, dodgers, or handbills or other participation in any campaign in connection with such petition if the activity is not carried on during hours of work, or when he is dressed in the uniform required in any department of the city government.

The violation of any provision of Sections 12 or 13 is ground for discharge of any officer or employee.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 14 - Discrimination

All recruitment, hiring, placements, transfers and promotions shall be on the basis of qualifications of the individual for the positions being filled regardless of race, color, religion, ancestry, national origin, age (over forty years), sex, marital status, medical condition (cured or rehabilitated cancer), physical handicap, political affiliation or union activity. All other personnel actions, such as compensation, benefits, layoffs, returns from layoffs, disciplinary actions, training and social and recreational programs shall also be administered regardless of race, color, religion, ancestry, national origin, age (over forty years), sex, marital status, medical condition, physical handicap, political affiliation or union activity.

(Ord. 111.8 (C)(part), (H), 4/17/90: Ord. 111 (part), 8/6/63)

Section 15 - 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.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 16 - Appropriation of Funds

The Council shall appropriate such funds as are necessary to carry out the provisions of this Chapter.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 17 - Penalty Provision

See I-1-4.09-1

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

Section 18 - Regulations Regarding Nepotism

VI-101-18.01

As used herein, the term "relative" means the following relationships by blood, marriage or adoption: Spouse, father, mother, sister, brother, son, daughter, niece, nephew, aunt, uncle, stepfather, stepmother, stepsister, stepbrother, stepson, stepdaughter.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-18.02

The provisions of this Section shall not apply to any officer, employee or appointee holding any office, employment or appointment prior to thirty days following the adoption of this Section.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111 (part), 8/6/63)

VI-101-18.03

No person shall be disqualified for appointment as an employee of the City or disqualified from assignment or transfer for the sole reason that said person is a relative of another City officer or employee except as follows:

- a) No person shall serve in a position where said person is subject to supervision, evaluation, discipline or having his/her compensation determined by a relative.
- b) No person who is a relative of a department head shall serve in the department of said department head.
- c) No person who is a relative of a division head shall serve in the same division as said division head.
- d) No relative of the City Manager, Mayor, or of any City Council member shall serve in any city position provided nothing herein contained:
 - (i) shall be a limitation upon the power of the electorate to elect a Mayor or Council member, notwithstanding the fact that at the time of said election, said Mayor or Council member shall have a relative employed by the City
 - (ii) shall be a limitation upon the power of the Mayor or Council to appoint any Council member or other City officer, notwithstanding the fact that at the time of the appointment, the appointee has a relative employed by the City.

(Ord. 111.8 (C)(part), 4/17/90; Ord. 111.6, 2/18/86; Ord. 111 (part), 8/6/63)

Chapter 102 - PROVISIONS FOR REDUCING CITY WORK FORCE

Sections:

Section 1 - Abolition or Reduction of Authorized Positions

VI-102-1.00

Whenever in the judgment of the City Council it becomes necessary in the interest of economy or because the necessity for any authorized position in the City service no longer exists, the City Council may eliminate or reduce the number of any or all authorized positions within the City service without the right of appeal of the decision to eliminate or reduce the positions.

(Ord. 111.5 (part), 6/20/78)

Section 2 - Demotion Within the Competitive Service Classifications Above the Entry Level

VI-102-2.00

In reducing the number of personnel within classification(s) the least senior employee(s) within the affected class(es) shall be displaced either through demotion or lay-off. Seniority for the purpose of this section, is defined as the employee's total time served within the specified classification, or higher classification(s) within the job series. In the event two or more employees have served the same amount

of time in a classification, seniority shall be determined by their respective position on the employment list for the specified classification. All temporary employees in the affected class or classes shall be laid off prior to the displacement of any probationary or permanent employee.

Any permanent employee who is displaced as provided for in Section 1, may elect to accept a demotion in lieu of lay-off to a lower level related classification, or an unrelated classification previously held on a permanent basis, provided, however, that two conditions are met:

- 1) that the employee accepting demotion meets the qualifications for the classification he/she has elected for the demotion OR has previously held the classification; and
- 2) that the employee accepting demotion must have a length of service either in the higher classification(s), the classification he/she is considering for demotion, or a combination of both which is greater than the least senior employee in the classification to which he/she intends to accept the demotion.

(Ord. 111.5 (part), 6/20/78)

Section 3 - Exempt Employees May Return to the Competitive Service

VI-102-3.00

Any exempt employee who was promoted from the Competitive Service may elect a demotion to the Competitive Service in lieu of layoff. Once elected, said employee shall be eligible for demotion to a lower level classification in accordance with the provisions of Section 2.

(Ord. 111.8 (I)(part), 4/17/90: Ord. 111.5 (part), 6/20/78)

Section 4 - Lay-Off

VI-102-4.00

Seniority, for the purpose of this section, shall be defined as the total cumulative time of City service and shall be observed in effecting lay-offs. The order of lay-off shall be in the reverse order of total cumulative time served in permanent positions in the City service upon the effective date of lay-off. Lay-off shall be made within classes of positions, and all temporary employees in the affected class or classes shall be laid off prior to the lay-off of any probationary or permanent employee.

Each employee laid off shall receive a final performance evaluation to be based on job performance since the employee's last performance appraisal. Thereafter, the Department head shall certify as to the affected employee's competency if overall service in the classification has been satisfactory. If not certified as having given satisfactory service, the employee laid off may interpret the action as a discharge and request a hearing as provided by the Personnel Ordinance. An employee who is laid off must be certified as competent, in order to be placed on the re-employment list.

(Ord. 111.5 (part), 6/20/78)

Section 5 - Time Served on Military Leave

VI-102-5.00

For the purpose of determining displacement within classifications in accordance with this Chapter, time served on military leave shall be included as time served within the classification held at the time the military leave was taken, and in accordance with the Military and Veterans Code of the State of California.

(Ord. 111.5 (part), 6/20/78)

Section 6 - Notice of Lay-Off

VI-102-6.00

Pursuant to Section 1 of this Chapter, the City shall provide employees who may be affected by lay-off, a thirty (30) calendar day written preliminary notice of intent to lay-off. The preliminary notice shall also advise the employee whether, in accordance with this Chapter, they may elect demotion in lieu of lay-off. Employees who are notified that they may elect demotion in lieu of lay-off, must advise the City Manager's Office within fifteen (15) calendar days, of their decision to exercise the demotion option or forfeit their rights to the demotion in lieu of lay-off. Thereafter, the City shall provide a written confirmed notice of lay-off at least ten (10) working days prior to the effective date of lay-off. Reasonable effort shall be made to ensure notification. The recognized employee group representatives for the affected classes shall be notified concurrently on the preliminary and confirmed lay-off notices.

(Ord. 111.5 (part), 6/20/78)

Section 7 - Re-Employment Lists

VI-102-7.00

The names of probationary and permanent employees laid off or demoted in accordance with this Chapter shall be placed on a re-employment list in the reverse order of their displacement, whether it be by lay-off or demotion. The lists shall be prepared by classes which, in the opinion of the City Manager, require basically the same qualifications and duties and responsibilities for those of the class or classes of positions from which lay-off or demotion occurred. Re-employment lists shall remain in effect for seven years following their promulgation, except that the names of employees who are laid off shall be removed after three years.

Employees who are laid off in accordance with this Chapter are required to keep the City Manager's Office informed of any change of address or telephone number. Employees shall be returned in the reverse order of their displacement.

An employee's name shall be removed from the re-employment list, if:

- 1) the individual has been certified for appointment three times and has refused the appointments; and/or
- 2) has resigned from City service during the period the list is in effect.

In the event an employee's name is removed from the re-employment list for refusing an appointment three times, he/she may petition the City Manager in writing for reinstatement to the list. If good cause can be demonstrated as to why the individual did not accept any of the appointments, the City Manager may reinstate the individual to the list.

(Ord. 111.5 (part), 6/20/78)

Section 8 - Conditions of Re-Employment

VI-102-8.00

Upon re-employment, any employee who was laid off in accordance with Section 4 of this Chapter shall have his/her status restored and/or modified pursuant to the existing Memorandum of Understanding in effect at the time of lay-off or subsequent Memorandum of Understanding. The intent of this section is to restore at least the following:

- 1) the same vacation accrual rate;
- 2) his/her sick leave balance in effect at the time of lay-off;
- 3) his/her seniority (time served in permanent positions within the City service), at the time of lay-off;
- 4) if re-employed in the same classification, or substantially the same classification, the employee shall be returned to the same step of the current salary range for that classification;
- 5) if re-employed in a lower classification, the employee's salary shall be established as though he/she had been demoted to the position; and
- 6) upon re-employment the applicant shall provide a written statement that he/she has not incurred any disability during the period of lay-off which would prevent the applicant from performing the duties of that position.

(Ord. 111.5 (part), 6/20/78)

Section 9 - Waiver

VI-102-9.00

Unless modified herein, all other existing provisions remain as established.

(Ord. 111.5 (part), 6/20/78)

Section 10 - Severability

See I-1-4.12

(Ord. 111.5 (part), 6/20/78)

Section 11 - Criteria for Demotion Within Exempt Classifications

VI-102-11.00

In reducing the number of exempt personnel, displacement within classification(s) shall be made by the City Manager after reviewing the Department Head's recommendation and may take into consideration the following four factors:

- 1) consideration of the seniority of the employee(s) affected;
- 2) the nature of the services performed by the employee(s) affected or which the employee(s) affected are capable of rendering;
- 3) the importance of the service rendered to the City and to the community; and

4) the availability of funds.

(Ord. 111.8 (I)(part), 4/17/90: Ord. 111.5 (part), 6/20/78)

Section 12 - Outsourcing of Sworn Safety Personnel

VI-102-12.00

Police and Fire services are currently provided by employees of the City within Departments of the City utilizing City owned facilities and equipment. Any proposal to outsource the public safety functions of these departments as currently organized may not be implemented without first being approved by the voters of the City of Milpitas. Outsourcing within the meaning of this Ordinance means laying off or terminating the employment of the employees currently providing these services and replacing those persons with personnel not employees of the City. This provision shall not affect the authority of the City to otherwise reduce its workforce, as provided in this Chapter, or to take disciplinary action regarding any employee for cause, or otherwise exercise management authority to organize these departments and personnel as allowed under this Code, the Personnel Rules and applicable MOU provisions.

(Ord. No. 283, § 2, 11/6/12)