

RECOMMENDATION

1. Adopt Resolution No. 7405 – A RESOLUTION OF THE OROVILLE CITY COUNCIL AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AMENDMENT TO THE AGREEMENT WITH CSG CONSULTANTS, INC. TO PROVIDE ON-CALL BUILDING OFFICIAL AND FIRE INSPECTION SERVICES - (Agreement No. 1622-11).
2. Authorize the necessary budget adjustments as indicated in the fiscal impact of this report, dated August 4, 2009.

ATTACHMENTS

Resolution No. 7405
Agreement No. 1622-11

APPENDIX B: LIST OF CSG CONSULTANT, INC., CONTRACTS WITH THE CITY OF OROVILLE

CSG Consulting Services - Contract #1622						
Date	Contract Number	Amount	Totals	Contract end date	Other	Notes
9/6/2005	1622	20,000	20,000	9/6/2006	\$55 - 110/hr	Contract duration one year. Services Building Official @\$60-65/hr; Plan Review @ \$70-75/hr; Building Inspection services @ \$55-110/hr Or 70-75% of the fee charged by the city
1/17/2006	1622-1	75,000	95,000	1/17/2007	\$115/hr	Contract duration one year. *Consultant to perform engineering review services for subdivision and other site improvements services
11/7/2006	1622-2	20,000	115,000	See notes	\$112/hr	No extension of Contract end date. Incorporates Contract 1622.
7/3/2007	1622-3	48,000	163,000	See notes	\$112/hr	No extension of Contract end date. Incorporates Contract 1622.
8/21/2007	1622-4	20,000	183,000	See notes	\$112/hr	No extension of Contract end date. Incorporates Contract 1622.
11/20/2007	1622-5	20,000	203,000	See notes	\$112/hr	No extension of Contract end date. Incorporates Contract 1622.
4/1/2008	1622-6	29,075	232,075	See notes	\$112/hr	No extension of Contract end date. Incorporates Contract 1622.
5/6/2008	1622-7	25,000	257,075	See notes	\$112/hr	No extension of Contract end date. Incorporates Contract 1622.
8/19/2008	1622-8	20,000	277,075	See notes	\$112/hr	No extension of Contract end date. Incorporates Contract 1622.
8/19/2008	1622-8	30,000	307,075	See notes	\$95/hr	No extension of Contract end date. Incorporates Contract 1622. Delinates between building and fire plan checking services and building official and fire inspection services
	1622-9					"Vacant"
12/16/2008	1622-10	36,480	343,555	1/17/2007	\$95/hr	No extension of Contract end date. Incorporates Contract 1622. Building Official and Fire Inspection services
8/4/2009	1622-11	135,000	478,555	6/30/2010	\$95/hr	Contract end date finally extended to 6/30/2011 and incorporates Contract 1622. Building Official and Fire Inspection Services

APPENDIX C: A PORTION OF THE OPINION OF THE COURT OF APPEAL, THIRD APPELLATE DISTRICT, IN THE MATTER OF THE CITY OF OROVILLE V. OROVILLE POLICE OFFICERS ASSOCIATION, ET AL., (CASE NO. C053640)

NOT TO BE PUBLISHED

COPY

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Butte)

CITY OF OROVILLE,

Plaintiff and Appellant,

v.

OROVILLE POLICE OFFICERS ASSOCIATION et
al.,

Defendants and Respondents.

C053640
(Sup. Ct. No. 135447)

FILED

MAR 10 2008

COURT OF APPEAL - THIRD DISTRICT
DEENA C. FAWCETT, Clerk

BY _____ Deputy

This case concerns the standard of review for the arbitration of grievances under the Memorandum of Understanding (MOU) between the City of Oroville (the City) and the Oroville Police Officers Association (OPOA). After the City decided to terminate for cause the employment of Jerry Roberson, a member of OPOA, OPOA appealed the decision through the grievance procedure of the MOU. Step four of that procedure calls for binding arbitration. The parties disagreed on the issue the arbitrator was to decide and the City filed a complaint for declaratory relief. The trial court ruled in favor of OPOA,

declaring the arbitrator should conduct a trial de novo and determine independently if there was cause for discharge and confirm the discharge or determine other appropriate discipline.

The City appeals, contending the arbitrator is limited to reviewing the City's decision to terminate Roberson for an abuse of discretion, deciding only whether the decision was reached honestly and for reasons not arbitrary or pretextual. Given the language of the MOU, the prior course of conduct of the parties, and the provisions of the Public Safety Officers Procedural Bill of Rights Act (Gov. Code, § 3300 et seq.), we find Roberson is entitled to an independent reexamination of the decision to terminate him. We affirm.

BACKGROUND

The City is a chartered city (Gov. Code, § 34101); its charter was approved by the California legislature in 1933. The charter provides the City "may make and enforce all laws, ordinances and regulations necessary, convenient or incidental to the exercise of all rights and powers in respect to its affairs, officers and employees"

The City's Municipal Code provides that the city administrator shall suspend or remove city employees subject to personnel rules and regulations adopted by the council. (City of Oroville Municipal Code, ch. 2, art. III, § 2-37(a).) These rules provide the grounds for disciplinary action of an employee and provide that appeals of disciplinary action shall be in

APPENDIX D: CITY OF CHICO MUNICIPAL CODE, CHAPTER 2R. 72, PERSONNEL AND EMPLOYEE REPRESENTATION RULES, RULE 2R. 150 DISCIPLINARY ACTION AND RULE 2R. 72.240 DISPUTE RESOLUTION PROVISIONS

City of Chico Municipal Code
Chapter 2R.72
PERSONNEL AND EMPLOYEE REPRESENTATION RULES
(9/18/07)

2R.72.150 Disciplinary action.

A. General Provisions.

1. The provisions of this section, including permitted disciplinary actions, and hearing and procedural requirements shall be available only to permanent classified employees and, except in cases of probationary rejection, to permanent classified employees on promotional probation.
2. City employees who are not permanent classified employees or employees on promotional probation shall have no right to the notice and hearing requirements set forth herein. Provided, however, that such employees shall be given a written notice of such disciplinary action and the opportunity to discuss the matter with the Director.
3. When disciplinary action against a permanent classified employee is first contemplated by a direct or indirect supervisor of such employee, the employee shall be advised of the employee's right to representation. Such advice may be given by the appointing authority or the Director.
4. At the discretion of the appointing authority or department head, employees may be placed on paid leave during a period in which an investigation into facts which may result in discipline is conducted. Such paid investigatory leave is not discipline, and employees on such paid leave shall not be subject to a reduction in pay or benefits during the period of investigatory leave. Investigatory leave may be terminated at any time by the appointing authority or department head. At such time, the employee shall immediately return to work. An employee who is placed on paid investigatory leave during an investigation shall be informed of the reason for the leave, the potential for discipline, the right to representation, and the obligation to return to work when so instructed by the appointing authority or department head.

B. Permitted Disciplinary Action. The following disciplinary actions may be taken against an employee for one or more of the causes for discipline specified in subsection D below, or for any other just cause:

1. Discharge;
2. Demotion; provided, however, that no employee shall be demoted to a position for which the employee does not possess the desired qualifications;
3. Suspension without pay; provided, however, that such suspension shall not exceed 240 hours, and no employee shall be penalized by suspension for more than 240 hours in any fiscal year; further provided, that employees exempt from payment for overtime work under the Fair Labor Standards Act (FLSA) shall not be suspended in a manner that would conflict with employees' FLSA exempt status.
4. Written reprimand;
5. Any other action which corrects or mitigates the cause for which disciplinary action is taken and which is agreed to between the employee and the appointing

authority, with the prior approval of the City Manager.

C. Delegation of Disciplinary Authority. Pursuant to Section 701a of the Charter of the City of Chico, the City Manager may at any time authorize any appointing authority to discipline subordinate employees subject to the procedures in these rules.

D. Causes for Disciplinary Action. Causes for disciplinary action against any employee shall include any just cause including, but not limited to, the following:

1. Fraud in securing employment;
2. Willful violation of safety rules;
3. Nonobservance of work hours;
4. Unauthorized absence;
5. Being in the unauthorized possession of or under the influence of alcoholic beverages and/or any nonprescription or unauthorized narcotics or dangerous drugs during working hours;
6. Refusal or failure to perform assigned work;
7. Violation of any City or department rule, regulation or ordinance applicable to an employee's performance;
8. Conviction of a felony or conviction of a misdemeanor involving moral turpitude;
9. Disrespectful or unprofessional treatment of the public or another City employee;
10. Disobedience of a lawful order or insubordination to proper authority;
11. Misuse, misappropriation or theft of City property;
12. Falsification of City records;
13. Unauthorized sleeping on the job;
14. Incompetent, substandard or untimely performance of assigned work.

E. Procedural Requirements Prior to Disciplinary Action. No employee to whom this section applies shall be subject to disciplinary action hereunder unless prior thereto such employee has received:

1. A written notice of the proposed disciplinary action including the specific charges, and grounds upon which such charges are based;
2. A reasonable time to review the materials upon which the charges and proposed action are based and to answer the charges;
3. The opportunity to appear before the appointing authority to respond to the charges orally and/or in writing;
4. Notice of his or her right to be represented by an attorney or other representative at any disciplinary conferences or proceedings;
5. A written decision on such answer at the earliest practicable date, not to exceed fifteen (15) days following the answer. No disciplinary action shall be taken against an employee until the time period provided herein has been exhausted without a response from the employee.

F. Notice of Proposed Action. An employee against whom disciplinary action is pending is entitled to reasonable advance written notice stating any and all reasons, specifically and in detail, for the proposed action. All material, including new material prepared subsequent to the notice, on which the notice is based and which is relied on to support the reasons in that notice, shall be assembled and made available to the employee for review. The notice shall inform the employee when and where the employee may review such materials and of a reasonable method for reviewing such materials. Employees will be provided with a copy of such materials upon request. Material which is classified as confidential and as such is not available for

the employee to review shall not be used to support the reasons in the notice.

G. Employee's Answer. An employee is entitled to a reasonable time, not to exceed fifteen (15) days unless the appointing authority authorizes a longer time, to answer a notice of proposed disciplinary action. The time to be allowed depends on the facts and circumstances of the case, and shall be sufficient to afford the employee ample opportunity to review the material relied on by the appointing authority to support the reasons in the notice and to prepare an answer. If the employee answers, the appointing authority shall consider the answer in reaching a decision. The employee is entitled to answer through a designated representative, or personally, or in writing, or any combination thereof. The right to answer personally includes the right to answer orally in person by being given a reasonable opportunity to make any representations which the employee believes might affect the final decision in the case. When the employee requests an opportunity to answer personally, the appointing authority taking the action shall personally hear the answer. The word "answer" shall be deemed to include such statements, affidavits, declarations, or such other evidentiary matter as the employee may wish to submit. At this stage of the process, the employee shall not be entitled to an evidentiary hearing and the sole purpose of the answer shall be to allow the employee to respond to the charges. Further, the employee shall not be entitled to present witnesses or cross-examine any witness of the appointing authority.

H. Status of Employee During Notice Period. Except as otherwise provided, an employee against whom disciplinary action is proposed is entitled to be retained in an active status during the notice period. When circumstances are such that the retention of the employee in an active status in the employee's position may result in damage to City property or may be detrimental to the interests of the City or injurious to the employee, fellow workers or the public, the appointing authority may temporarily assign the employee to duties in which these conditions do not exist or place the employee on paid leave status which is not charged to the employee.

I. Notice of Decision. Any employee against whom disciplinary action is pending is entitled to notice of the appointing authority's decision at the earliest practicable date, not to exceed fifteen (15) days following the answer. The appointing authority shall cause the notice of decision to be delivered to the employee at or before the time when the action will be effective. If discipline is to be finally imposed, the notice shall be in writing, be dated and inform the employee of the following:

1. Those reasons in the notice of proposed disciplinary action which have been sustained and which have not been sustained;
2. The nature of the disciplinary action.
3. The right to appeal the notice of decision, as provided herein, if and only if such disciplinary action results in discharge, demotion, or suspension. However, police safety employees shall have a right to appeal if the disciplinary action is with a written reprimand. All other employees may provide a written response to the reprimand and the response shall be placed in the employee's personnel file, stapled to the written reprimand, but the employee shall have no right to further appeal.
4. The time limit for such appeal. If after notice and answer the appointing authority decides not to discipline the employee, the employee shall be so notified within fifteen (15) days following the answer. No materials relating to the proposed

disciplinary action shall be placed in an employee's personnel file unless and until a decision is made to discipline the employee.

J. Appeal of Disciplinary Actions.

1. To appeal the notice of decision, an employee must file with the Director within fifteen (15) days following receipt of the notice of decision a written request for such appeal and hearing. Upon receipt of such request a hearing officer shall be named to hear the matter. The hearing officer shall be appointed from a list maintained by the City Clerk. The City Clerk's appointment shall be by random selection from among those appearing on the list. Both the employee and the City shall have the right to challenge and refuse any person so selected. The employee and the City may each so challenge two such persons. The City Clerk's random selection shall proceed until both parties are satisfied with the selection or until their rights to challenge are exhausted. The list shall be compiled by obtaining names from the Butte County Bar Association or by another agency independent of the City for the purpose of providing impartial, competent hearing officers to hear disciplinary appeals.
2. The hearing authorized herein shall be held within thirty (30) days following the request for hearing.
3. Whenever a hearing on any disciplinary action is to be held, the Director shall notify the person requesting the hearing and the appointing authority from whose action the appeal is being taken, of the date, time and place of the hearing and shall publicly post a notice of the date, time and place of hearing on a public bulletin board in the Municipal Center of the City.
4. The hearing may be public or closed, at the employee's option.
5. The employee requesting the hearing shall not be required to appear at the hearing; provided, however, that in any event City shall have the right to call as a witness the employee requesting the hearing. The employee requesting the hearing may be represented by any person. Unless otherwise mutually agreed upon by the employee and City's representative, during the hearing, any and all witnesses to be called by either the employee or City shall be excluded from the hearing room unless actually testifying. Provided, that both the employee and City may designate a person, who shall not be subject to the exclusion herein, who has investigated the matter at issue in the hearing and whose assistance during the hearing is necessary to the efficient conduct of the hearing.
6. The Director shall issue subpoenas to compel the attendance of witnesses or the production of documents at the hearing when a request for same is made on behalf of the City, or by the affected employee. Any witness fees, mileage or other costs relating to subpoenas shall be the responsibility of the party requesting their issuance.
7. The hearing shall proceed generally as follows:
 - a. City's representative and the affected employee may make preliminary, opening statements.
 - b. The City's representative shall present oral and/or documentary evidence in support of City's position; the affected employee may cross-examine any witness called by City.
 - c. The affected employee may present evidence in employee's own behalf; the City's representative may cross-examine such witnesses as are called by the

affected employee.

d. Both the City and the affected employee may present rebuttal evidence as they deem necessary and appropriate.

e. The hearing officer shall rule on any objections made to the admissibility of evidence or otherwise relating to the conduct of the hearing. Such rulings shall be final.

f. The City's representative and the affected employee may make closing statements.

8. Hearing Officer's Action.

a. Upon the conclusion of any investigation or hearing, the hearing officer shall cause findings and recommendations to be prepared in writing and shall certify the same.

b. The hearing officer shall, at a minimum, find whether the City has shown by a preponderance of the evidence that the charges in support of the disciplinary action have been substantiated. Such a finding shall be made as to each charge. If the hearing officer finds that none of the charges are supported by the evidence presented, the recommendation shall be that no disciplinary action be taken. If the hearing officer finds that any or all of the charges are supported, the hearing officer shall either:

(1) Recommend that the proposed disciplinary action be carried out;

(2) Recommend such other disciplinary action deemed appropriate under the circumstances;

(3) Recommend that no disciplinary action be taken.

c. The hearing officer's findings and recommendations shall be filed as a permanent record with the Director who shall acknowledge their receipt. The Director shall certify and deliver a copy of such findings and recommendations to the appointing authority, the City Manager and to the employee affected by such findings and recommendations, or from whose action the appeal was taken.

9. The City Manager shall review the findings and recommendations, the record of the hearing and any other information submitted in writing by the employee, and shall then determine in light of such record and other information supplied by the employee whether the disciplinary action in the notice of decision (subsection 1 above) is proper. If it is determined that the action is proper, the employee shall be so notified in writing and no further action shall be necessary. If it is determined that the action is not proper, the action shall be rescinded and steps necessary to adjust the employee's records and pay to reflect such rescission shall be taken. Nothing herein shall be construed to preclude the City Manager from imposing a less severe disciplinary action than that imposed under subsection B above, following review of the records. For this purpose, the order of severity, from most severe to least, shall be as listed (in subdivisions 1 through 4) in said subsection B.

10. At the request of the employee, a copy of the written determination and findings of the hearing officer and the final determination of the City Manager shall be furnished to the City Council.

K. Imposition of Discipline Prior to or During Appeal. The disciplinary action set forth in the notice of decision may be imposed or carried out regardless of whether or not

an appeal has been filed or is being processed by the employee being disciplined.

L. Variation in Time Periods.

1. Any time period set forth in this section may be waived or otherwise varied from upon mutual agreement between the Director and the affected employee.
2. If the time period for the conduct of an appeal hearing cannot be met due to the unavailability of a hearing officer, the illness of the appointing authority, the temporary unavailability of a City witness, an employee or an employee's witness, or for any other reason beyond the control of the City, or the employee, the time period shall be extended to the earliest possible date for such hearing.
3. Upon request, the affected employee shall have the right to one postponement of the hearing date to the earliest possible date.

(Res. No. 143 95-96, Res. No. 51 02-03, Res. No. 113-07)

2R.72.240 Dispute resolution provisions.

A. Grievances.

1. Purpose of Grievance Procedures.

- a. To promote improved employer-employee relationships by establishing a grievance procedure on matters for which appeal is not otherwise provided;
- b. To afford individual employees and recognized employee organizations a systematic means to obtain further consideration of problems after every reasonable effort has failed to resolve them through discussions. Nothing herein shall preclude an employee from being represented by another individual or employee organization in the grievance procedure;
- c. To provide that grievances shall be settled as near as possible to the point of origin;
- d. To provide that the grievance procedure shall be as informal as possible.

2. Availability of Procedures. The grievance procedures set forth herein shall be available only to permanent employees, as defined in Section 2R.72.120, and to recognized employee organizations.

3. Grievance Defined. A grievance is any dispute concerning the interpretation or application of:

- a. A written memorandum of understanding between the City and an employee organization;
- b. The provisions of a pay and benefit resolution;
- c. Any ordinance, rule or regulation governing personnel practices which address wages, hours or other terms and conditions of employment;
- d. These Personnel and Employee Representation Rules, provided, however, that final determinations of the City Manager or a hearing officer, made pursuant to the provisions of these Rules, shall not be the subject of a grievance; or
- e. The adoption or amendment of the Classification Plan.

4. Exclusions. The following matters are specifically excluded from review under this grievance procedure:

- a. All City rights and all employee rights as set forth in Section 2R.72.220 of this Article.
- b. Matters within the budgetary authority of the City Council or City Manager.
- c. The rejection of an employee from probation.
- d. All rights reserved to management under the provisions of an existing

memorandum of understanding.

5. Grievance Procedures. Grievances shall be processed in accordance with the following procedures:

a. Informal Procedure. Any employee having a grievance shall first discuss the grievance with his or her immediate supervisor within ten (10) calendar days of the occurrence which caused the grievance. Within ten (10) calendar days after the discussion the supervisor shall attempt to resolve the grievance.

b. Formal Procedure. If the supervisor's action does not adjust the grievance satisfactorily, the employee may, within ten (10) working days of the supervisor's response, take the following steps:

(1) First Level of Review. A grievance may be submitted in writing to the employee's immediate supervisor. The written grievance shall be as specific as possible and shall include all facts deemed pertinent to its resolution. The immediate supervisor shall discuss the grievance with the employee and/or the employee's representative, if any, and reply in writing to the employee within five (5) working days.

(2) Second Level of Review. If the employee does not agree with the supervisor's decision, the written grievance will be presented within ten (10) working days to the next level of supervision. The second level supervisor shall have ten (10) working days to investigate and shall thereafter render a written decision.

(3) Third Level of Review. If the employee does not agree with the decision of the second level supervisor, the written grievance shall be submitted to the department head within five (5) working days after receipt of the second level supervisor's decision. After the receipt of the grievance, the department head shall have fifteen (15) working days to render a written decision.

(4) If the employee does not agree with the decision of the department head, the written grievance shall be submitted to the Director within five (5) days after receipt of the department head's decision. After receipt of the grievance, the Director shall have fifteen (15) working days in which to investigate and render a written decision.

(5) Hearing Request. Should the employee still be aggrieved, the employee may appeal the decision. An appeal must be filed with the Director within fifteen (15) working days of receipt of the written decision. After receipt of the appeal, a hearing officer shall be appointed and a hearing held in the manner set forth below.

c. General Provisions: The following provisions shall apply to the grievance procedure:

(1) Departments with only one supervisory level between the employee and the department head shall omit the second level review. In departments where the only supervisor is the department or office head, the first level and the second level shall be omitted. In departments with more than three levels of supervision, each additional level shall review the grievance prior to the matter being submitted to the department head, in accordance with the time lines provided for in the second level of review. Employees in the Human Resources Department shall have the Assistant

City Manager act in place of the Director in step b (3) and (4) above.

Employees having a grievance which involves an office or department other than their own shall submit the written grievance to the Director who shall have twenty (20) working days in which to investigate and render a written decision thereon. Such decision shall be subject to appeal by the employee.

If the employee does not agree with the decision of the department head, the written grievance shall be submitted to the Personnel Director within five (5) days after receipt of the department head's decision. After receipt of the grievance, the Personnel Director shall have fifteen (15) working days in which to investigate and render a written decision.

(1) Hearing Request. Should the employee still be aggrieved, the employee may appeal the decision. Said appeal must be filed with the Personnel Director within fifteen (15) working days of receipt of the written decision. After receipt of the appeal, a hearing officer shall be appointed and a hearing held in the manner set forth below.

b. General Provisions: The following provisions shall apply to the grievance procedure:

(1) Departments with only one supervisory level between the employee and the department head shall omit the second level review. In departments where the only supervisor is the department or office head, the first level and the second level shall be omitted. In departments with more than three levels of supervision, each additional level shall review the grievance prior to the matter being submitted to the department head, in accordance with the time lines provided for in the second level of review. Employees in the personnel office shall have the Assistant City Manager act in place of the Personnel Director in step b (iii) and (iv) above. Employees having a grievance which involves an office or department other than their own shall submit the written grievance to the Personnel Director who shall have twenty (20) working days in which to investigate and render a written decision thereon. Such decision shall be subject to appeal by the employee.

(2) Each level of supervision has an obligation to respond to any grievance, but should a response not be rendered within the time limit, the grievance may be appealed to the next step.

(3) The grievance is considered settled if the decision of any step is not appealed within the time limit, except when an investigative process is still in progress and the employee has been notified that it is taking place and the employee agrees to extend the time period.

(4) Any time limit in the grievance procedure may be extended to a date mutually consented to by the employee or employees filing the grievance and the supervisor involved.

(5) There shall be no reprisal or any other action taken against employees who avail themselves of the grievance procedure.

(6) An employee may use vacation time, administrative leave or compensatory time, if reasonably necessary, for the preparation of a grievance. If the grievance is sustained by the City Manager, such time taken shall be recredited to the employee.

(7) The cost, if any for a hearing officer to conduct a grievance hearing, for a facility in which to hold the hearing, and the like, shall be divided equally between the parties. Each party shall be responsible for its own costs for an attorney or other representation, for presenting evidence and for the cost of a court reporter when it requests one.

B. Grievance Hearing Procedure.

1. The hearing officer shall be appointed in the manner set forth under Section 2R.72.150.J. of this chapter.

2. The hearing authorized herein shall be held within thirty (30) days following the request for hearing.

3. The Director shall notify the person requesting the hearing and the hearing officer of the date, time and place of the hearing.

4. Unless otherwise requested by the grievant, the hearing shall be closed to the public.

5. The grievant may be represented by any person.

6. The Director shall be authorized to issue subpoenas to compel the attendance of witnesses or the production of documents at the hearing when a request for same is made on behalf of the City, or by the grievant. Any witness fees, mileage or other costs relating to subpoenas shall be the responsibility of the party requesting their issuance.

7. Prehearing briefs regarding the issue subject to the grievance may be filed by the City or the grievant with the hearing officer no later than seven (7) calendar days prior to the date of the hearing. Post-hearing briefs may be requested by the hearing officer, in his or her sole discretion, to be filed after the conclusion of the hearing by a date certain mutually agreed to between the hearing officer and the parties. Copies of prehearing and post-hearing briefs shall be filed concurrently with the other parties involved in the hearing.

8. The hearing shall proceed generally as follows:

a. The grievant and the City's representative may make preliminary, opening statements.

b. The grievant may present oral and/or documentary evidence in support of his/her/its position; the City's representative may cross-examine any witness called by the grievant.

c. The City's representative may present evidence in the City's behalf; the grievant or his/her/its representative may cross-examine witnesses called by the City.

d. Both the grievant and the City may present rebuttal evidence as they deem necessary and appropriate.

e. The hearing officer shall rule on any objections made to the admissibility of evidence or otherwise relating to the conduct of the hearing. Such rulings shall be final, unless otherwise provided for in a memorandum of understanding, or in a pay and benefit resolution adopted by the City Council for non-recognized employee groups.

f. The grievant and the City's representative may make closing statements.

9. Hearing officer's action:

a. At the close of the hearing, and in no event more than fifteen (15) calendar days following the conclusion thereof, the hearing officer shall prepare

findings and conclusions regarding the merits of the grievance; provided, however, that the hearing officer may request and the Director may grant an extension of not more than fifteen (15) days for the preparation of findings and conclusions.

b. The findings and conclusions shall be forwarded to the City Manager and to the grievant and his/her/its representative. The City Manager shall, within ten (10) calendar days of receipt of same, either accept, reject, or modify the findings and conclusions of the hearing officer and make a decision and issue a written order on the matter. If the City Manager rejects or modifies the decision of the hearing officer, the reasons therefor shall be included in the decision and order. The City Manager's action shall be final, unless otherwise provided for in a memorandum of understanding, or in a pay and benefit resolution adopted by the City Council for non-recognized employee groups.

c. All materials relating to any grievance including, but not limited to, minutes of the hearing, findings and recommendations and the final decision and order shall be available to the City Council for review, upon request.

(Res. No. 143 95-96, Res. No. 113-07)

APPENDIX E: GRASS VALLEY PERSONNEL COMMISSION

Section 99.01.010 CHARTER GRASS VALLEY, CALIFORNIA

ARTICLE IX

CIVIL SERVICE

Section 1: Policy:

(a) A merit system shall be established to provide an equitable and uniform procedure for the administration of personnel matters; to ensure that employment be made on the basis of merit and fitness so that the best qualified persons available are brought into the service of the City; and to make certain that employment by the City provides for security of tenure.

Section 2: The Civil Service System:

The City Council shall provide, by ordinance, for the regulation and maintenance of a Civil Service system governing personnel policies necessary to the effective administration of the employees of the City's departments and offices. No ordinance or other personnel rule, regulation or policy shall be adopted unless approved and recommended by the Personnel Commission. All regular employees shall be included within the Civil Service system except as follows:

- (1) All elective offices;
- (2) All members of boards and commissions;
- (3) All Department Heads;
- (4) City Administrator and deputies, if any; and
- (5) City Attorney and deputies, if any.

Any person on the effective date of this Charter amendment holding a position of employment which was previously included in the Civil Service system, shall be entitled to Civil Service status for the duration of his/her employment in said position. No department head may be removed except upon a four fifths (4/5) vote of the Council.

Section 3: Personnel Commission Created:

(a) There is hereby created a Personnel Commission consisting of five (5) members, who and whose immediate families shall have no monetary connection with the City government. Their term of office shall be four (4) years as provided herein. The members shall be appointed by the City Council. Annually one of the members, by a majority vote of the Commission shall be elected chairman. Members may be removed from the Personnel Commission by a four-fifths (4/5) vote of the Council, for malfeasance, neglect of duty or inefficiency.

(b) Members shall serve until their successors have been appointed and duly qualified.

Section 4: Powers of the Personnel Commission:

(a) The Personnel Commission shall act as an independent agency of the City charged with the duty to ensure the proper and impartial functioning of the Civil Service system and to advise the Council and City Administrator on matters relating to personnel administration.

(b) Commission meetings shall be held on a regular basis as the Chairman or a majority of the members determine appropriate. Such meetings shall be open to the public, except as to those matters which are authorized by law to be conducted in closed session.

(c) The Commission shall hear appeals of employees within the Civil Service pertaining to grievances and disciplinary action as provided herein. The determination of the Commission with respect to any such appeals shall be final and binding upon the City.

Section 5: Appointments:

All appointments to the civil Service shall be made by the City Council in accordance with the provisions of the Civil Service Rules and Regulations.

Section 6: Abolishment of Positions--Layoffs--Reinstatement:

(a) Whenever in the judgement of the City Council it becomes necessary, in the interests of economy and efficiency or because of need for the performance of the work no longer exists, the City council may abolish any position or positions in the Civil Service.

(b) The employee or employees holding such positions are to be laid off in accordance with the Civil Service Rules and Regulations.

Section 7: Disciplinary Action:

(a) The Department Head or the appointing authority shall have the authority to discharge, demote, reduce in pay, reprimand, suspend or otherwise discipline any employee in the Civil Service, in accordance with the procedure as established by the Civil Service Rules and Regulations.

(b) Employees in the Civil Service shall have the right to appeal as provided by the Civil Service Rules and Regulations and in accordance with State law. All appeals shall be conducted in accordance with the requirements of this Charter and the Civil Service Rules and Regulations.

Section 8: Staffing and Funding:

(a) The City Council shall provide the Commission with sufficient staffing and funding as reasonably necessary to properly discharge its function. In no event shall control of Commission funding be used to impair the independence or impartiality of the Commission.

(b) Commissioners shall receive compensation for their attendance at meetings equal to that received by members of the City Planning Commission.

(c) The Commission shall have the authority to select its own part time clerical staff and for matters pertaining to grievances and discipline, legal counsel.

City of Grass Valley, Municipal Code Title 2. Administration and Personnel

Section 2.36.010 Administration of the merit system--Reserved to the personnel commission.

The Grass Valley City Charter Article IX establishes a civil service system for the City of Grass Valley. Said system was established to provide an equitable and uniform procedure for the administration of merit system personnel who shall be designated as members of the "Classified Service". Under the charter persons in the merit system shall be employed on the basis of merit and fitness so that the best qualified persons available are brought into and remain in the service of the city. It is not the intent of this article to usurp or otherwise interfere with those powers and duties granted unto the personnel commission in said charter. (Ord. 475 § 1 (part), 1991: prior code § 1-7.010)

Section 2.36.020 Personnel included in classified service.

All positions within the employment of the city at the time of adoption of this ordinance shall be part of the classified service subject to the Merit System, except those positions excluded under Section 2.36.030 or exempted under Section 2.36.040 below. (Ord. 475 § 1 (part), 1991: prior code § 1-7.020)

Section 2.36.030 Officers and other personnel excluded.

The following offices, positions or employments within the City, hereinafter referred to as "excluded personnel" are totally excluded from the scope of this ordinance and are not subject to the merit system:

- A. Elected officers;
- B. Members of appointed boards and commissions and committees;
- C. Persons engaged under contract or agreement who supply expert, professional, technical or any other services;
- D. Volunteer personnel including, but not limited to, firefighters and volunteer fire department officers. (Ord. 475 § 1 (part), 1991: prior code § 1-7.030)

Section 2.36.040 Personnel exempted from the classified service.

The following positions of employment within the city, hereinafter referred to as "exempt employees" are exempt from the classified service:

- A. The city administrator;
- B. The city attorney;
- C. The following department heads:
 1. Finance Director,
 2. City Engineer,
 3. Building Official;
- D. Emergency employees who are hired to meet the immediate requirements of an emergency condition, such as extraordinary fire, flood, or earthquake which threatens life or property;
- E. Non-permanent, hourly, extra help, seasonal or other employees;
- F. Such other positions as the appointing authority shall create as exempt positions. (Ord. 475 § 1 (part), 1991: prior code § 1-7.040)

Section 2.36.050 Classification of new positions.

A. At the time of creation of any new positions in city employment, the appointing authority shall determine whether the position shall be exempt or part of the classified service, and so notify the personnel commission in writing.

B. In making this determination, the appointing authority shall consider the charter's requirement for "an equitable and uniform procedure for the administration of personnel matters," and avoid, where practical, the creation of positions, whose classification as exempt or merit system is inconsistent with the classification of existing similar positions.

C. In the event a position is not clearly designated as exempt or part of the classified service, it shall be exempt until expressly included in the classified service by official action of the appointing authority. (Ord. 475 § 1 (part), 1991: prior code § 1-7.050)

Section 2.36.060 Rules governing classified service employees.

Employment in the classified service of the city shall be regulated by rules adopted by the personnel commission and by such supplementary regulations and procedures as adopted by the city council. (Ord. 475 § 1 (part), 1991: prior code § 1-7.060)

Section 2.36.070 Rules governing exempt employees.

The city council may, by ordinance or resolution, regulate the employment of exempt employees. The personnel commission shall have no authority in connection with exempt employees, unless authorized by the city council. (Ord. 475 § 1 (part), 1991: prior code § 1-7.070)

Section 2.36.080 Appointment of exempt employees.

The appointing authority may utilize whatever selection system it deems appropriate for the selection and appointment of an exempt employee. The appointing authority may request that the personnel commission assist in the selection process. However, the participation of the personnel commission does not, in any way, impose merit system requirements or rights on the hiring process or the position when filled. (Ord. 475 § 1 (part), 1991: prior code § 1-7.080)

Section 2.36.090 Termination of exempt employees.

Except as otherwise specifically provided in this chapter, state law or written agreement duly executed by the city and the employee, exempt employees serve at the will and pleasure of their appointing authority, and have no vested right to their position. No cause or notice need be given for termination of exempt employees. (Ord. 475 § 1 (part), 1991: prior code § 1-7.090)

APPENDIX F: COUNTY OF BUTTE MERIT SYSTEM AND PERSONNEL RULES 2006,
RULE 7.11 NOTICE OF DISCIPLINARY ACTION

County of Butte Merit System and Personnel Rules 2006

7.11 NOTICE OF DISCIPLINARY ACTION

An appointing authority or designee who proposes to take disciplinary action against a regular employee of a suspension without pay that is greater than five (5) days, shall first serve the employee with notice of the proposed discipline including the right to respond to the appointing authority prior to the effective date of the action being taken. The notice shall be served at least seven (7) days prior to the effective day of the action and shall be served on the employee personally or by certified mail. If the employee is personally served, the date of service shall be considered the first day of notification. If the employee is served by certified mail, neither the day of the mailing nor the following calendar day shall be considered in the seven (7) calendar days for notification purposes.

The notice shall clearly specify the action taken, the reason for the action including the particular facts and specific incident(s) involved, the effective date(s) of the action, and, in cases of demotion, shall contain a statement as to the wages and duties of the new position. The notice shall also advise the employee that a copy of the material upon which the action taken is based is attached or available for review upon request during normal business hours; of the right to be represented and to respond verbally or in writing to the appointing authority or designated representative prior to the effective date of the action; and of the right to appeal the action and the time within which the appeal may be made.

An appointing authority or designated representative taking disciplinary action against an employee may, when it is necessary for the operation of the department or to conduct an investigation into the allegations, assign the employee to less critical duties during the five (5) day review period. When extraordinary circumstances exist that require the immediate removal of the employee from the premises, an appointing authority or designated representative may place the employee on paid suspension, subject to call, not to exceed five (5) days. If required to provide for full investigation of the allegations made against an employee, the five (5) day period for reassignment or paid leave may be extended up to twenty (20) days. A copy of all notices and written responses shall be forwarded to the Director - Human Resources.

APPENDIX G: SUTTER COUNTY PERSONNEL RULES AND REGULATIONS,
SECTION 18.0, DISCHARGE, DISMISSAL, SUSPENSION, REPRIMAND, REDUCTION
IN RANK, AND RIGHT OF APPEAL,, RULE 18.1 REGULAR EMPLOYEE, RULE 18.3
REMOVAL FROM WORK SITE PRIOR TO WRITTEN NOTICE -- CONDITIONS, AND
RULE 18.5 CAUSES FOR DISCIPLINE

SUTTER COUNTY PERSONNEL RULES AND REGULATIONS
(April 2009)

SECTION 18.0
DISCHARGE, DISMISSAL, SUSPENSION,
REPRIMAND, REDUCTION IN RANK, AND RIGHT OF APPEAL

18.1 Regular Employee

Any regular employee, which term does not include elected officials and appointed department heads, may be reprimanded, suspended, demoted, dismissed or have his/her merit increase delayed or reversed pursuant to Section 13.5, by the appropriate appointing authority in the manner specified in this Section. Nothing contained in this Section which is declaratory of existing regulations shall be construed as preventing the Board of Supervisors from reprimanding, suspending, demoting or dismissing any appointed Department Head.

(Adopted 6/24/86, General, Supervisory and Professional Units MOU)

(Adopted 6/17/86, Fire Safety MOU)

(Adopted 8/30/88, Law Enforcement Unit)

(Adopted 7/8/86, Confidential Agreement)

(Adopted 7/8/86, Resolution 86-99, Management)

(Adopted 7/8/86, Deputy County Counsels Agreement)

18.2 Right to Respond to Charges Prior to Disciplinary Action

A. General, Supervisory, Professional, Management, Confidential and Fire Units,
Deputy County Counsels and Assistant County Counsel

At least five calendar days prior to the effective date of a "significant disciplinary action" against an employee with regular status, the appointing authority shall give written notice of such disciplinary action to the employee personally, or by certified mail. Such written notice shall include:

- a. A description of the action taken and its effective date or dates.
- b. A clear and concise statement of the reasons for such action, including the acts or omissions on which the disciplinary action is based.
- c. A statement advising the person of the right to respond, either verbally or in writing, to the authority proposing the action prior to its effective date.
- d. A statement that a copy of the materials upon which the action is based is attached or available for inspection upon request.
- e. A statement advising the person of the right to appeal to the Board of Supervisors and the time within which the appeal must be made. Prior to taking such significant disciplinary action, the appointing authority should normally discuss such action with the Personnel Director and submit a copy of the written notice to the County Counsel to review for legal sufficiency. A copy of the written notice shall be filed in the employee's official personnel record.

(Adopted by the Sutter County Board of Supervisors 1/27/09)

B. Law Unit

At least five calendar days prior to the effective date of a "significant disciplinary action" against an employee with regular status, the appointing authority shall give written notice of such disciplinary action the employee personally, or by

certified mail. Such written notice shall include:

- a. A description of the action taken and its effective date or dates.
- b. A clear and concise statement of the reasons for such action, including the acts or omissions on which the disciplinary action is based.
- c. A statement advising the person of the right to respond, either verbally or in writing, to the authority proposing the action prior to its effective date.
- d. A statement that a copy of the materials upon which the action is based is attached or available for inspection upon request.
- e. A statement advising the person of the right to appeal to the Board of Supervisors and the time within which the appeal must be made. Prior to taking such significant disciplinary action, the appointing authority should normally discuss such action with the Personnel Director and submit a copy of the written notice to the County Counsel to review for legal sufficiency. A copy of the written notice shall be filed in the employee's official personnel record.
- f. At any time before the matter is submitted for decision, the appointing authority may file or permit the filing of an amended or supplemental accusation. All parties shall be notified thereof. If the amended or supplemental accusation presents new charges the agency shall afford respondent a reasonable opportunity to prepare his defense thereto, but he shall not be entitled to file a further pleading unless the appointing authority in his/her discretion so orders. Any new charges shall be deemed controverted, and any objections to the amended or supplemental accusation may be made orally and shall be noted in the record.

(Adopted 07/25/96 Law Enforcement Unit MOU)

18.3 Removal From Work Site Prior to Written Notice - Conditions

Under unusual circumstances, an employee may be removed from the work place prior to receiving the five days written notice specified in Section 18.2. In these cases the Department Head should document circumstances which indicate that the employee's continued presence at the work site could have detrimental consequences. In such a situation, the employee may be suspended until the notification process is complete and a decision reached regarding the potential disciplinary action.

(Adopted by the Sutter County Board of Supervisors 1/27/09)

18.4 Suspension

A suspension imposed by an appointing authority shall not exceed two (2) biweekly pay periods (28 calendar days). All suspensions shall be without pay, except that an employee may be suspended with pay if the suspension occurs prior to a decision by the Department Head regarding disciplinary action.

(Adopted by the Sutter County Board of Supervisors 1/27/09)

18.5 Causes for Discipline

A. General, Supervisory, Professional, Fire Safety, Confidential, and Management Units, Deputy County Counsels and Assistant County Counsel

Any of the following causes are sufficient causes for reprimand, dismissal, suspension or demotion; but the list is indicative rather than inclusive or restrictive,

and reprimands, dismissals, suspensions or demotions may be based on reasons other than those specifically mentioned:

- a. Intentional misrepresentation or concealment of any material fact in connection with obtaining employment.
 - b. Unsatisfactory performance.
 - c. Unexcused neglect of duty.
 - d. Insubordination.
 - e. Dishonesty.
 - f. Drunkenness on duty.
 - g. Addiction and/or use of narcotics or habit forming drugs without medical prescription while on duty.
 - h. Unexcused absence without leave not constituting abandonment of employment as defined in Section 14.10 of the Sutter County Rules Governing Employee Compensation, Benefits and Working Conditions.
 - i. Conviction of a felony.
 - j. Discourteous treatment of the public or other employees.
 - k. Political activity which is in violation of federal or state laws.
 - l. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with employment.
 - m. Violation of any of the provisions of Section 19.0, Prohibited Activities.
 - n. Negligent or willful damage to public property or waste of public supplies or equipment.
 - o. Misappropriation or misuse of county funds or property.
 - p. Failure or refusal to undergo any physical, medical, and/or psychiatric exam authorized by these rules.
 - q. Failure to comply with such safe working practices, as may be promulgated by the County, in the discharge of duties during work hours.
 - r. Unlawful discrimination, including harassment, on the basis of race, religious creed, color, national origin, ancestry, disability, sex, or age against the public or other employees while acting in the capacity of an employee.
 - s. Failure or refusal to cooperate in an investigation being conducted by the County.
 - t. Conviction of a misdemeanor involving moral turpitude.
 - u. Violation of the provisions of Section 23.0, Discriminatory Workplace Harassment Policy.
 - v. Knowingly making a false accusation or knowingly providing inaccurate information about an employee that could lead to disciplinary action of the employee if the information or accusation were true.
- (Amended 02/26/08, General, Supervisory and Professional Units MOU)
(Amended 08/26/08, Fire Safety Unit MOU)
(Amended 02/26/08, Confidential Unit Agreement)
(Amended 02/26/08, Resolution 08-020, Management Unit)
(Amended 02/26/08, Deputy County Counsels & Assistant County Counsel Agreement)