

# REDLINE

## Chapter 14 CIVIL SERVICE

### ARTICLE I. IN GENERAL

#### **Sec. 14-1. Commission members; appointments, terms, vacancies; organization; officers.**

(a) There are hereby re-established three civil service commission positions. Such positions shall be separately designated as "Position One," "Position Two," and "Position Three."

- (1) The mayor, when making an appointment to the civil service commission, and the city council, when confirming such appointment, shall specify the position for which such appointment or confirmation is made.
- (2) The initial term of each position as hereby re-established shall commence on June 15, 1983. The initial term of Position One shall expire on June 14, 1986; the initial term of Position Two shall expire on June 14, 1985; and the initial term of Position Three shall expire on June 14, 1984.
- (3) Following the aforesaid initial terms, the term of office for each position on the civil service commission shall be three years, to commence on June 15 and to expire on June 14.
- (4) Any appointment to a vacancy on the commission caused by death, resignation or otherwise, or caused by the failure of an appointee to qualify within ten days after appointment, shall be for the unexpired term of the deceased or retiring member or of the appointee failing to qualify.

(b) No sooner than June 15, and no later than June 30 of each year, the members of the commission shall meet to organize for the transaction of business. At such organizational meeting, the members shall take the constitutional oath of office and shall elect one member as chairman, and one member as vice-chairman.

- (1) It shall be the duty of the chairman to preside at all meetings of the commission; it shall be the duty of the vice-chairman to preside at such meetings in the absence of the chairman.
- (2) The chairman and vice-chairman each shall be elected for a period of one year or until a successor is elected.
- (3) The numerical positions established in subsection (a) of this section are for identification purposes only, and shall bear no relation whatsoever to the chairmanship or vice-chairmanship of the commission.

# REDLINE

(c) The mayor, subject to confirmation by city council, may appoint an alternate for each designated position on the civil service commission. Each alternate shall serve only when the regular member of the civil service commission in his position is absent and unable to attend meetings and perform commission duties for any reason. Alternates must have the same qualifications as regular members of the civil service commission and shall have all the powers and duties of a regular member but only when acting in the regular member's absence. An alternate shall be empowered to act as a regular member whenever the regular member notifies the secretary of the commission that the regular member is unable to attend a meeting of the commission or when the secretary of the commission is unable to secure the attendance of the regular member. The period of time during which an alternate may serve on the civil service commission shall expire at the end of the term of office of the regular member for which he serves as an alternate. An alternate shall not serve in any proceeding under Chapter 143 of the Local Government Code.

**Sec. 14-1.1. Human resources department—Established.**

The human resources department, formerly known as the department of personnel and originally established as and formerly known as the department of civil service, is hereby continued. To the extent that this Code or any other ordinance or any motion, resolution, contract or other document devolves duties upon the former department of personnel or department of civil service or upon the employees or director thereof, then such references shall be construed to mean the human resources department or the employees or director thereof, respectively.

**Sec. 14-2. Same—Director.**

(a) The office of human resources director, formerly known as the director of the department of personnel and originally established as and formerly known as the director of civil service, is hereby continued. The director shall be appointed by the mayor, with the approval of the city council, shall be over 21 years of age, and shall receive such salary as the city council may allow. Before entering upon the discharge of the duties of his office, the director shall take the constitutional oath of office, ~~and, if the mayor and council deem it advisable, he may be required to give bond in such sum and with such sureties and such conditions as the mayor may direct.~~

(b) It shall be the responsibility of the director to keep the minutes of the meetings and proceedings and all the books, records, etc., of the civil service commission. Such director shall be the secretary and the chief examiner for such commission, and as such shall perform the duties provided in the rules and regulations of such commission. He shall perform all such other duties as are now or may be hereafter imposed upon him by the civil service commission or the mayor and council.

(c) It shall be the responsibility of the director to supervise and administer the city's employee benefit programs, including but not limited to the city's pension programs (excluding those duties required by state law to be performed ~~by state law~~ by

# REDLINE

the city treasurer), health benefits, long term disability, life insurance, sick leave, ~~and vacation leave~~, and deferred compensation, and to serve as the administrator of the city's "125 Plan."

## **Sec. 14-3. Duty of commission to prepare and submit rules and regulations.**

It shall be the duty of the civil service commission to prepare, adopt and submit, as needed, to the city council for its approval such rules and regulations for the proper conduct of its business in carrying out the purpose of the Charter, and thereafter such amendments, alterations and changes of such rules and regulations as it may find necessary and expedient.

## **Sec. 14-4. Classification of offices and positions.**

It shall be the duty of the civil service commission to classify all of the offices of, and places or positions of employment in the service of the city with reference to the examinations provided for in the Charter, in this chapter and in the rules and regulations of the civil service commission, except those exempt from civil service under the Charter. The offices, places and positions so classified shall constitute the classified civil service of the city, and no appointment, employment, promotion, reappointment or reinstatement to any position, office or place shall be made except in accordance with the Charter, this chapter and the rules and regulations of the civil service commission.

## **Sec. 14-5. Examination and minimum age of applicants; exclusion of applicants likely to impair service.**

(a) It shall be the duty of the civil service commission to provide that all applicants for offices, places or positions in such classified civil service shall be subject to examination, either written, or oral ~~or unassembled~~, which shall be public, open, competitive and free to ~~the those authorized to work~~ citizens of in the United States of America, ~~with specified limitations as to residence, age, health, habits and moral character;~~ provided, however, that the minimum age of applicants for original employment in such classified civil service shall be 18 years ~~and provided, further, that any applicant whose presence in the public service would likely create friction among the employees thereof and thereby impair such service shall be excluded therefrom.~~ Such examinations shall be practical in their nature and character and shall relate to those matters which will fairly test the relative capacity of the person examined to discharge the duties of the office, position or place to which he seeks to be appointed. No question in any examination shall relate to political or religious opinions or affiliations. The commission shall have direct charge and control of all examinations of whatsoever character.

(b) No applicant shall be entitled to take any examination hereinabove provided for unless the applicant shall have filed with the human resources director his application prior to the date of examination.

# REDLINE

## **Sec. 14-6. Appointments, promotions, etc., to be made in accordance with Charter, chapter and rules and regulations of commission.**

Appointments, employments, promotions, reappointments and reinstatements in the classified civil service of the city shall be made only in accordance with the provisions of the Charter, this chapter and the rules and regulations of the civil service commission, and no officer or employee of the city having the power of appointment, employment, promotion, reappointment or reinstatement of persons to offices, places or positions in such classified civil service shall appoint, employ, promote, reappoint or reinstate any person to or in any office, employment, position or place in such service except in accordance with the Charter, this chapter and the rules and regulations of the civil service commission.

## **Sec. 14-7. Procedure when vacancy exists; suspension of employees.**

When any office, employment, place or position in the classified service is vacant, which is desired to be filled, following the conclusion of an open, competitive and free examination, the director shall certify to the commission a list of eligibles for appointment to the office, employment, place or position in the classified service ~~the mayor or the director of the department shall notify the civil service commission that a certification is requested, and the human resources director shall certify to the department director concerned the names of the three persons standing highest on the eligible list or register for the class and grade to which such office, employment, place or position belongs, and the department director concerned shall select an individual from a list of eligibles for appointment to the office, employment, place or position in the classified service.~~ one of the three persons certified. Such appointment or employment ~~from eligible lists derived from the original entrance examinations~~ shall be on probation as provided by the Charter and rules and regulations of the commission, and such appointees shall not be removed or dismissed except as provided therein; provided, that nothing herein shall prevent the director of any department or office from temporarily suspending officers or employees for disciplinary purposes, for reasonable periods, not exceeding 15 work days. It shall be the duty of the mayor to indefinitely suspend employees upon the recommendation of the respective department director. The commission shall be notified of any such suspension immediately and may, at its discretion or upon request of the mayor, investigate same and determine whether just cause therefor exists.

## **Sec. 14-8. Transfers from one department to another.**

The civil service commission shall have the power to so amend its rules that any employee in the classified service in the city may be transferred by such commission from one department to another, for the good of the service, provided such transfer is satisfactory to the director of the department to which the employee is transferred, and to the director of the department from which he is transferred.

# REDLINE

## **Sec. 14-9. Duty of city officers and employees to assist commission.**

It shall be the duty of all officers and employees of the city to aid and assist the civil service commission, and the members and officers and employees thereof, in all proper ways in carrying out the Charter provisions, this chapter and the rules and regulations of the commission, and it shall be an offense for any such officer or employee to willfully fail or refuse so to aid and assist, or to willfully hinder, obstruct or delay the civil service commission, or the members, officers or employees thereof, in any manner in carrying out such Charter provisions, this chapter and such rules and regulations.

## **Sec. 14-10. Suspension of provisions requiring competition.**

When an office, employment, place or position in the classified service, in which peculiar and exceptional qualifications of a scientific, professional or educational character are required, is vacant, upon satisfactory evidence that, for special reasons, competition in such special case is impracticable, and that the position, etc., can be best filled by the selection of some designated person of high and recognized attainments in such qualities, the commission may suspend all provisions requiring competition in such case, but no such suspension shall be general in its application to such place.

## **Sec. 14-11. Offenses in regard to examinations.**

No person or officer or employee shall willfully or corruptly, by himself or in cooperation with one or more other persons, defeat, deceive or obstruct any person in respect to his right of examination, or corruptly or falsely mark, grade, estimate or report upon the examination or proper standing of any person examined, or aid in so doing, or willfully or corruptly make any false representation concerning the same or concerning the person examined, or willfully or corruptly furnish to any person any special or secret information for the purpose of either improving or injuring the prospects or chances of any person so examined, being appointed, employed, promoted, reappointed or reinstated.

## **Sec. 14-12. Hearings and investigations by commission.**

The civil service commission may hold hearings concerning all matters touching the enforcement and effect of the Charter provisions for civil service, this chapter and the rules and regulations of such commission concerning the action of any officer or employee of the city in respect to the execution of such Charter provision, this chapter or the rules and regulations of the commission; and in all cases of investigation under the preceding provision, or of an appeal of an officer or employee in the classified service from the action of any officer, department director ~~of department~~ or employee of the city removing, discharging or ~~finally~~ suspending him from his office or employment, the commission, for the purpose of holding such hearing, investigation or inquiry, shall have the power to take testimony, administer oaths and affirmations, subpoena and require the attendance of witnesses and the production of books and papers pertinent

# REDLINE

thereto, and to examine such witnesses, books and papers, and it shall be the duty of all persons to obey such subpoenas, produce such books, records and papers, and to submit to examination and give their testimony, in all cases where such testimony, evidence, etc., could be required in a court of competent jurisdiction.

## **Sec. 14-13. Compiling, checking, certifying and correcting payrolls.**

(a) It shall be the duty of every department director to complete ~~compile~~ all payrolls as promptly as possible, and to deliver same to the administration and regulatory affairs department ~~to the office of the civil service commission~~ in good order, properly signed and ready for the city controller. ~~It shall also be the duty of each department to furnish one employee to deliver such payrolls, which employee shall assist the civil service commission in the checking of that department's payroll at the time same is delivered. It shall be the duty of each supervising authority to review and approve time cards, electronically, of direct reports prior to the pay period close.~~

(b) It shall be the duty of ~~the civil service commission~~ to check all payrolls to determine the legality of employment. Each item shall conform to the civil service records. ~~the director to maintain the active payroll status of all employees.~~

(c) Payrolls checked under this section shall comply with personnel actions certified by the director. ~~be certified in writing by the human resources director and, when checked by another employee of the commission, shall bear the initials of the employee checking the same.~~

(d) After payrolls have been checked and certified by the administration and regulatory affairs department ~~commission~~, they shall be delivered immediately to the city controller.

(e) ~~When items on any payroll are found to be incorrect and are red-lined, the same shall be corrected by the department responsible before the payroll is certified by the commission. No payroll shall be honored by the city controller which has not been first checked and found correct by the commission.~~

(fe) It shall be the duty of the ~~civil service commission~~ administration and regulatory affairs department director to notify the department ~~of any city department~~ director if any irregularity, mistake or error is found in the names or in the amount of compensation on any payroll; and to refuse to certify to the correctness of such payroll until the mistake or error is rectified. All ~~directors of departments~~ department directors, when notified of such irregularity or error, ~~by telephone or otherwise~~, shall at once rectify same ~~correct the error~~, in order to facilitate the work of certifying to the correctness of any such payrolls.

# REDLINE

## **Sec. 14-14. Salaries and wages not to be approved or paid for improper employment.**

(a) The city controller shall not approve the payment of, or be in any manner concerned in paying, any salary or wages to any person for services as an officer or employee of the city unless such person is occupying an office or place of employment according to the provisions of the Charter and ordinances of the city and is entitled to payment therefor.

(b) ~~No paymaster, treasurer, director of administration and regulatory affairs, or other officer or agent of the city shall willfully pay, or be in any manner concerned in paying, any person any salary or wages for services as an officer or employee of the city, unless such person is occupying an office or place of employment according to the provisions of the Charter and ordinances of the city and is entitled to payment therefor.~~

## **Sec. 14-15. Responsibility for irregularities or mistakes in payrolls.**

It is the object of this article to hold responsible the directors of departments furnishing the payrolls for all irregularities, mistakes and incorrectness ~~appearing in the amount of compensation set opposite each name on each payroll.~~

## **Sec. 14-16. Violation of Charter, this chapter or rules and regulations.**

(a) Whenever any person, or any officer or employee of the city has any positive duty imposed upon him, or any person or any officer or employee of the city is prohibited from the doing of any act by the Charter provisions for civil service, by this chapter or by the rules and regulations of the civil service commission, now or hereafter adopted and approved by the city council, and filed in the office of the city secretary, a willful failure, refusal or neglect to perform such duty, or the willful doing of any act prohibited, shall constitute an offense, and the officer or employee or person convicted thereof shall be punished as provided by section 1-6 of this Code.

(b) If any person, or any officer or employee of the city shall be convicted under subsection (a) above, any office, place or position which he may hold with the city shall, by force of such conviction, be rendered vacant, and such person, officer or employee shall be incapable of holding any appointive office, or any office, place or position in the classified service of the city.

## **Sec. 14-17. Soliciting compensation or offering compensation to hasten an employee's retirement or resignation.**

(a) A city employee commits an offense if the city employee pays or offers to pay anything of value to another city employee with the intent to hasten the retirement or resignation of the other city employee in order to gain a promotion in rank, classification or salary or an opportunity therefor.

## REDLINE

(b) A city employee commits an offense if the city employee solicits or accepts anything of value from another city employee upon the representation that such payment will hasten the retirement or resignation of the city employee making the solicitation or accepting the payment in order to gain a promotion in rank, classification or salary for the city employee solicited or making the payment or an opportunity therefor.

(c) The term "*city employee*" as used in this section includes any person employed by the city at the time of the offense whether holding a position that is classified under the Municipal Civil Service System created pursuant to Article Va of the City Charter, a position that is classified under the Firemen's and Policemen's Civil Service System created pursuant to ~~Article 1269m, Tex. Rev. Civ. Stat.~~ Chapter 143 of the Texas Local Government Code or a position that is not classified.

(d) Any person who violates this section shall, upon conviction, be punished by a fine of exactly \$500.00.

### **Sec. 14-18. Creation of § 401(a) plan authorized.**

(a) This section applies to any employee of the city, other than a police officer or fire fighter classified under Chapter 143 of the Texas Local Government Code, who upon termination of city employment is entitled to a combined gross benefit amount exceeding \$5,000.00 under section 14-170 and/or article III of this chapter for accumulated but unused vacation leave and sick leave benefits. This section shall not be applicable if the termination results from the death of an active city employee.

(b) City council hereby authorizes the establishment of a retirement savings plan under 26 U.S.C. § 401(a) and other applicable provisions of federal income tax laws and regulations. The plan shall be as established and amended from time to time by ordinance of the city, and it shall be administered by a third party administrator retained from time to time by contract with the city, as authorized by ordinance.

(c) Notwithstanding any provision of section 14-170 or article III of this chapter to the contrary, any terminating employee to whom this section applies shall forfeit his right to ordinary cash compensation for a portion of the combined gross termination benefit amount otherwise payable under section 14-170 and/or article III of this chapter that is equal to the lesser of: (1) the combined gross termination benefit amount, or (2) the amount of any applicable contribution limit for the plan as established by federal income tax laws and regulations. The amount so forfeited shall be allocated to an account in the name of the employee within the plan established under subsection (b) of this section.

### **Secs. 14-19—14-26. Reserved.**

# REDLINE

## DIVISION 1. RULE 1. DEFINITIONS

### **Sec. 14-27. — ~~Enumeration~~ Definitions and rules of construction.**

The following words, terms and phrases, when ~~they appear~~ used in article I of this chapter and these rules and regulations shall have these meanings assigned to them in this section, unless otherwise clearly indicated in the text:

*Accumulated* (in reference to time or leave). Days and fractions thereof which are credited to an employee's vacation or sick allowance and gained through length of service with the city.

~~*Active duty.* The actual performance of work or duties prescribed by ordinance, or the actual performance of work or duties assigned by the supervisor or department director.~~

*Allocate (allocation).* Official determination of the class and pay level in which a position in the classified service is deemed to exist.

*Appeal.* A request in writing by an employee of the city addressed to and filed with the civil service commission, in the manner and within the time provided by the Charter and these rules, seeking an investigation, review or hearing of facts therein represented to constitute a deprivation or impairment of rights vested in such employee as a member of the classified service.

*Appointee.* An employee of the city who is not an elected official nor one working on a contract basis.

*Appointing authority.* The mayor.

*Appointment.* The designation of ~~a person an individual~~ by the appointing authority to become appointed to an employee in a position.

*Article Va.* Article Va of the City Charter ~~of the city~~, which creates civil service.

*Budgetary reasons.* Generally assigned in connection with releases, suspensions, or terminations, that occur when available funds for a department, division or section, or project are depleted, withdrawn by the proper authorities, or when ~~expected~~ necessary revenues fail to materialize.

*Certification.* A written statement which advises of confirmation of conditions, individuals or positions by the constituted authority or authorities.

*Charter.* City Charter ~~of the city~~.

# REDLINE

*Chief examiner.* ~~The director of the department of civil service~~The human resources department director.

*Civil service or civil service employee.* All city employees, other than probationary employees, embraced within the classifications recognized by the commission and not ~~otherwise exempted~~ excepted from civil service by the Charter.

*Civil service staff.* The employees in the offices of the commission.

*Class.* A group of positions which, having common characteristics or similar educational and general qualification requirements or encompassing positions sufficiently alike as to character of duties and responsibilities, warrant for the group essentially the same treatment for all civil service purposes; as, "the engineering class," "the skilled labor class," etc.

*Classification.* The title of an individual position in the classified service; also the title of an individual employee in the service.

*Classification plan.* Orderly arrangement of positions into separate and distinct classes so that each class will contain those positions which involve similar duties, responsibilities, and qualification requirements.

*Classified (position—service).* All positions and their titles which have been created by council and are under civil service.

*Commission.* The civil service commission of the city.

*Compensation plan.* Schedule of salaries or salary ranges established by ordinance for the several classes of positions in the service of the city; the provisions whereby all positions of a given classification will be paid either the same salary or within the same salary range.

*Council.* ~~The city council of the city.~~

*Demotion (demote).* A change in (or change to) the employment status of an civil service employee to a position of less responsibility or lower classification or lower pay grade salary range.

*Department.* Each department, division of a department, office, or division of an office of the city that is listed on Exhibit A at the end of Division 11, without regard to whether it constitutes a department of the city government.

*Department director.* Each person appointed as a department director by the mayor and confirmed by the council to assume the administrative duties of the various departments of the city. For the purposes of administering this article only, each person appointed by the mayor as the director or head of the division

# REDLINE

for each division of the mayor's office shall be considered a "department director." For purposes of mayor and councilmember offices, the mayor shall be considered the department director.

~~———Demotion. A change in the employment status of a civil service employee to a position of less responsibility or lower classification or salary range.~~

*Director.* The human resources department director.

*Discharge.* Act of removing an employee from the roster of the city dispensing with, terminating the services of, or dismissing an employee.

~~———Disciplinary (action—measure). A penalty imposed upon a civil service employee by the legally constituted authority.~~

*Eligible (eligibility).* One whose name is placed upon an employment, reemployment, reappointment or promotional list for a given class or classification after fulfilling the requirements therefor; attainment by an applicant, after passing the prescribed tests and fulfilling the qualifications, of the right to be certified as a prospective incumbent of a position.

~~———Employment list (same as an eligibility list). Names arranged in order of merit, of persons who have passed suitable tests and possess the necessary qualifications and who are entitled to be certified for original appointment under the provisions of article Va and these rules.~~

*Examination.* A standard means by which an individual's or group's knowledge, skill, and/or ability in a particular area is evaluated, but which is not an employee performance rating. Examinations must be open, competitive, and free in accordance with the charter.

*Full-time (employees, employment, position).* ~~These~~ Refers (or relates) to employees who are scheduled to work 80 hours per pay period full days or full shifts regularly week after week throughout the year.

~~*He (she).* Use of the masculine noun or pronoun shall be held to include the feminine; use of the singular shall be held to include the plural and conversely.~~

*Hearing.* A commission ~~session of the commission~~, following notice to the interested party or parties, held for the purpose of receiving evidence and thereafter reaching a decision with respect to matters or controversies appropriately submitted to it for determination.

*List of applicants.* Those persons who have completed and submitted an application for employment, grouped according to merit, qualifications or pass/fail grade.

## REDLINE

List of eligibles. A final list of applicants who have passed suitable examinations and/or possess the necessary qualification and who are eligible to be certified for an original appointment or reappointment under the provisions of Article Va and these rules.

~~Noncivil service employees. These~~ An employee not under civil service as elsewhere defined by the charter.

*Number.* Use of the singular shall be held to include the plural, and use of the plural shall be held to include the singular.

*Original appointment.* Authorization for an eligible to begin work at a stated time and with a specific title and salary; such eligible shall not have previously worked for the city.

Part-time (employees, employment, position). ~~Employees~~ Refers (or relates) to employees of the city who normally are scheduled to work less than 80 hours per pay period. ~~an eight hour day or a 40-hour week.~~

Pay grade. A designated level in a compensation plan with an assigned salary range to be used for any classifications determined to have that relative value.

Performance rating. The prescribed methods for determining the varying degrees of efficiency, production, capacity and the general contribution of a civil service employee.

~~Regular~~ Permanent (position, employee, employment). A position requiring full-time regular employment which has reasonable expectancy of continuing indefinitely; an employee occupying such a position and who has fulfilled the required probationary period of one year in a civil service position; appointment to such a position of an eligible who has reasonable expectancy of continuance permanence even though his probationary period may not have ended, this as distinguished from temporary employment, emergency employment, etc., where in the latter cases a limited term of employment was contemplated when either the position was created or the appointment was made.

*Probationary employee.* An employee who has not completed his first year of employment; after original appointment or reappointment; in a civil service position, or who has not completed the necessary six months if in a position to which he has been promoted.

~~Probationary period.~~ Length of time during which an employee is on trial and is expected to prove his complete fitness for his position.

## REDLINE

*Promotion.* A change in the employment status of an an civil service employee to a position of ~~more responsibility or higher classification or salary~~ pay grade.

*Promotional examination.* Examination of employees as a selection procedure for awarding promotions on the basis of merit. ~~All tests of fitness, separately or taken together, and restricted to classified employees, for determining the eligibility of applicants for promotion.~~

*Promotional probationary employee.* An employee who has completed his probationary period after original appointment or reappointment in a civil service position, but has not completed the necessary six months in a position to which he has been promoted.

*Reappointment.* Authorization for a former employee to resume city employment, usually the position he last held but also any ~~similar~~ position, which appointment of itself (without the approval of the commission then given) does not restore seniority formerly held by such appointee.

*Reassignment of duties.* Result of changing by a supervisor, section head, division head or department director of an employee's duties or responsibilities, either whether gradually or suddenly, whereby these duties or responsibilities then vary substantially from those in the job description and/or most recent employee performance plan ~~statement of duties~~ last given for that position.

*Reclassification.* Change in title of a position; also change in title of an employee either through promotion, demotion or transfer.

~~Reemployment. (See reappointment).~~

*Reemployment list.* Names of persons, arranged in the order prescribed by these rules, who formerly occupied classified positions in the classified service and are entitled to certification to the appointing authority for reappointment after a layoff.

*Regular-Permanent (position, employee, employment).* ~~A~~ In reference to a position, one requiring full-time ~~regular~~ employment which has reasonable expectancy of continuing indefinitely; in reference to an employee, one who occupies ~~occupying~~ such a position and ~~who~~ has fulfilled the required probationary period of one year in a civil service position; and in reference to employment, appointment to such a position of an eligible who has reasonable expectancy of continuance ~~permanence~~ even though his probationary period may not have ended, ~~this~~ as distinguished from temporary employment, emergency employment, etc., where in the latter cases a limited term of employment was contemplated when either the position was created or the appointment was made.

# REDLINE

Reinstatement. The ~~commission's~~ return of an employee to regular employment of the city with or without back pay and/or seniority.

~~Salary range.~~ The amounts from minimum to maximum ~~and minimum amounts for a pay grade fixed by the council~~ within which an employee's a specific salary may be determined.

~~Service ratings.~~ The ~~prescribed methods for determining the varying degrees of efficiency, production, capacity and the general worth of a civil service employee.~~

*Supervising authority.* An employee who is charged with the responsibility of overseeing the work of one or more other employees, usually a department director but may also be a division head, section head, ~~foreman~~ or other designated employee.

*Suspension.* Period of time during which an employee, through disciplinary action ~~of a superior~~, is forbidden to work and is denied salary ~~during such period.~~

Termination. The cessation of employment with the city.

~~Test of fitness.~~ Means or measures, which may include separately or collectively written or oral examinations and medical examinations as performed by ~~designated examining physicians.~~

*Title.* The designation given to a position; also the designation of an incumbent of a position in the classified service.

## **Sec. 14-28. Task system employees.**

(a) Upon the request of the department director of the department in which they are employed, ~~permanent regular, full-time~~ employees of the city may be designated by order of the commission as "task system employees." Requests to the commission for such designations shall be made by the department director who shall demonstrate to the commission each of the following:

- (1) The identity of classifications or positions of employment requested to be designated for task system employees.
- (2) That the work performed within those positions or classifications is not temporary in nature, that the work is of a kind which varies in a predictable manner by season or otherwise so that more work is required to be performed in some workweeks than in other workweeks, and that the annually adjusted regular workweek of the employees therein requires the actual performance of an average of 40 hours of work per week.

## REDLINE

- (3) That the department director has developed a means of equitably assigning the employees involved so that each will be required to perform a specifically assigned task or tasks as his weeks' work, which task or tasks will, on an annually adjusted basis, require the actual performance of an average of 40 hours of work per week.
- (4) That it is impracticable to assign the employees involved to a regular and uniform 40-hour workweek.

(b) The task system employee designation may be removed by the commission at any time upon its own motion or upon request of the department director and a finding that the conditions justifying its establishment as defined in subsection (a), above, no longer exist.

(c) Task system employees shall be considered to be full-time employees, and those task system employees who are not otherwise exempt from civil service classification under section 2 of article Va, ~~section 2 of the Charter~~ shall be entitled to civil service classification.

(d) The tasks to be performed as a regular workweek by each task system employee shall be as assigned from time to time by the department director. Such tasks shall be allocated so that they will require the actual performance of an average 40 hours of work per week on an annually adjusted basis. The department director shall maintain, by use of time clocks, a record of the hours actually worked by each task system employee by name and classification and shall furnish an annual report thereof for each calendar year to the commission by the thirty-first day of January of the next year so that the commission may properly review its designation pursuant to subsection (b) above. Any task system employee who is aggrieved by his or her task assignments shall be entitled to the recourse provided by the grievance procedure established in section 14-50 of this Code.

(e) Notwithstanding the requirements of subsections (a) and (d), above, the ~~civil service~~ commission may, by order, find that an average of a lesser number of hours of productive effort is equivalent to an average of 40 hours per week on an annually adjusted basis for any classifications or positions of employees authorized for task system assignment, if their department director demonstrates to the commission each of the following:

- (1) That the employees are required by virtue of the nature of their work to perform strenuous and continuing physical labor without an opportunity for the rest periods which are usually afforded to employees in other classifications;
- (2) That no practicable means exist to restructure the employees' work assignments to provide such rest periods; and

## REDLINE

- (3) That the work tasks assigned to the employees will require a productive effort which is equivalent to not less than 40 hours of work as performed by other city employees who are assigned to labor under the normal working conditions associated with city employment.

Employees who are authorized to perform a reduced workweek pursuant to this section shall, nevertheless, not be subject to overtime benefits in any workweek unless and until all of the requirements of section 14-168 of ~~the City~~ this Code, specifically including the requirements of subsection (e) thereof have been met. The designation of any position or classification of task system employees as equivalent workweek employees shall not impair their right to civil service classification under subsection (c) above. Consistent with the nature of the work to be performed, the commission shall establish minimum time in attendance work hour requirements, which shall in no event be less than 32 hours per week, for payroll reporting purposes as to each position or classification of task system employment which is authorized to perform an equivalent workweek under this subsection.

**Secs. 14-29—14-32. Reserved.**

**Sec. 14-33. Appointment of commission.**

There shall be a civil service commission duly installed and authorized to operate under the provisions of section 1, of a ~~Article Va of the City Charter~~.

**Sec. 14-34. Purposes of rules.**

~~These rules are adopted to conform with provisions of article Article Va of the City Charter and shall be known as the civil service rules for employees of the city (other than fire fighters and police officers ~~firemen and policemen~~); and are adopted to conform with provisions of Article Va for the purpose of establishing procedures for handling those matters which are the responsibility of the civil service commission in such a way as to ~~insure~~ ensure:~~

- (1) That all appointments and promotions to, and separations from, positions in the classified service shall be made on the sole basis of merit and fitness, which, so far as is practicable, shall be ascertained by means of competitive examinations; ~~which may be either written, oral or unassembled.~~
- (2) That a plan of classification and fair compensation for positions therein shall be adopted which will conform with the principle of like pay for like work.
- (3) That employment in the service of the city shall be made attractive as a career.

# REDLINE

- (4) That each civil service employee shall be encouraged to render his best service in compliance with all of the provisions of his employment.
- (5) That a modern, comprehensive efficiency-performance rating system shall be provided whereby economy and effectiveness in personal services may be promoted to the mutual benefit of the employees and the taxpayers.

## **Sec. 14-35. Application of rules.**

These rules shall apply to all positions in the classified service, except those as otherwise provided for in section 2 of ~~article~~ Article Va.

## **Sec. 14-36. Adoption and publication of rules.**

Civil service rules, when adopted by the commission and approved by the council, shall be effective but shall also be published publically through the use of any media most likely to reach citizens of the city, employees and applicants, including electronic media. ~~in some newspaper in the city (section 4, article Va). Insertion of such notice in a single issue of a Houston newspaper of general circulation shall be treated as being in compliance with this requirement.~~

## **Sec. 14-37. General powers and duties of the commission.**

(a) In accordance with the provisions of sections 2 and 4 of ~~article~~ Article Va, the commission shall have the power to amend, repeal or supplement these rules at any time and adopt new rules which shall become effective upon approval thereof, by the ~~city~~ council.

(b) The commission shall, in cooperation with the mayor and ~~city~~ council, develop job descriptions and qualifications, and recommend to the council a compensation plan of properly related scales of pay for all classes of positions.

(c) The commission shall, in cooperation with the mayor and ~~city~~ council, develop regulations covering vacations, sick leaves, leaves without pay, injury leaves, and other leaves, which will take effect when approved by the council.

(d) The commission shall develop a system of efficiency-performance ratings and administer same for employees in the classified service.

(e) The commission shall develop and enforce a code of rules and regulations which, being based upon merit, efficiency, production, character and conduct, will provide for:

- ~~(1-)~~ a Appointments and employment in all positions of the classified service; ~~for~~
- ~~(2-)~~ r Reduction in forces; ~~for~~

# REDLINE

~~(3-) The order in which employees shall be laid off and reinstated;~~ and for

~~(4-) a~~ Appeals from dismissals, demotions and suspensions.

(f) The commission shall direct the administration and enforcement of the civil service rules and regulations and ordinances which affect the civil service commission. Should the ~~civil service~~ commission have reason to believe any officer, board, commissioner or person concerned with appointment, layoff, demotion, suspension, indefinite suspension, discharge or promotion; has abused such power by executing or recommending any action in violation of the civil service rules and regulations or ordinances or Charter provisions covering civil service, it shall be the duty of the commission to make an investigation and, if violation of the provision or spirit and intent of the law or rules and regulations is found, the commission shall make a report thereof to the mayor and ~~city~~ council and recommend appropriate action.

(g) The commission shall order reinstatement without loss of pay for any employee who has been ~~discharged, demoted, indefinitely suspended,~~ reduced in rank or compensation, suspended or transferred for religious, racial or political reasons.

(h) The commission shall order reinstatement without loss of pay for any employee in the classified service who has been ~~discharged, demoted, indefinitely suspended,~~ reduced in rank or compensation in any instance where, following a hearing, the commission finds as a fact that such ~~discharge, demotion, indefinite suspension,~~ reduction in rank or compensation was not affected in a manner consistent with these rules and regulations.

## **Sec. 14-38. Duties of director.**

The duties of the director shall be:

- (1) To recommend for action by the ~~civil service~~ commission rules and regulations for the proper administration and development of the merit system for employees of all departments.
- (2) To recommend for action by the ~~civil service~~ commission rules and regulations for the establishment of a classification plan for all positions affected herein, based upon similarity of duties and responsibility.
- (3) To recommend for action by the ~~civil service~~ commission rules and regulations for the establishment of a compensation plan for all positions affected herein, in conjunction with the directors of the departments.
- (4) To recommend for action by the ~~civil service~~ commission rules and regulations for the establishment of open, competitive and free examinations.

## REDLINE

- (5) To recommend for action by the ~~civil service~~ commission reasonable provisions for preference for service of persons who:
  - a. ~~Have~~ Have been members of the armed forces of the United States covered by the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended; and
  - b. ~~Who~~ Who are able to produce evidence of an honorable discharge.
- (6) To recommend for action by the ~~civil service~~ commission such other rules and regulations, including but not limited to matters pertaining to attendance of witnesses, filling of vacancies, promotions, demotions, probationary periods, layoffs, discharges, reductions and suspensions, and appeals from actions taken therewith; to make recommendations tending to establish and maintain harmony between the commission and the various city departments; to improve selection methods; to reduce excessive turnover of personnel in the departments; to forestall excessive increases in personnel; to make available to the various departments the best personnel practices; to develop an adequate and comprehensive system of personnel records; and, generally, to perform at the direction of the commission any other work necessary or proper for making effective the provisions of ~~article Va of the Charter~~ Article Va of the Charter and the rules and regulations and the ordinances pertaining thereto.
- (7) To hold examinations, pass upon qualifications of applicants, establish lists of eligibles ~~lists~~ as needed, and to certify ~~names~~ lists of eligibles to department directors for filling vacancies in the city's service.
- (8) To serve as executive head of the civil service staff, to direct and supervise all of its administrative and technical activities, and with the approval of the commission, and under the budgetary procedure of the city, to direct and control the expenditures from appropriations for the ~~civil service~~ commission.
- (9) To serve as secretary of the commission, to keep the minutes and records thereof, and in all other proper ways to facilitate the actions and proceedings of the commission.
- (10) To examine and qualify for appointment all employees of the commission except the director and the members of the commission, and to plan, direct and supervise their work.
- (11) To establish and maintain a ~~roster~~ record of all city employees, showing as to each the classification, position held, the salary or wages, the address, and any other necessary data, and ~~record~~ thereof.

# REDLINE

- (12) With the approval of the commission, to allocate each position in the classified service to its appropriate class and pay level in the classification plan and reallocate positions as conditions warrant.
- (13) To recommend to the commission for its adoption amendments to ~~of~~ ~~classes in~~ the classification plan.
- (14) To make such investigations as he may deem desirable with respect to the enforcement and effect of the civil service provisions of the Charter, the ordinances, and the rules over which the commission has jurisdiction, and to make such other investigations as the commission or the mayor may request, and to make special reports thereon.
- (15) To aid the mayor and department directors in handling matters over which the commission has jurisdiction.

**Secs. 14-39—14-4344. Reserved.**

DIVISION 3. RULE 3. OFFICERS, MEETINGS, ETC., OF COMMISSION

**Sec. 14-44. Reserved.**

**Sec. 14-45. Meetings generally.**

All meetings of the commission shall be held ~~in the city hall~~ an appropriate public meeting place, shall be open to the public, and shall be held on the days and hours that the commission from time to time may designate. Special meetings may be held on the call of the chairman or the director.

**Sec. 14-46. Rules of order, evidence or procedure.**

The commission shall not be bound by any rules of order, evidence, or procedures in its meetings, hearings, or investigations, except such rules as it may establish.

**Sec. 14-47. Quorum.**

Two members of the commission shall constitute a quorum for the transaction of business. A meeting shall be adjourned in the absence of a quorum.

**Sec. 14-48. Power to take action.**

Neither the commission nor any member shall have power to take action except by authority of majority vote in the meeting assembled.

# REDLINE

## **Sec. 14-49. Duty of director to attend meetings; minutes of meetings.**

The director, ~~or in case of his absence or disability, the one acting for him, his designee~~ shall attend all meetings of the commission; shall act as its secretary and have recorded its official actions in the minutes; and shall have recorded a commissioner's dissent with his reasons therefor when such there be. The director ~~or chairperson~~ may ~~shall~~ cause the minutes to be transcribed and ~~shall presented them for approval or amendment~~ amendment at the next meeting. The official copy of the minutes and any amendments thereto, ~~or a true copy thereof, shall be certified by the chairman or vice chairman, and attested by the director, and be kept in the office of the civil service commission.~~

## **Sec. 14-50. Grievable issues.**

Any civil service protected employee who feels aggrieved due to:

- ~~(1-)~~ Nonselection for a promotion to a referred position; and/or
- ~~(2-)~~ Hazardous working conditions not intrinsic to the job; and/or
- ~~(3-)~~ Employee performance ~~evaluations~~ ratings with an overall rating of less than acceptable or effective or the equivalent; and/or
- ~~(4-)~~ Failure to receive a performance ~~evaluation~~ rating if delayed more than six months; and/or
- ~~(5-)~~ Failure to be paid overtime or compensatory time, if eligible, appropriate, and worked; and/or
- ~~(6-)~~ Written reprimand;

may file a grievance and pursue it through as many of the grievance steps provided by this chapter as desired ~~and provided by this chapter~~.

## **Sec. 14-51. Grievances generally.**

At each step in ~~these~~ the grievance proceedings, the following shall apply:

- (1) At all times, the department will give the grievant at least four calendar days notice of any step meeting unless a shorter period is mutually agreed upon. At each step in the process the participants shall appear in person and fully, candidly and openly discuss the grievance in an effort to mutually resolve the disputed issues.
- (2) The grievant must submit the grievance on the appropriate forms provided by the director with the grievant's original signature. The grievance form may not be signed by a representative, or faxed, e-mailed, or otherwise

## REDLINE

transmitted by electronic means to the grievance coordinator or the commission.

- (3) The grievant and department management are required to mutually disclose non-privileged information, names of witnesses/persons with relevant knowledge, and provide documents to be used in the step meetings. Failure by either party to disclose known witnesses/persons with relevant knowledge, documents or information may be grounds for exclusion/inclusion of such evidence, where appropriate. Failure by the department to disclose known witnesses/persons with relevant knowledge, documents or information shall subject the person responsible to discipline.
- (4) With the approval of a grievance examiner, a grievance may be discontinued at any step in the process for the grievant's unexcused failure to disclose witnesses/persons with relevant knowledge, documents or information, or failure to cooperate or respond. Such decisions may be reviewed by the commission.
- (5) The dates required herein for scheduling meetings/hearings may not be extended except where an investigation for criminal misconduct is pending, where the failure to meet a date is the result of an authorized leave of absence or excused illness of the grievant, or the parties mutually and voluntarily agree in writing to extend the deadlines. Any extension granted must be reasonable and not unduly or unnecessarily delay the grievance process.
- (6) Upon mutual agreement, grievances by more than one grievant arising out of the same or similar fact situations may be consolidated and heard concurrently at the discretion of the department.
- (7) Grievances by the same grievant may be consolidated and heard concurrently at the discretion of the grievance examiner at step III.
- (8) The grievant and the department shall be allowed to have a representative present at any meeting or hearing authorized herein, though each shall be conducted so that the grievant may represent himself if he so chooses. No representative need be a licensed attorney. Any representative must be in compliance with section 14-183(a)(10) of this Code.
- (9) No electronic or other technological mode of recording may be used at step I or II proceedings by any participant.
- (10) Grievance forms and related documents shall not be filed in a grievant's personnel file. Every reasonable effort shall be made to keep grievances

## REDLINE

and the documents related thereto from disclosure to persons without a need to know, except as required by state, federal or local law.

- (11) Neither step I or II meetings nor step III hearings shall be open to the public.
- (12) In each step of the grievance process, the grievant shall be allowed a reasonable time off from his regular duties to file his grievance and to attend step I or II meetings or a step III hearing thereon, and such time off shall not be charged against the grievant. Such allowed time does not include time for preparation, meetings with witnesses or representatives, drafting responses or gathering evidence, etc. At its discretion, the department may provide an alternative work schedule or overtime as needed to accommodate the grievant's attendance at step meetings or hearings.
- (13) Subpoenas may be issued only for step III hearings and will be limited to a maximum of five fact witnesses per grievance. Upon presentation of the subpoena, city employees will be allowed reasonable time for travel and participation at step III hearings and, ~~if city employees,~~ will be compensated (regular or overtime hours, as appropriate) by the department.
- (14) If a grievant resigns his position with the city or is indefinitely suspended while a grievance is pending at any step proceeding, the grievance shall become moot and all further processing shall be discontinued.

### **Sec. 14-52. Grievance filing period.**

Grievances shall be in writing and received by the designated departmental grievance coordinator within 30 calendar days (including weekends and official city holidays) after the occurrence of the action or inaction or the date on which the grievant knew or should have known through the exercise of reasonable diligence of the action or inaction for which the civil service protected employee feels himself aggrieved. This time period shall be mandatory and jurisdictional.

### **Sec. 14-53. Compliance oversight.**

The director shall recommend to the commission for approval a procedures for the handling of grievances. It shall be the responsibility of the director to monitor, coordinate and facilitate the processes of this grievance procedure. The director may designate one or more persons who shall assist the designated departmental grievance coordinators to resolve any questionable or challenged grievances, schedule and coordinate step III hearings, give timely and proper notice to all parties of step III hearings, and shall take such other and further action as shall be required to assure that

# REDLINE

this grievance procedure operates timely, correctly and effectively in compliance with these rules.

## **Sec. 14-54. Grievability challenges.**

If there is any doubt as to whether an issue is grievable under section 14-50 above, a written request may be directed to the director to have the grievance referred to a grievance examiner for a determination of grievability. Either the grievant's department, the director or the grievant may challenge grievability at any point in the grievance process and submit written arguments on the issue of grievability.

- (1) At the request of either the grievant or the department, the grievance examiner's determination of grievability may be referred to the commission for review without hearing or testimony. Written arguments may be submitted to the commission; however, no other issues or new evidence on the issue of grievability may be submitted to the commission by either party at any time.
- (2) When a request for a determination of grievability is filed with the director or the commission, all subsequent time frames in the grievance step process shall be suspended during the period of referral and review by the grievance examiner and/or the commission.

## **Sec. 14-55. Grievance process.**

The grievance process shall consist of four steps.

- (1) Step I:
  - a. The step I grievance form may be obtained from the departmental grievance coordinator. The completed form must be received by the grievance coordinator on or before the deadline. The date the grievance is filed shall be documented on the grievance form by the grievance coordinator. Thereafter, the grievance coordinator must arrange a meeting between the grievant and the immediate supervisor or another supervisor in the chain of command who might better resolve the grievance at this step, and/or other appropriate party(ies) to be concluded no later than 30 calendar days after the date on which the grievance was received. If the meeting is not concluded within 30 calendar days, the grievance shall proceed automatically to step II.
    - (+)1] No later than 24 hours before the meeting, the parties shall mutually exchange all documents reasonably related and relevant to the grieved issue.

## REDLINE

(ii)[2] If the grievance may not be resolved by the immediate supervisor because of a lack of authority to resolve the issue, steps I and II may be combined.

(iii)[3] If the grievant's immediate supervisor is the department director, steps I and II are automatically combined and considered concurrently. In such case, the department director shall meet with the grievant and shall not appoint a designee.

(iv)[4] When a performance rating of less than effective—~~EPE evaluation~~ is grieved, at the option of the grievant, steps I and II may be combined and the grievance may proceed directly to a step II meeting. If steps I and II are combined, all time frames shall ~~remain~~ be the same as at step II.

b. Regardless of the outcome of the step I meeting, the immediate supervisor or appropriate party shall respond in writing not later than ten calendar days after the date on which the meeting was concluded. The response must include the supervisor's evaluation of the grievance and proposed resolution(s), if any. Any proposed resolution must be within the authority of the supervisor or approved by the department director.

(i)[1] The supervisor or appropriate party shall submit the completed written response to the grievance coordinator. The grievance coordinator shall forward the supervisor's response to the grievant with a copy to the director. The response shall be either personally delivered by the grievance coordinator to the grievant or be served by certified mail, return receipt requested, to the last address of record provided by the grievant on the step I grievance form.

(ii)[2] If no written response is submitted by the supervisor or appropriate parties within the ten calendar days following the conclusion of the step I meeting, the grievance coordinator shall have an additional ten calendar days to automatically schedule a step II meeting. Notice shall be given to the grievant, the department director/designee and the supervisor. A supervisor or appropriate party who fails to comply with the requirements of this section or to do so timely, may be disciplined.

(iii)[3] An untimely filed response may be accepted at the discretion of the grievant, but will not avoid the automatic referral to

# REDLINE

step II unless the grievant requests that the grievance be withdrawn.

- c. Proposed resolution(s) for each grievance by a supervisor or appropriate party must be accepted by the grievant entirely or not at all. If the proposed resolution is rejected, the grievant may file a step II grievance form with the department grievance coordinator. If the grievant fails to timely file a step II grievance form, the grievance process is terminated. If the grievant accepts the proposed resolution(s), the department must implement the proffered resolution(s).

## (2) Step II:

- a. To continue the grievance, the grievant must reject all of the proposed step I resolution(s), specifying reasons for the rejection on the step II grievance form. The completed step II grievance form must be received by the department grievance coordinator no later than the tenth calendar day after the date on which the grievant was served with the supervisor's response. If certified mail is used to give the step I response to the grievant, the step II grievance form still must be received no later than the tenth calendar day after the date the step I response ~~is~~ was mailed.

- b. The grievance coordinator shall arrange a step II meeting between the grievant, the immediate supervisor and/or the appropriate party(ies) at step I and the department director or a designee of at least an assistant director level or the equivalent selected by the department director.

~~(i)~~[1] Where steps I and II are combined, and the grievant's immediate supervisor is not the department director, the department director or a designee of at least assistant director or the equivalent shall hear the grievance. If the grievant's immediate supervisor is the department director, the combined step I and II meeting shall be with the department director and may not be held with a designee from any level.

~~(ii)~~[2] The step II meeting must be concluded no later than 45 calendar days after the date on which the step II grievance form was received by the department's grievance coordinator. If the meeting is not concluded within 45 calendar days, the grievant has ten calendar days to request that a grievance examiner order the grievance to proceed to step III without a step II meeting. Such a request must be

## REDLINE

filed with the civil service coordinator at the human resources department in accordance with procedures recommended by the director and approved by the commission.

~~(iii)~~[3] No later than 24 hours before the scheduled step II meeting, both parties must mutually exchange through the grievance coordinator, any additional non-privileged documents not previously disclosed or discovered through the exercise of reasonable diligence or provided at step I which are related to the grievant and reasonably related to his grievance or the grieved issue. Documents or information indirectly related to the grievant or his issue or related to other employees may be disclosed at the discretion of the department and the grievant respectively.

c. Within ten calendar days after the date the step II meeting concludes, the department director or the designee who conducted the step II meeting shall provide a written response to the grievance issues together with proposed resolution(s) to the grievance coordinator who shall be responsible for service of the response on the grievant in person or by certified mail, return receipt requested, to the last address of record provided by the grievant on the step II grievance form.

~~(i)~~[1] Any proposed resolutions must be within the authority of the department director or designee.

~~(ii)~~[2] If no written response is submitted by the department director or the designee within the ten calendar days following the conclusion of the step II meeting, the grievance coordinator shall have an additional ten calendar days to refer the grievance to the civil service coordinator of the human resources department to automatically set the grievance for a step III hearing. Notice shall be given to the grievant, the department director or the designee and the supervisor that the matter was automatically referred to step III.

~~(iii)~~[3] An untimely filed response may be accepted at the discretion of the grievant, but will not avoid the automatic referral to step III unless the grievant requests that the grievance be withdrawn.

## REDLINE

- d. Proposed step II resolution(s) must be accepted by the grievant entirely or not at all. If the grievant accepts the proposed resolution(s), the department must implement the resolution(s).
- (3) Alternative mediated Step II proceeding for written reprimands or a performance evaluation rating of less than effective: At the time of filing of a step II proceeding only for a grievance of a written reprimand or an employee performance evaluation (EPE) rating of that is less than effective, the grievant may elect to proceed to a step II meeting with a department director or designee or to proceed to request a mediated step II in accordance with the procedures set forth below.
- a. The director shall be authorized to establish a mediation program and to develop procedures for its implementation. Prior to implementation, the commission shall approve rules and procedures for step II mediations, which shall be in writing and made available to all parties. A mediation program for this purpose shall have certified mediators who shall not be city employees. A mediation program established under this section shall have the following features:
    - ~~(i)~~[1] At step II, instead of a meeting with the department director or a designee, the parties may mutually agree to mediate either the grievable issue (written reprimand or less than effective EPE performance rating). A mediated step II must be accomplished within the same time frames as a nonmediated step II proceeding.
    - ~~(ii)~~[2] If a settlement is reached and reduced to writing and signed by all parties at the mediated step II, no further appeal is allowed.
    - ~~(iii)~~[3] If a settlement is not reached through mediation, a grievant who wishes to continue the grievance shall file a step III request for grievance hearing with the director on or before the tenth calendar day following the conclusion of the mediated step II meeting.
  - b. No mediator may be called to testify at the commission or at a step III hearing.
- (4) Step III: The director or his designee shall coordinate all proceedings at steps III and IV.

Grievance examiner

## REDLINE

- a. The completed step III request for grievance hearing form obtained from the human resources department must be received by the director on or before the tenth calendar day following service of the written step II department response or the conclusion of the mediation, as applicable. If the grievant fails timely to file a step III request, the grievance process is terminated. The request for grievance hearing must specify the reasons for the rejection. The director or his designee shall notify the department grievance coordinator when a step III request is filed and serve notice of the scheduled hearing date and time on the grievant and the department director/designee at least ten calendar days before the hearing.
- b. The grievance examiner shall conclude an evidentiary hearing within 60 calendar days after the date of receipt by the director of the step III request for grievance hearing. If the grievant fails to appear at the hearing, the grievance examiner shall dismiss the grievance.
- c. Step III grievance hearings shall be limited to the issues articulated at step I and shall be conducted as informal administrative proceedings. The presumption in favor of the departmental action mandated by the Charter is rebuttable. The burden shall be on the grievant to support the grievance by a preponderance of the evidence.
- d. At each hearing, the grievance examiner shall:
  - (i)[1] Review the current status of the grievance;
  - (ii)[2] Determine whether jurisdiction is proper;
  - (iii)[3] Determine the issues to be addressed and the extent to which evidence will be allowed;
  - (iv)[4] Determine who will be allowed to testify and what documentary and other evidence will be admitted; and
  - (v)[5] Hear the evidence and ensure that the proceedings follow due process and these rules.
- d. Written rules of evidence, order and procedure shall be adopted by the commission with copies provided to the parties at the time of filing. All rules adopted by the commission for step III hearings shall be enforced by grievance examiners. ~~A record shall be made of the hearing.~~ The hearing shall be transcribed.

## REDLINE

- e. The parties to a hearing before the grievance examiner shall be the grievant, his representative, ~~and the department,~~ by and through a departmental representative designated by the department director, and the department's attorney. Other persons who may attend include fact witnesses, appropriate supervisory personnel, and any other persons necessary for a fair determination of the grievance.
- f. The director, on behalf of the commission, Grievance examiners may issue subpoenas to require the attendance of witnesses and/or the production of books, documents, records or other tangible evidence relevant to any factual dispute. At the time of hearing, the grievance examiner will determine which witnesses will be allowed to testify. Alternative forms of allowable testimony (video, telephonic, deposition, affidavit, etc.) may be accepted in addition to or in lieu of live testimony if, in the opinion of the grievance examiner, such alternative testimony is credible, relevant, authentic, and reliable.
- g. All witnesses shall be examined under oath in relation to any matters relevant to the grievance issues. No general references or character evidence or testimony shall be allowed in any form, including character affidavits, declarations or statements. Persons to be called as witnesses may be excluded from the hearing room during the taking of testimony upon the request of either party.
- h. Grievance examiners may impose a reasonable time limit on the time allowed the parties to present evidence or examine witnesses, limit the number of witnesses to be heard in accordance with commission rules, and ~~may~~ restrict presentation of the issues or the proceedings.
- i. After the close of evidence and the arguments of the parties, if any, ~~are allowed~~, the grievance examiner may rule immediately into the record or take the matter under advisement. In either case, the grievance examiner shall file a written determination within 15 calendar days after the date the hearing concludes. The determination shall consist of findings of fact and conclusions of law based upon the grievance issues, evidence, legal principles and arguments presented, and recommendations for resolution of the grievance. The authority and powers of the grievance examiner are limited to those of the commission as reflected by the commission's rules, the Charter and ordinances. A grievance examiner may not exceed his/her jurisdiction or authority or recommend relief that is not otherwise authorized by this chapter or these rules.

## REDLINE

- j. The grievance examiner's determination shall be served on the grievant on or before the fifth calendar day following receipt by the director with a copy to the commission and the department director.
  - k. If the grievance examiner's determination is improper due to lack of jurisdiction, authority, due process or sufficiency of the evidence to sustain the examiner's findings or recommendations, either party may file a step IV request for review on a form provided by the director. If both the grievant and the department director fail to timely file a request for review, the grievance examiner's determination is deemed affirmed by the commission and the grievance process terminated.
- (5) Step IV:
- a. The completed step IV request for review form must be received by the commission on or before the tenth calendar day following service of the grievance examiner's determination.
  - b. The step IV request for review form provided by the director must include all of the reasons for the request, all agreed facts and issues through step III and may include a statement in support of the issues and/or a proposed resolution together with all supporting documentation and justification for the request. A copy shall be served upon the opposing party. No reply statement is allowed by the filing party.
  - c. The opposing party may file a response in support of the determination and/or a proposed resolution together with any agreed issues and/or facts and all supporting documentation and justification to be served upon the commission and all opposing parties at least seven calendar days before the scheduled commission review. The burden of proof remains on the grievant.
  - d. If both parties file a step IV request for review, each may prepare and file a response to the opposing party's request and statement.
  - e. Review by the commission shall be limited to the evidence before the grievance examiner, including the transcript from the Step III hearing. No new evidence may be submitted or introduced for the first time at step IV.
  - f. The commission may affirm, reverse, or modify the grievance examiner's determination and issue an order which shall be served upon the parties with a copy to the grievance coordinator and the

# REDLINE

grievance examiner. The commission's order is final for all administrative purposes.

## **Sec. 14-55.1. Grievance coordinators.**

(a) Each department director or designee shall appoint from among the employees in that department one or more grievance coordinator(s) who shall perform without additional compensation the ministerial, administrative and clerical duties required to coordinate this grievance procedure within the department. The title "grievance coordinator" is a functional designation of ~~the~~ each person(s) selected by the department to be the focal point for the initiation, facilitation and completion of the mechanics and logistics of the grievance process, and confers no official status, position, authority, or power upon the person(s) so appointed. The department director or designee may assign additional duties to ~~the~~ grievance coordinator(s) relating to any employee concerns review programs adopted by the department.

(b) The grievance coordinator(s) shall:

- (1) Be responsible for implementing the requirements of this procedure and ensuring timely and correct compliance with these rules within the department.
- (2) Provide all civil service protected employees with appropriate forms for filing grievances, upon request, along with written instructions or guidelines, but shall not assist or fill out the forms for the grievant.
- (3) Before accepting the grievance, receive and review the grievance form to ensure that it is:
  - a. Grievable as set forth hereinabove;
  - b. Complete in sufficient detail to inform the department of the factual basis;
  - c. Timely filed; and
  - d. Executed by a civil service protected employee.
- (4) Refer any questionable grievances in compliance with these rules.
- (5) Arrange and coordinate all meetings and proceedings required herein, notify all participants of scheduled meetings/proceedings, and may only facilitate scheduling of, but not conduct, meetings.
- (6) Coordinate the exchange between the parties of documents, forms, and other materials associated with each grievance.

## REDLINE

- (7) Provide responses or information regarding policies and procedures when requested.
- (8) Receive the results of the step proceedings from the departmental representatives and forward them to the appropriate participants.
- (9) Keep a permanent record of all grievances filed and maintain all grievance matters and related documents in segregated, confidential files. Subject to federal, state and local law, all information contained in such files may be disclosed on a need to know basis only. Any employee who otherwise discloses such confidential information without the grievant's authorization, may be subject to disciplinary action.

(c) Grievance coordinator(s) shall not:

- (1) Encourage or discourage grievances, nor represent or advocate for or against the grievant or the department at any time, at meetings or otherwise.
- (2) Participate in the decision making.

(d) ~~Copies of all~~ Original grievance forms and related documents filed with the grievance coordinator at each step of these proceedings shall be forwarded to the director.

### **Sec. 14-55.2. Grievance examiners.**

The commission shall appoint qualified persons, independent of all city departments and experienced in employment related issues, to preside over and conduct step III grievance hearings. Each appointment shall be for a term of one year. Reappointment to successive one year terms shall be at the discretion of the commission. The grievance examiner shall be responsible only to the commission.

- (1) A grievance examiner shall not be a city employee nor shall such examiner be considered an employee by such service to the commission.
- (2) An examiner may be removed from an appointment by a majority vote of the commission. Removal may be by resignation or for cause including, but not limited to, a violation of an ordinance or criminal laws whether misdemeanors or ~~felonies~~ felony including moral turpitude, continued failure to be available to hear grievances, negligence, or failure to perform the duties of an examiner timely, to follow the rules of the commission, or to provide due process.
- (3) For participation in the hearing and providing a written determination, each examiner shall be paid a fee set by the commission. A separate budget account shall be set up for this purpose by the director.

## REDLINE

- (4) The director shall provide each grievance examiner with a suitable location to hold hearings and sufficient clerical support to perform his duties.
- (5) Anyone who has a complaint against a grievance examiner, may file such complaint in writing with the director. Any such complaints will be set on the next agenda of the commission for review, whereupon the commission will determine the appropriate action to be taken (e.g. investigation, notice, opportunity to respond, etc.) with regard to such complaint~~(s)~~.

### **Sec. 14-55.3. Retaliation prohibited.**

It shall be a violation of the civil service rules and regulations for any supervisor to take any retaliatory action against any grievant for utilizing or participating in any of the grievance procedures established by this section. It shall also be a violation for a grievant to retaliate against a supervisor or another employee for participating in a grievance. If retaliation is alleged to have occurred, ~~it~~ that allegation shall be incorporated into the next succeeding step proceeding through step III.

### **Sec. 14-55.4. Notice of these procedures.**

The director shall provide a suitable notice explaining this grievance procedure and the grievant's rights thereunder and furnish an adequate number of copies to each city department. The department director shall cause to be posted in a prominent place at least one copy of such notice in each division within the department.

### **Sec. 14-55.5. Assistance by legal and human resources departments.**

When requested to do so by the commission, the director, or the department director of the grievant who has filed a grievance under this procedure, the legal and/or the human resources departments shall assist in the representation or resolution of a grievance.

### **Sec. 14-55.6. Record keeping requirements.**

The director shall be the official custodian of all records involving grievances after each grievance has been resolved. A repository of closed grievances shall be maintained ~~in~~ by the civil service coordinator of the human resources department.

### **Sec. 14-55.7. Nongrievable issues.**

Unless specifically authorized in section 14-50 above, other issues that concern employees shall be handled as set forth below:

- (1) *Employee concerns review programs.* All departments shall establish and implement programs with written procedures to address employee concerns which do not allege discrimination or are not expressly made

## REDLINE

grievable herein. The director shall establish guidelines for such programs which shall be approved by the ~~civil service~~ commission prior to the development of any departmental program. Regardless of the form or manner, programs such as peer review, employee representative councils, mediation or any other alternative dispute resolution mechanism, or any combination of programs may be implemented to address such issues.

- a. Each department's employee concerns review programs must be accessible to all of its employees regardless of civil service protection (e.g. probationary, ~~part time~~ part-time, appointed, executive, etc.).
  - b. Departments may reasonably limit concerns which can be addressed through this process. All programs and procedures and any amendments or subsequent changes must be approved by the commission prior to implementation.
  - c. There is no appeal to or review by the commission of decisions made by departments in any employee concerns review program.
- (2) *Nonreferral complaints.* The director shall establish procedures for addressing complaints regarding nonreferral of applicants to posted vacant positions.
- (3) *Classification challenge.* Any civil service protected employee who feels that he is performing duties outside the course and scope of his classification as defined by the position job description and/or the performance plan ~~EPE plan~~, may request a review of his actual duties performed to ensure conformity and consistency in that classification and the classification system.
- a. The request must be made in writing and filed with the employee's department grievance coordinator who shall be responsible for immediately providing a copy of the request to the department director or his designee.
  - b. The department director or his designee shall reviews the request and no later than ten calendar days after the request was provided by the grievance coordinator shall ~~to~~ determine whether the request has merit and ~~may~~ should be resolved internally without formal review by the director. The department director or designee may elect to:  
  
(+) [1] Make no change in the employee's duties; or

# REDLINE

~~(ii)[2]~~ Eliminate any duties alleged to be outside the job description of the employee's classification and/or EPE Plan, the employee's performance plan; or of the employee's classification;

~~(iii)[3]~~ Assign and/or substitute other duties that conform with the current job description of the employee's classification and/or reflect duties on the employee's performance plan; or to the employee within the current job description and EPE plan; or

~~(iv)[4]~~ Join the employee's request for a job audit and determination. Request an analysis and recommendation from the director. The department director shall immediately forward a request to notify the director of the request for review.

~~c.~~ If the department director or designee fails to take any action within ten calendar days after the employee's initial request, the grievance coordinator shall forward the employee's request to the director requesting a formal job audit.

~~d.~~ The director shall process the request as expeditiously as possible and issue a determination as to the propriety of the duties the employee is being asked to perform and whether they are within the existing classification. The final determination of the director shall be forwarded to the department grievance coordinator, the employee and the department director or designee.

~~ec.~~ If the department requests an analysis, upon receiving the director's determination, the department director shall have ten calendar days to elect to change the employee's duties those duties that are non-conforming with the employee's job description and performance plan and set forth in writing the proposed actions, if any, to be taken with respect to the employee's duties and/or classification, keep the same duties, or eliminate any additional duties not previously assigned to the employee alleged to be outside the employee's job description and EPE plan. The department director or designee shall respond in writing to the director within ten calendar days of receipt of the director's determination, setting forth the proposed action(s), if any, to be made with respect to the employee's duties and/or classification. The director will send a copy of the determination and the department director's response and proposed action to the requesting employee.



## REDLINE

sexual orientation, gender identity, Family Medical Leave Act status, workers' compensation status, or retaliation for filing a charge/claim of discrimination (discrimination factors) or for whistleblowing is not grievable through the grievance process. All such claims will be referred by the grievance coordinator to the office of the inspector general for investigation and/or to the director for a determination of severability, if necessary. All or any portion of the complaint which is not based upon a discrimination factor and which may be segregated and severed, may proceed through the grievance process if it is otherwise grievable herein even if the grievant has concurrently or subsequently filed a complaint on the nongrievable (discrimination based) aspects of the complaint with the office of inspector general and/or the Equal Employment Opportunity Commission (EEOC), or the ~~Texas Commission on Human Rights (TCHR)~~ Texas Workforce Commission (TWC).

- a. If at any point in the grievance process, a grievant alleges discrimination in either the grievance forms, at step proceedings, or in documentary materials, all such discrimination based issues, documents or testimony will be excluded from consideration.
- b. If the grievable issues cannot be separated from the discrimination based issues which are not grievable, further processing of the grievance will be suspended, and the grievance will be referred to the office of inspector general for an investigation of the discrimination complaint. If an allegation of discrimination is sustained, the office of inspector general will inform the department who will attempt to resolve the issues in accordance with the applicable law. If any nondiscrimination issues remain to be resolved after the office of inspector general issues its findings, any previously intertwined grievable issues will be referred back to the department (if referred at steps I or II) or to the director (if referred at step III) for completion of grievance processing of the remaining unresolved grievable (nondiscrimination) issues.
- c. A civil service protected employee who files a grievance must affirm in writing on a form provided by the director, that the grievance is not based upon a discrimination factor in whole or in part. If the grievant indicates a discrimination factor on the form, the grievant will be referred to the office of inspector general and the grievance handled as indicated above.
- d. Notices regarding the filing of federal and state law complaints of discrimination shall be posted in prominent places in compliance with state and federal laws. A charge of discrimination filed with the EEOC or the ~~TCHR~~ TWC will not affect a valid grievance based on the same facts, even if concurrently or subsequently filed with the

# REDLINE

processing of the grievance, so long as the grievance is processed in accordance with the rules set forth above and limited to the nondiscrimination based facts. EEOC and/or ~~TCHR~~ TWC determinations will not ~~effect~~ affect any grievance.

- (5) *City appeals to state court.* In cases of exceptional importance, legal precedence, or challenges to jurisdiction or legal authority, the city/department may seek a declaratory judgment from a state district court of Harris County construing the commission's order(s). The appeal must be filed within thirty days ~~of~~ after the date of the commission's order and ~~is~~ be based upon substantial evidence. The commission need not be joined as a necessary party.

## DIVISION 4. RULE 4. CLASSIFICATION PLAN

### **Sec. 14-56. Generally.**

The commission shall, in cooperation with the mayor and ~~city~~ council, have a classification plan which shall provide for the use of standard titles for all classes of positions in the classified service, and a written ~~definition~~ job description for each classification which will describe duties and responsibilities and set forth minimum requirements necessary for the successful performance of the task involved in each classification.

### **Sec. 14-57. Adding or revising classifications.**

The commission may, at any meeting, add new classifications or revise existing classifications whenever it is deemed advisable, always subject to the approval of the mayor and ~~city~~ council. There shall be no new classification proposed for council approval until the proposal, with full details of the duties involved, has been submitted to the commission for its recommendation.

### **Sec. 14-58. Interpretation of specifications.**

The specifications of the various positions in the classification plan are hereby declared to have the following force and effect:

- (1) The use of a particular expression or illustration as to duties, qualifications, or other attributes, shall not be held to exclude others not mentioned, provided such others are similar in kind or quality; nor to limit the power of the supervising authority to alter the detailed tasks involved in the duties of a position. But when a substantial change of duties is made, except for limited, temporary periods, such change shall be reported to the commission with a view to a possible reclassification of the position.

## REDLINE

- (2) In determining where a given position is to be allocated, the specifications shall be considered as a whole. Consideration shall be given to the ~~general duties~~ job purpose, the specific responsibilities, duties, tasks, responsibilities, and qualification requirements, and to the relation of the position to other classifications as all together affording a picture of the kind of employment the classification is intended to embrace.
- (3) The commission shall prescribe minimum and maximum age requirements of applicants for appointment to particular positions. The minimum age for employment in the classified service of the city shall be 18 years. ~~And for~~
- (4) For all classes, qualifications such as citizenship ~~legal authority to work,~~ honesty, ~~sobriety,~~ and industry, ~~and good physical condition,~~ shall be deemed to be required even though they may not be specifically mentioned in the definitions of the positions.
- (45) The statement of necessary special qualifications in the specifications of a position, comprising an enumeration of license, registration, or other legal qualifications required for the performance of the duties of the position, shall constitute a basis and source of authority for acceptance or rejection of applications for examination for the position and also for the evaluation of the qualifications of an applicant. When such qualifications exist in state laws or city ordinances, they shall be required even though they are not specifically stated in the specifications.

### **Sec. 14-59. Allocation of positions to classes.**

The commission shall allocate each position in the classified service to its appropriate class under the classification plan by placing in each class those positions substantially similar in nature, degree of difficulty, responsibility, and character of work which require generally the same kind and amount of training and experience for proper performance and which merit approximately equal pay. In making such allocations, provisions shall be made for the uniform application of the classification plan to positions in the various departments of the city.

### **Sec. 14-60. Status of incumbents of positions when allocated.**

Should a position in the original allocation process be allocated or reallocated to a different class in order to correct an error in its original allocation, the employee in such position shall be entitled to continue therein, provided he legally occupies that position by regular appointment thereto.

### **Sec. 14-61. Allocation of new positions and reallocation.**

(a) Whenever a new position is created by the mayor and ~~city~~ council, the commission shall allocate the position to its proper class in the classification plan, or if

# REDLINE

no suitable class exists, one shall be established as provided in these rules, and the position allocated thereto.

(b) Whenever the duties of a position are so changed as to justify its allocation to a different class, the commission shall make that reallocation and shall decide whether the change represents a promotion or a demotion for the incumbent of the position. Should it be a promotion, the incumbent must qualify therefor, provided he has not previously done so.

## **Sec. 14-62. Protesting allocations.**

If an employee believes that his position has been improperly allocated, he may protest by presenting his reasons therefor upon such forms or documents as the director may prescribe. The claim shall be investigated ~~by the director, then referred to the commission for its decision which shall be final~~ consistent with the rules under a classification challenge under section 14-55.7(3) of this Code.

## **Sec. 14-63. Use of position titles.**

The commission-approved title of each position shall be its official title for all purposes having to do with the position as such and shall be used to the exclusion of all other titles on all payrolls, budget estimates, official records and reports and personnel forms.

## **Sec. 14-64. Effect of classification on payments of salaries.**

No employee shall be appointed, employed, or paid under any title other than that of the class to which the position occupied by him is allocated.

## **Sec. 14-65. Right to make investigations.**

The commission shall have the right to initiate and conduct investigations of positions in the classified service at any time and to propose changes in the classifications of positions when the facts warrant such action. The commission, through the director, may secure from the employee or his supervisor a new statement of the duties and responsibilities of the position under consideration. Should a change to the classification be proposed, the ~~The~~ employee and/or the ~~supervising authority department director~~ shall have an opportunity to be heard by the commission before the revised classification shall become effective.

# REDLINE

**Secs. 14-66—14-70. Reserved.**

## DIVISION 5. RULE 5. COMPENSATION PLAN

**Sec. 14-71. Preparation, approval and revision.**

The commission, in cooperation with the mayor and ~~city~~-council, shall prepare or cause to be prepared a compensation plan for the classified service and from time to time propose such revision as may be deemed advisable so as to provide for uniform scales of pay for all classes of positions. No such plan shall become effective until it has been approved by the mayor and ~~city~~-council.

**Sec. 14-72. Adjustment of wages when plan made effective.**

When the compensation plan is made effective under these rules by ordinance, the employees within a certain classification who are receiving a salary or wage lower than the minimum for that classification shall have their salary or wage increased to an amount equal to the minimum for that classification. The salaries or wages which are in excess of the maximum for that classification shall be considered individually by the commission, ~~and they~~ which in turn shall make recommendations to the mayor and ~~city~~ council for their action.

**Sec. 14-73. Longevity pay.**

(a) Effective January 1, 1975, in addition to his base salary, each full-time ~~permanent~~ regular employee shall be paid longevity pay in the sum of \$2.00 per bi-weekly pay period for each one year period of actual service with the city. The maximum longevity to which any employee shall be entitled under this section shall not exceed \$50.00 per bi-weekly pay period.

(b) Longevity pay for employees of the city shall be computed on a bi-weekly basis being effective on the first day of the first pay period following the employee's anniversary date of employment with the city. In computing actual service, time spent on authorized absence on military leave for service with the armed forces of the United States shall be included, but any other period of time in which an employee is out of the service of the city, or absent on leave without pay in excess of 90 days ~~in any 36-month period~~, shall not be counted, provided, however, that in the case of extended leave without pay only the period in excess of 90 days shall not be counted.

**Sec. 14-74. Shift pay differential for certain city employees.**

(a) For the purposes of this section, the following phrases shall have the meanings hereby ascribed to them:

(1) *Day shift.* Any regularly scheduled work shift which begins between the hours of 5:00 a.m. and 12:00 noon.

# REDLINE

(2) *Second shift.* Any regularly scheduled work shift which begins between the hours of 12:00 noon and 6:00 p.m.

(3) *Third shift.* Any regularly scheduled work shift which begins between the hours of 6:00 p.m. and 5:00 a.m.

(b) All ~~permanent~~, full-time regular employees of the city, other than fire fighters and police officers ~~firemen and policemen~~, who are assigned to the second shift shall be paid, in addition to their base pay, shift differential in the amount of \$0.25 per hour.

(c) All ~~permanent~~, full-time regular employees of the city, other than fire fighters and police officers ~~firemen and policemen~~, who are assigned to the third shift shall be paid, in addition to their base pay, shift differential in the amount of \$0.35 per hour.

**Secs. 14-75—14-78. Reserved.**

## DIVISION 6. RULE 6. EXAMINATION

**Sec. 14-79. Requirements for ~~tests~~ examinations.**

The director shall, whenever vacancies exist within the ~~classified~~ civil service or even in advance of such vacancies, prepare, view and rate necessary ~~tests~~ examinations, or direct this work, which ~~tests~~ examinations shall determine the fitness suitability of applicants for ~~classified~~ civil service positions. No person shall be appointed to a position in the ~~classified~~ civil service, except as otherwise provided for by law, until he shall have signed a completed application on the forms prescribed by the commission, ~~has~~ qualified by passing the required examination, and ~~has~~ been certified for appointment in accordance with these rules.

**Sec. 14-80. Notice required; exceptions.**

~~The commission shall give public~~ Public notice of competitive group examinations shall be given at least ~~ten~~ seven calendar days prior to such examinations by posting notices in the office of the commission, or upon any public bulletin boards available in the city hall, ~~and~~ or elsewhere as the director may decide. Such examinations may be further publicized through the use of any other media most likely to reach qualified applicants for the position in question. This requirement may be waived by the commission in cases of special examinations for positions for which there is substantial difficulty in obtaining qualified applicants.

**Sec. 14-81. Contents of notice.**

Each official notice of an examination ~~or test~~ shall state the title, duties and pay of the position for which the ~~test~~ examination is to be held, the qualifications required, the time and place for making application, the time and place of examination ~~or test~~, and any other information which is deemed to be pertinent and useful.

# REDLINE

## **Sec. 14-82. Open application period.**

Should the commission find that there is a shortage of qualified candidates for positions or classes of positions which urgently need to be filled, it may announce that no time limit has been established for receiving applications, and applications may be filed during such period of time as may be necessary to establish a satisfactory employment list. When a satisfactory employment list has been established, public notice shall then be given that no further applications will be accepted.

## **Sec. 14-83. Types of examinations.**

(a) All examinations shall be ~~impartial, fair, and practical~~ open, competitive, and free in character and designed to measure fairly the applicant's ~~qualifications for and fitness to discharge suitability to perform~~ the duties of the position which he seeks to fill.

(b) An examination may be written, or oral ~~or unassembled~~ and may include physical tests, demonstrations of skill, evaluation of training and experience of applicants as recorded in their applications, or any combination thereof.

## **Sec. 14-84. Admission to examinations Applications and examination admission.**

(a) All applications shall be made on forms prescribed by the director who may require such information as he deems pertinent, but no questions in the application, or in any other portion of the examination, shall be so framed as to elicit information concerning the political, fraternal or religious opinion or affiliation of the applicant.

(b) Any person may apply for any examination unless the public notice of same shall disqualify such person based upon a bona fide occupational qualification.

(c) The commission or director may reject the application of any person for admission to an examination ~~or test of fitness~~, or refuse to ~~test-examine~~ any applicant, who is found to lack any of the qualifications prescribed in the public notice, or who is physically or mentally ~~unfit-unqualified~~ to perform ~~effectively~~ the duties of the class, ~~or who is addicted to the habitual use of alcoholic beverages to excess or to the use of drugs, or who has been adjudged guilty of a crime involving moral turpitude or infamous or disgraceful conduct, or who has been dismissed from the public service for delinquency or misconduct, or who has made false statements of any material fact, or has practiced or attempted to practice deception or fraud in his application or in his examination-or-test.~~ In every such case, the commission may reject the application and likewise may cancel the eligibility of the applicant if he has already been admitted to an examination and has attained a place on ~~an eligible list~~ a list of eligibles, and take action for his removal from the service in case he has already received appointment when such finding is made.

(d) The director may exclude from any further participation in any examination any applicant who does not make a passing grade on any part of an examination where

## REDLINE

the examination is in more than one part ~~and consists of tests of skill, physical tests, and medical examinations.~~ Failure in any portion of ~~this type of test~~ the examination ~~will~~ shall be sufficient grounds for exclusion in any other part of the examination, or, if all portions of the examination have been completed, the director may declare such applicant as failing in the entire examination.

(e) When applications are received from qualified applicants who are living in another city and it is not practical for such applicants to present themselves in the city for the examination, the director may make arrangements with ~~the civil service office in that city or, in lieu thereof, with the high school principal or any other person in that city~~ who is acceptable to the commission to administer the examination.

### **Sec. 14-85. Conduct of examinations ~~and tests.~~**

(a) The examinations ~~and tests~~ shall be conducted by the director, or by persons designated by him, ~~at the time and place stated in the notices or advertisements of examinations or tests and~~ according to the procedure established by the director. Safeguards shall be devised which, insofar as possible and practicable, shall, ~~except in oral examinations,~~ conceal the identity of candidates from examiners or other persons engaged in scoring, marking, or otherwise rating the candidates.

(b) The director shall arrange for suitable persons in the service of the city, with the consent of the supervising authorities under whom such persons work, to assist in examinations. When there is an insufficient number of such persons available, the director may arrange to employ temporarily such other persons as might be needed and shall provide for their pay.

(c) It shall be the duty of all city employees having such authority to allow the reasonable use of public buildings and other facilities as conditions might require for holding such examinations and tests.

### **Sec. 14-86. Passing grade.**

The commission shall have the power to place the passing grade at any figure or percentage deemed equitable in each test but, unless a definite figure is set, the passing grade shall be 70, based upon a total weight of 100 for the entire examination ~~or test.~~

### **Sec. 14-87. Eligibility for examinations ~~and tests.~~**

(a) ~~Tests of fitness~~ Examinations for original entrance ~~appointment~~ shall be open to persons who meet the requirements for admission to the ~~tests~~ examinations as established in the public notices therefor or as specified in these rules. Such requirements may relate only to qualifications, characteristics, skills and abilities related to the actual performance of the duties of the job for which the examination is being held.

# REDLINE

(b) No additional applicant shall be admitted to the examination room after any candidate has permanently absented himself from the place of examination.

## **Sec. 14-88. Reexaminations; correcting; amending, etc., records.**

The commission shall have the power, whenever in its judgment the interests of the public service require it, to order a reexamination of applicants for any position, and shall have the power to correct, amend, or revoke any schedule, list or other papers or records when it appears that an error or injustice has been done; and when any person whose name appears on the ~~eligible list~~ list of eligibles has, for any reason, become incapacitated for appointment in the public service, the commission may strike such name from said ~~register~~ list of eligibles. The reason for such action shall be recorded in full in the minutes of the commission.

## **Sec. 14-89. Original papers.**

All original papers, applications, examination papers and questions, certificates, and all other papers pertaining to the application and examination are the property of the ~~commission~~ human resources department and must be filed in the ~~office of the commission~~ with the human resources department and shall be kept not less than one year for a minimum of three years or longer if circumstances require.; ~~exceptions are the examination papers of those failing to pass which may be destroyed after 60 days.~~

## **Sec. 14-90. Notice of results.**

Each person competing in an examination ~~or test~~ shall be given a written notice of his ~~final earned rating and, if he has passed, of his relative standing on the list~~ the examination results. Those who fail to attain a place on the list of eligibles shall be notified of that fact.

## **Sec. 14-91. Review of results.**

Each person competing in a ~~test or an~~ examination may, within five business days after the ~~date of mailing of~~ notice of the results, and only after such person has requested in writing to the director, be permitted to inspect his rating and examination ~~or test~~ papers at the ~~office of the civil service commission~~ appropriate human resources department location, during business hours, and may secure any necessary explanations of the methods by which the ratings were determined. However, no examinee will be permitted to review the questions used in a written examination but may be allowed to review his answer sheet only.

## **Sec. 14-92. Appeals.**

An examinee may file his appeal with the director for correction of his rating at any time during the five days immediately following notice of the ~~determination of~~ examination results; such appeals must be made in writing and must set forth the grounds for such appeal. The commission shall review such appeal within a reasonable

# REDLINE

time and shall notify the examinee of its decision, and the decision of the commission shall be final.

## **Sec. 14-93. Correction of results.**

If, after examination of the appeal filed by a candidate, the director finds that any manifest error existed in the rating, scoring, or computing of the results, he shall, upon approval by the commission, make the required correction and place the name of that person in its true position on the list as the correction warrants. Such correction, however, shall not invalidate any appointment previously made from such list.

## **Secs. 14-94—14-98. Reserved.**

### DIVISION 7. RULE 7. ~~ELIGIBLE LISTS~~LIST OF ELIGIBLES

## **Sec. 14-99. Preparation; contents.**

(a) The director may prepare an ~~eligible list~~ list of eligibles, when needed, from the results of each ~~original appointment~~ examination. The list shall contain the names of only those persons who have met the minimum requirements for eligibility. Names shall be listed in a descending scale order starting with the one receiving the highest rating.

(b) When two or more candidates have equal final weighted ratings, their names shall be arranged on the list ~~in the order of their performance in the written test; but when this arrangement fails to resolve the tie, the order on the list shall be determined by the order in which the application was accepted~~ submitted.

(c) When a list of eligibles is being prepared in the course of an open application or examination period, as provided for by ~~rule~~ Rule 6, section 14-84 of this Code, names of eligibles shall be added to the list as rapidly as the necessary examinations are completed and rated, and in the order to which their final earned ratings entitle them. However, names certified prior to receipt of later eligibles shall not instantly be affected even though later eligibles may have higher earned final ratings, the prior certified names being affected only when these certified are returned to the eligible list at which time the names of eligibles who earned higher, though later, ratings shall be placed above them on the list to await another certification.

## **Sec. 14-100. Duration of lists of eligibles.**

All ~~eligibility~~ lists of eligibles shall remain in existence for one year unless sooner exhausted, and at the end of one year they shall expire and new examinations shall be given as the need requires.

## **Sec. 14-101. Promotional lists.**

After each promotional examination, the commission, through the director, shall prepare and keep available a promotional ~~employment list~~ list of eligible ~~of persons~~

# REDLINE

~~successfully passing the examination, arranged in descending scale order of final weighted ratings. When two or more persons have equal final weighted ratings, their names shall be placed in the following manner: The one with the higher service performance rating shall be placed above the other; but if there should still be a tie, the one of greater seniority shall be placed above the other one.~~

## **Sec. 14-102. Reemployment lists and reappointment.**

(a) ~~The name of any~~ Any employee who has held a ~~permanent regular~~ permanent regular position in the ~~classified civil~~ classified civil service and has been laid off for reasons not to his discredit or whose position has been abolished under reduction of forces shall ~~have his name be~~ placed upon the reemployment list according to the date laid off, and shall remain thereon for a period of one year.

(b) Any person who voluntarily resigns from a position in the ~~classified civil~~ classified civil service and who leaves the service shall forfeit any rights which he might have had under civil service and may be ~~reemployed reappointed~~ reappointed in the ~~classified civil~~ classified civil service only in the manner prescribed by the rule governing original appointment. Nothing herein contained shall affect adversely the rights of any employee who enters the uniformed military forces as provided under rules governing military leaves.

## **Sec. 14-103. Removal of names.**

Names of eligibles may be removed from ~~an employment list~~ a list of eligible for any of the following reasons:

- (1) Failure to report for an interview, ~~within three days (weekends and holidays excepted) after notification by the commission.~~
- (2) Declining an appointment, ~~without reasons satisfactory to the commission.~~
- (3) Inability of the ~~postal authorities to~~ be located him.
- (4) ~~Having been appointed previously to fill a permanent position.~~
- (54) Continued unavailability after expiration of a stated limited period of time during which, at the eligible's request, the director has not certified him.
- (65) Failure to ~~promptly~~ report to work after appointment.
- (76) Death of eligible.
- (87) ~~Loss of citizenship~~ Loss of legal authority to work.
- (98) ~~When, at any time after the creation of an eligible list, the~~ The commission has reason to believe that ~~one whose name appears on the list~~ the individual is unqualified for appointment because of:

# REDLINE

- ~~i.[1]~~ Incapacity; ~~developed subsequent to his examination, or~~
- ~~ii.[2]~~ ~~because of errors disclosed~~ Errors discovered in computing his examination score; ~~or because of~~
- ~~iii.[3]~~ ~~false~~ False statements made in his application; ~~or~~
- ~~iv.[4]~~ ~~for other~~ Other similar reasons.

## **Sec. 14-104. Offenses relative to examinations, applications, etc.**

No person shall ~~willfully~~willfully, by himself or in cooperation with any others, defeat, deceive, or obstruct any person in respect to his rights to any ~~test~~ examination of ~~fitness~~ or appointment to any position under the provisions of ~~article~~ Article Va and any rules or ordinances adopted thereunder; nor shall anyone ~~willfully~~willfully and falsely mark, grade, estimate or report upon, the ~~tests of fitness~~ examination, the standing of any person ~~tested~~ examined or certified, or the ~~service performance~~ ratings of any employee; nor shall anyone aid in so doing; nor shall anyone ~~willfully~~willfully make any false representation concerning any person ~~tested~~ examined, or ~~willfully~~willfully furnish to any person any special or secret information for the purpose of either improving or injuring that persons's prospects or chances in connection with any examination ~~or test~~ or appointment; nor shall anyone impersonate any other person or permit or aid in any manner any other person to impersonate him in connection with any examination ~~or test~~ or appointment or application or request to be examined. Violation of this rule by a city employee shall be grounds for ~~prompt and permanent dismissal~~ immediate indefinite suspension of the offending employee or employees as provided for by ~~rule~~ Rule 15. Violation of this rule by an applicant shall cancel all present ~~and future~~ rights of that applicant or candidate for consideration as an appointee to the city's service. Violation of this rule by a noncivil service employee shall be grounds for the immediate discharge or termination of the noncivil service employee. In all cases, violation of this rule may result in removal of the offending employee or candidate from all lists of eligibles.

## **Secs. 14-105—14-109. Reserved.**

### DIVISION 8. RULE 8. CERTIFICATION AND APPOINTMENT; TRANSFERS

## **Sec. 14-110. Requests for certification.**

Whenever it is desired to fill a vacant classified position, written notification and such information as might be necessary for an ~~intelligent~~ informed certification shall be submitted to the commission on a form prescribed by the director. Insofar as is practicable, each vacancy shall be anticipated sufficiently in advance by the department in order to permit the director to determine who may be available for appointment and, if necessary, to prepare a class specification and to establish a list of eligibles.

# REDLINE

## Sec. 14-111. Certification of eligibles.

(a) Upon receipt of written request for certification, the director shall certify to the department director ~~under the direction of the mayor from the eligible list~~the list of eligibles, or the list most nearly appropriate, the names, addresses, and examination grades of, and any other ~~desirable~~applicable data.

(b) If any of the number so certified ~~shall not be then not~~ available for appointment, the director shall certify the succeeding name or names from such eligible list~~list of eligibles~~ until a sufficient number of eligibles ~~to conform with the above formula~~ is~~are~~ certified.

~~(c) No name shall be certified more than three times to the same department director for the same or similar position except upon written request of that department.~~

~~(d) The department director may specify sex only where such restriction is based upon a bona fide occupational qualification.~~

~~(e) An eligible who has declined an appointment on the grounds of insufficient salary shall not thereafter be certified for a position at the same or any less salary except upon written request of the eligible.~~

~~(fc) Vacancies in the classified service shall be filled by promotion, except when the commission deems that the interests of the city may be served better thereby, such vacancies may be filled by the demotion, transfer, reemployment or original employment when applicable.~~

~~(gd) The eligibles to be certified, subject to the limitations of the preceding section, shall be the highest ranking ones willing to accept employment chosen in this order:~~

- ~~(1) Former regular employees on a reemployment list whose services terminated only because of budgetary or force-reduction reasons.~~
- ~~(2) Regular employees on the appropriate promotion list, if any.~~
- ~~(3) Those approved for reappointment; ~~on a reemployment list~~, if any.~~
- ~~(4) Those on an original employment list.~~

All names on one of such lists shall be exhausted before names from another list may be certified, but names certified may be those taken from two or more lists, if necessary, to provide the necessary number ~~to conform with the formula~~ prescribed in subsection (a) of this section.

~~(he) If the appropriate lists do not contain a sufficient number of eligibles to conform with the formula prescribed in subsection (a) of this section, the maximum~~

# REDLINE

number of available eligible persons willing to accept appointment shall then be certified. Under such circumstances, ~~the mayor shall not be required to make an appointment from such lists and~~ the director shall then prepare an examination in order to create a new ~~eligible list~~ of eligibles from which certification shall be made.

~~(i) The department director shall forward to the director, with due notice of appointments, copies of all correspondence to and from those persons interviewed.~~

(j) When, upon request for certification, there are no eligibles on an appropriate list, certification may be made at the discretion of the director, and the director may appoint any qualified person available to fill the position.

## **Sec. 14-112. Report and effective date of appointments.**

An appointment shall be reported immediately to the human resources department on the form prescribed by the commission. The director, after certification of conformity with the rules, shall forward one copy of the form to the department concerned, the payroll section, and the civil service personnel files. An appointment shall become effective as of the date on which the appointee enters upon duty.

## **Sec. 14-113. Temporary and emergency appointments.**

(a) Whenever a department requires temporary assistance because of a special project, a temporary increase in the work load, or absence of a regular employee, appointments may be made from an appropriate ~~eligible list~~ list of eligibles for the duration of such unusual work. Each such employee shall have the prefix ~~TEMPORARY~~ temporary as part of his title in the official records.

(b) The acceptance or rejection by an eligible of temporary appointment shall not affect his standing on the ~~eligible list~~ list of eligibles, but the temporary service ~~may~~ shall not be counted as a part of his ~~probationary period~~ only probation in case of immediately subsequent, ~~permanent~~ regular employment in the same position in the same department.

(c) No temporary appointment shall be made for a period of more than ~~three~~ six months, but may be extended by the commission for a longer period. No temporary employment shall become ~~permanent~~ regular unless the employee, at the time of original, temporary placement, came from an ~~eligible list~~ list of eligibles for that position. In case it is desired to convert a temporary appointment into a ~~permanent~~ regular one, such appointee shall fulfill the requirements covering candidates for original entrance into the service and must be certified by the commission before he may become a regular appointee.

(d) In the event of an emergency which may result in loss of public property or in serious inconvenience to the public, the mayor may direct the ~~commission~~ director to select and appoint a person or persons without regard to the rules governing other appointments, but in no case shall such emergency placements be employed for longer

## REDLINE

than the duration of the emergency and each such employee shall have the prefix ~~EMERGENCY~~ emergency as part of his title in the official records.

(e) Successive or consecutive emergency appointments shall be made only with express approval by the commission with a view of limiting a person to a total of 90 working days of such employment.

(f) Emergency appointments shall be reported promptly to the commission with reasons therefor; the commission ~~reserving~~ reserves the right to inquire into the nature of the emergency.

### **Sec. 14-114. Approval of appointments.**

(a) Approval by the commission of regular appointments made in conformity with civil service rules and from ~~lists of certifications~~ lists of eligibles shall not be required, ~~as certification of eligibles shall be deemed as having fulfilled civil service requirements.~~

(b) Approval by the commission of temporary appointments shall be required before the ~~civil service commission~~ administration and regulatory department director may certify to the legality of the payrolls upon which such names appear. ~~Such approval should be had before employment of temporary employees begins.~~

(c) Approval by the commission before employment begins shall not be required in the case of an emergency placement, but each such appointment shall be reported to the ~~civil service~~ commission immediately.

(d) When there is a vacancy in a scientific, managerial, professional, or educational class and there is a shortage of applicants in that class, the commission may approve the appointment of an applicant recommended by the mayor upon satisfactory evidence that the applicant meets the requirements for the class and is qualified otherwise; however, the commission may require the applicant to pass ~~either an assembled or an unassembled examination, or both, to qualify.~~

### **Sec. 14-115. Transfers.**

(a) A department director, with the approval of the mayor, may request the ~~civil service~~ commission to ~~transfer or reclassify~~ within his department any classified employee under his jurisdiction ~~from one position to another position in the same class~~ with the same maximum salary. ~~Transfer or r~~ Reclassification shall not be allowed until prior approval by the ~~civil service~~ commission.

(b) Transfer of a classified employee from a position under the jurisdiction of one department director to a position under the jurisdiction of another department director may be made only upon approval of the ~~civil service~~ commission and both department directors concerned.

## REDLINE

(c) Any transfer of an employee from a position in a lower class to a position in a class carrying a higher maximum salary shall be deemed a promotion; while any transfer from a position in a higher class to a position in a class carrying a lower maximum salary shall be deemed a demotion and neither may be accomplished except in the manner provided in these rules for making a promotion and for making a demotion.

(d) A city employee in a noncivil service position shall not be ~~neither~~ transferred, appointed, nor promoted to a civil service position without first having been qualified by the ~~civil service~~ commission.

(e) When the best interests of the city may be served thereby, the commission may approve transfers, to vacancies, of employees who are about to be displaced for reasons not reflecting upon the efficiency, character, conduct or capacity of those employees.

### **Sec. 14-116. Procedure.**

The director shall institute procedures and designate forms for carrying on all of the activities involved in such transactions coming under the jurisdiction of the commission.

### **Secs. 14-117—14-121. Reserved.**

## DIVISION 9. RULE 9. PROBATION

### **Sec. 14-122. Duration.**

(a) Each ~~original appointment or reappointment~~ to a position in the ~~classified service~~civil service shall be for a probationary period of 12 consecutive months. Each employee so appointed shall complete the 12 months probationary period, which is to be regarded as a working ~~test~~evaluation period, before being considered a ~~classified civil service~~ employee.

(b) Each promotion in the ~~classified civil service~~ shall ~~be for~~require an additional probationary period of six months, which is also to be regarded as a working test evaluation period.

### **Sec. 14-123. ~~Service ratings during probation.~~**

During a probationary period the department director shall observe ~~carefully~~ the performance and conduct of the employee and, if ~~the conduct of the employee~~ issuch is not satisfactory, then the circumstances ~~pertaining to the unsatisfactory performance~~ shall be ~~reported~~ filed in writing with the ~~to the civil service~~ commission.

# REDLINE

## **Sec. 14-124. Effect of nonpaid absences or transfers during probation.**

(a) If an employee is absent without pay for any reason from his work for a period of over 30 calendar days, during the probationary period, the time he is absent shall not count as a part of the period of probation and the employee will be required to serve that additional time as part of his probationary period.

(b) If an employee is transferred during the period of probation from a position in one department to a position in another department, the employee so transferred shall be required to start a new probationary period at the time of his transfer.

## **Sec. 14-125. Removals during probation.**

(a) In case the department director deems a probationary employee unable or unwilling to render satisfactory service, or for other sufficient cause, the director of the department, ~~with the approval of the civil service commission,~~ may remove such employee upon written notice to the commission. When any employee is removed for any cause during probationary period, he shall not be entitled to a review or hearing before the ~~civil service~~ commission.

(b) If a civil service employee is removed during probation, from a position to which he has been promoted, he shall be restored to his former classification in the department in which the employee is presently assigned, unless the employee consents to other placement.

## **Sec. 14-126. Credit for prior service.**

The provisions of this section shall be available in any instance in which a position which was not theretofore subject to civil service ~~classification~~ protections is revised or redesignated by action of the ~~city council~~ or the commission so that it becomes a classified civil service position and the incumbent thereof qualifies for and continues to hold such position without a break in service after its revision or redesignation. Under such circumstances, the commission may, upon recommendation of the department director and the director and a finding that the duties and responsibilities of the position have not substantially changed, grant credit to the incumbent for all or a portion of his prior service time or none towards the appointment probation period established pursuant to section 14-122 of this Code.

## **Secs. 14-127—14-130. Reserved.**

### DIVISION 10. RULE 10. PROMOTIONS

## **Sec. 14-131. General requirements.**

Vacancies in the classified service shall be filled only at the discretion of the department director and, insofar as is practicable, by the promotion of employees within the department in the classified service. Only the ~~The commission director~~ shall, in each

## REDLINE

case, ~~determine~~ certify the qualifications of the employees recommended ~~by~~ to the department director, ~~and the civil service commission shall determine which employee is entitled to the promotion.~~ Promotions shall involve a definite change in duties or an increase in responsibilities and an increase in pay grade and shall not be made merely for the purpose of effecting an increase in compensation.

### **Sec. 14-132. Promotional examinations generally.**

Promotional examinations shall be ~~open only~~ limited to only employees in the classified service who, at the time of the examination, are serving in other ~~civil service~~ classified positions and have served for such a period as may be prescribed by the ~~commission~~ director. A promotional examination may include employees with specific classifications in all departments or only in the department for which the ~~eligible list~~ list of eligibles is being established, as determined by the ~~commission~~ director in each instance. Certification shall be made in the same manner as that prescribed for original appointment. Promotional examinations may, at the direction of the director, consist of one or more of the following parts: Written, oral, ~~mental~~ psychological, and practical performance tests, a special rating by each candidate's department director and, in some cases, a medical examination as an additional requirement.

### **Sec. 14-133. Notice of promotional examinations.**

Whenever ~~the commission orders a written~~ a promotional examination ~~is~~ to be held, notice of such examination shall be posted, ~~in the department or departments in which eligibles are employed.~~ It shall be the duty of the department director concerned to determine where such notices shall be posted and the duty of the department director to see that each such notice is properly posted, at least one week prior to the examination date.

### **Sec. 14-134. Temporary promotions.**

An interim or temporary promotion to a higher position, made necessary by reasons of sickness, disability, vacancy, or other absence of another employee, may be authorized by the commission upon the written request of the department director concerned who shall set forth full information regarding such request. All such temporary promotions, where practical, shall be filled from a promotional list if there is one in effect for the particular class, and shall continue only during such period of sickness, disability or other absence. Any such temporary promotion may or may not include a temporary increase in compensation at the discretion of the department director.

# REDLINE

**Secs. 14-135—14-139. Reserved.**

## DIVISION 11. RULE 11. LAYOFFS

**Sec. 14-140. Notice.**

When it is necessary to reduce the number of employees within any department due to reorganization of the department, reduction in funding, reduction in services provided, or for any other reason, each employee whose position is to be eliminated shall be so notified, and at the stated time his salary and work shall cease. This shall constitute a layoff. The department director shall notify the employee in writing at least 45 calendar days in advance of the layoff. A copy of the layoff notice shall be forwarded promptly to the director. A suspension, dismissal, discharge or discontinuance of temporary, part-time or seasonal employment shall not necessarily constitute a layoff and vice versa.

**Sec. 14-141. Who shall be laid off.**

When it becomes necessary to lay off one employee or more in the same classification in a department, the one or ones to be laid off shall be determined by the department director on the basis of this section. While there is no guarantee of reemployment for any laid-off employee, the names of all those laid off, who have received performance ratings reflecting acceptable performance or higher, shall be placed on a reemployment list for a period of one year. No employee in a ~~permanent~~ regular position shall be laid-off while any probationary, temporary, part-time, seasonal, or emergency employee is performing comparable duties in the same department unless the department director determines that the continued use of such employees is necessary due to unpredictable work loads, seasonal or temporary work requirements, or related factors that make the use of ~~permanent-regular~~ full-time employees for the work impracticable or inefficient or would impair the quality of service of the department. Employees will be laid off by a combination of merit rating and seniority as provided in this ordinance.

**Sec. 14-141.1. Rules of construction and definitions.**

In the construction of this division, the following rules shall be observed and the following definitions shall apply, unless the context clearly indicates otherwise:

*Classification* means the actual employment category to which each employee is assigned at the city.

*Combined merit rating* means the total point score of overall appraisal ratings received during the past three years' annual ~~Employee Performance Evaluations (EPEs)~~ performance ratings. Combined merit rating will be based on the overall ~~appraisal~~ performance ratings from the subject employee's annual ~~employee performance review(s)~~ performance ratings given upon forms promulgated by the director and approved by the commission, during the

## REDLINE

calendar year in which the implementation date occurs and for each of the two calendar years preceding the year in which the implementation date occurs. For each of those three years' performance reviews, the employee shall receive points on a basis that corresponds to the employee's overall ~~appraisal performance rating~~ numerical score, ~~on the EPE~~. If the numerical scoring systems differ between types of ~~EPE performance review forms~~, those ratings shall be adjusted to obtain corresponding scoring systems according to standards set by the director.

If an employee received more than one performance ~~review rating~~ during any such calendar year, then the results of each ~~review performance rating~~ for that year shall be averaged on the basis of the number of performance ~~reviews ratings~~ that the employee received during that calendar year. For any year in which an employee did not receive a performance ~~review rating~~ for any reason including, but not limited to, not being employed by the city, then for that year the average of the scores the employee received in the remaining year(s) in the combined merit rating period shall be used. If an employee in a classification tier that is targeted for layoff has not received any performance reviews during employment with the city, then the department shall perform an unscheduled performance review before the implementation date, and the score on that review shall be multiplied by three to give that employee's combined merit rating. If an ~~EPE~~ ~~a performance rating~~ is on appeal through ~~the city's~~ grievance process, the appropriate hearing officer will be notified and requested to render a decision before the implementation date. If the appeal is still pending on the implementation date then the average of the scores the employee received in the remaining year(s) in the combined merit rating period shall be used instead of the score on the performance ~~review rating~~ which is pending on appeal. Combined merit ratings shall be computed for all employees within the department and classification in which a layoff is to be implemented.

*Department* means each department, division of a department, office, or division of an office of the city that is listed on the Exhibit A at the end of this division, regardless of whether it actually constitutes a department of the city government, or not.

*Implementation date* means the date established in writing by the mayor for the implementation of a layoff within a department. All computations regarding the layoff shall be based upon the implementation date, and the delay of the actual implementation of the layoff for any reason shall not affect the use of the established implementation date for such computations, unless the mayor elects to establish a new implementation date.

*Layoff tier.* Each employee within a department and classification in which a layoff is to be implemented will be assigned to a layoff tier as determined by the employee's combined merit rating. Employees within a layoff tier will be laid off on the basis of their seniority with the employees having the least amount of

## REDLINE

seniority being laid off first. The most senior person within a layoff tier will be retained, barring any exemptions.

*Managerial tier* means a separate tier which consists of employees who occupy positions within classifications assigned to a pay grade greater than or equal to pay grade 23, as designated in the Officials and Administrators EEOC (Equal Employment Opportunity Commission) job category A, and which are designated as a mid-level manager or above on the class description. Managerial tier shall not include employees excepted from eligibility to civil service classification under ~~Article~~ Article Va, Section 2 ~~of the City Charter~~. When a classification in the managerial tier is targeted for layoff within a department, all employees holding positions within that classification in the department shall constitute one tier for the purposes of computing the combined merit rating.

*Total continuous employment* shall be computed from the date of an employee's initially reporting to work with the city as an employee in a ~~permanent~~ regular position. Total continuous service in the current job classification shall be computed from the date of an employee's certification to the current job classification. If the employee has had a break in employment, then the total continuous employment or the total continuous service in the current job classification shall be computed from the date of the employee's return reporting to work with the city as an employee in a ~~permanent~~ regular position. A break in employment shall consist of any instance in which the person ceased to be a ~~permanent~~ regular employee of the city under these civil service rules, except for a military leave authorized under state or federal law or a prior layoff and reemployment under Civil Service Rule 11.

### **Sec. 14-141.2. Layoff procedure including sequence of layoffs.**

(a) With the exception of employees in classifications in the managerial tier, employees within the same classification in a department where the layoff is to be implemented shall be laid off on a lowest numbered layoff tier-first out basis. In the event that there are two or more employees within a given classification and layoff tier and the number of persons to be laid off is such that one or more of the employees within that classification and layoff tier need be laid off and one or more need not be laid off, then the person or persons with the least seniority, based on total continuous employment, shall be laid off first.

(b) For each job classification affected by the layoff, probationary, temporary, part-time, seasonal and emergency employees shall be laid off first and, exclusive of exemptions, comprise Layoff Tier Number One of the layoff scheme. Layoff Tier Number Two shall, exclusive of exemptions, be comprised of all employees having a combined merit rating falling below standard (i.e. below 9). Layoff Tier Number 3 shall, exclusive of exemptions, be comprised of all employees having a combined merit rating greater than or equal to 9 and less than or equal to 11.07. Layoff Tier Number 4 shall be comprised of all employees with a combined merit rating greater than 11.07.

# REDLINE

(c) The employee or employees to be laid off will be determined by their layoff tier and seniority, based on total continuous employment, on a lowest tier number-first out basis. Within a layoff tier, the employee or employees having the least seniority (exemptions excluded) will be the first laid off. After all employees within a layoff tier (exemptions excluded) have been laid off, the employees in the next numbered layoff tier will be laid off in order of seniority, and layoffs will continue through layoff tiers sequentially until the layoff has been completed.

(d) If a tie exists between two or more employees after use of the procedure outlined in (c) of this section, then among those employees with the tie score, the following steps will be utilized in the following numbered sequence until the tie is broken, with use of a succeeding step only in the event a tie still exists among two or more employees:

- (1) Employees will be laid off on the basis of the commencement of their total continuous service in the current job classification on a last in-first out basis, with the last commenced to be the first laid off.
- (2) Employees will be laid off on the basis of their most recent job performance review score on a lowest score-first out basis, with the employee receiving the lowest score to be the first laid off.
- (3) Employees will be laid off on the basis of the commencement of their total continuous employment on a last in-first out basis, with the last commenced to be the first laid off.
- (4) Employees will be laid off on the basis of the date an employee filed an application for current continuous employment with the human resources department on a last in-first out basis, with the last applicant to be the first laid off.
- (5) Employees will be laid off on the basis of total city service, which shall include all periods of permanent employment with the city, on at least total service-first out basis, with employee(s) with the least amount of total city service to be the first laid off.
- (6) Employees will be laid off on the basis of their names selected on a random basis by the human resources director, or his or her designee, on a first selected-first out basis, with the first name(s) selected to be laid off first.

### **Sec. 14-141.3. Exemptions and directors' discretion.**

The department director may exempt one or more employees from the operation of the layoff, if the department director makes a specific written finding that:

# REDLINE

- (1) The exempted employee(s) have specifically enumerated educational qualifications or specialized technical training, professional licenses or qualities relevant to their work functions that are not possessed by the employee or employees who would otherwise replace them; or
- (2) The retraining of the employee or employees who would otherwise replace the exempted employee(s) would cause a deterioration of service delivery or service quality by the department or the exempted employee has specifically enumerated skills, the loss of which would adversely impact the department's service delivery or quality.

~~Not less than ten city working~~ At least ten calendar days prior to the date that the laid off employees are formally notified in writing of their layoff under this rule, the department director implementing such layoff shall provide the city attorney with written exemptions, if any, for review and approval.

Except as to employees who are exempted in accordance with this subsection, the layoff shall be accomplished in the manner otherwise provided in this rule.

### **Sec. 14-141.4. Grant-funded positions.**

In any instance in which a department has some positions that are funded in whole or in part by virtue of funding received from one or more state or federal grant contracts and other positions that are funded in whole by virtue of funds derived from other general sources of city revenue and a layoff is required due to a reduction or elimination of the funding, then the layoff shall be accomplished in accordance with this rule, but in such a manner as to affect only those employees whose positions are funded in whole or in part through the source of funding that has been reduced or eliminated. It shall be the duty of the department director to ensure that each employee hired, transferred, promoted, demoted or otherwise assigned into a position that is funded in whole or in part by any state or federal contract or grant in aid notified prior to such assignment that the position will not be wholly funded by general city revenues and that the employee's continued employment will be subject to the city's continued receipt of funds for the position under the applicable state or federal contract funding the position.

A position shall be considered to be funded by a state or federal grant contract for purposes of the administration of this subsection regardless of whether the grant contract provides for the receipt of the funds in advance of their expenditure by the city, or provides for the expenditure of city funds from other city sources with their subsequent reimbursement pursuant to the terms of the grant contract, or provides for any combination of advance funding and reimbursement funding.

# REDLINE

## Sec. 14-142. Reemployment list; ~~reemployment;~~ reappointment; restoration of sick leave and vacation accruals.

The names of persons officially filling ~~permanent-regular~~ civil service positions at the time such positions are abolished and who have ~~EPE scores~~ performance rating scores of acceptable or higher shall be placed on a reemployment list and shall remain on this list for a period of one year. When vacancies occur in positions with the same classification or any other classification which is determined by the director to require equivalent job skills within the same or any other department, except as provided below the last one or ones laid off shall be the first ~~reemployed~~ reappointed, and no other names shall be certified for those classifications until the one or ones laid off have been given a reasonable opportunity to accept reemployment with the city. Nothing herein shall be construed as a guarantee of reemployment.

- (1) ~~In~~ For any instance in which there exists a reemployment list for a classification, and if an employee has been or will be voluntarily or involuntarily demoted to that classification within the department or if a qualified employee with a disability must be transferred to a vacant position in that classification as an accommodation of last resort, the department director may request and the commission may approve the certification of the ~~demoted~~ employee to a position within that classification and thereby reject ~~employees~~ placement of those on the reemployment list.
- (2) In any instance in which the reemployment list for a given classification contains employees who before the layoff did not work within the department in which they would be reemployed, the department director may request and the commission may approve the certification of only those employees on that reemployment list who worked in that department at the time they were laid off, and thereby reject all employees on the reemployment list who were not employed in that department at the time they were laid off. If vacancies that the department seeks to fill still exist after certification of all those employees who worked in the department at the time they were laid off, then for those remaining vacancies the last employees laid-off in that classification within any other department shall be the first reemployed.
- (3) In any instance in which the duties assigned to a classification within a department will require the performance of different work functions, which vary as to tasks performed, equipment operated, or in any other manner that affects the transferability of persons between the functions, and any one or more employees on the reemployment list were, before the layoff, either:

## REDLINE

- a. Selected for employment or promotion to the same or similar work functions on the basis of different formal education qualifications, professional licenses, or specialized technical training, or
  - b. Given specialized training, whether of a formal or on-the-job nature, while employed by the city that substantially meets the needs of the work functions to be performed in the department where reemployment of employees based strictly on their numerical position on the reemployment list would, in the opinion of the department director, require the retraining, licensing, or additional education of any one or more employees on the reemployment list to effectively staff those activities of the department that will be performed, then the department director may request that the commission reject one or more employees on the reemployment list. The commission may reject the employee(s) based on the director's opinion:
    - [1] The employee(s) who will be rejected does not have educational or training skills or licenses relevant to the work functions required for the department that are possessed by the employee(s) who the department requests be employed, or
    - [2] The retraining, licensing or additional education of the employee(s) who will be rejected would cause a deterioration of service delivery or service quality by the department.
- (4) Restoration of sick leave accruals. An employee laid off under the Rule 11 provisions and placed on a reemployment list who returns to ~~full~~ ~~time~~ regular employment with the city within one year of the layoff effective ~~date on April 12, 2011, or any subsequent layoff~~, shall be immediately reinstated to the Compensable sick leave or Modified sick leave plan which the employee participated in at the time of layoff. Upon reemployment, the employee shall have restored all unused sick leave hours accrued by the employee as of the time of layoff under the Compensable sick leave plan, not to exceed 1,040 hours. Any unused sick leave hours accrued by the employee under the Compensable sick leave plan as of the time of layoff in excess of 1,040 hours and for which the employee has been compensated, shall not be restored. Upon reemployment, any sick leave hours that had been accrued by the employee under the Modified sick leave plan and for which the employee was compensated subsequent to the layoff, shall not be restored to the employee.

## REDLINE

- (5) Restoration of vacation accruals. An employee laid off under the Rule 11 provisions and placed on a reemployment list who returns to ~~full time~~regular employment with the city within one year of the layoff effective ~~date on April 12, 2011, or any subsequent layoff~~, shall be reinstated to the vacation accrual program the employee participated in at the time of the layoff as provided under section 14-170 of this Code. All vacation hours the employee had accrued in excess of the vacation cap applicable to the employee at the time of layoff, shall also be restored to the employee. Any vacation hours accrued by an employee at the time of layoff, for which the employee was compensated subsequent to the layoff, shall not be restored to the employee.

### **Sec. 14-143. Transfer or demotion in lieu of layoff.**

An employee who is determined to be in line for layoff may be transferred, before the effective date of such layoff, to a position in the same classification in a different department or to a position in any other classification for which the employee is qualified in the same department, in lieu of being laid off, such transfer to be governed by conditions or procedures prescribed in these civil service rules and the availability of suitable positions that the department directors desire to fill. If a ~~permanent~~regular employee is in line for layoff from a position to which he was promoted within the preceding 12 months, he may be demoted to his previous classification, provided that there is a vacant position available in such classification that the department director desires to fill and further provided that the employee is willing to accept a pay reduction to the rate applicable for the classification to which the employee will be demoted.

### **Sec. 14-144. Filing of plan; appeal.**

(a) ~~Not less than five city working~~At least seven calendar days prior to the date that the laid off employees are formally notified in writing of their layoff under this rule, the department director implementing such layoff shall file a written plan reflecting such layoff with the human resources director as secretary to the commission for review of compliance with non-discrimination obligations. Such plan shall set forth:

- (1) Reason for the layoff and the source of funding which was reduced, if applicable;
- (2) An organizational plan or diagram for the department affected by the layoff as it appeared prior to the layoff;
- (3) The names and the current home addresses and telephone numbers and classifications of the employees who are to be laid off;
- (4) For each classification and final layoff tier in the department in which employees are to be laid off along with the computation of each

## REDLINE

employees' (whether laid off or not) combined merit rating score and layoff tier pursuant to section 14-141 of this Code; and

- (5) A copy of any exemption designations made pursuant to section 14-141 of this Code.

(b) Each layoff process accomplished under this rule that causes the layoff of any permanent employee shall be subject to review by the commission upon the request of any laid off permanent employee filed in writing with the director within ten calendar days after the date that the employee is given written notice of the layoff. If the tenth day falls on a Saturday, Sunday, or holiday, the time for filing the request for review shall be extended to the next working day. In this paragraph "permanent employee" shall mean a full-time regular employee who is serving in a classified civil service position who has completed the one-year probationary period applicable to new and rehired civil service employees but shall not be construed to mean any employee ~~accepted~~ excepted from civil service classification pursuant to Article Va, Section 2-~~of the City Charter.~~ Such request shall specify the reason that the laid off employee believes that the layoff process was not properly accomplished in accordance with this rule. Any request which lacks such specificity may be rejected by the commission. The appeal shall not raise prior acts of the department or delve into past incidents. It shall focus solely on the process of the layoff and whether it was done correctly and in accordance with this rule. The chairman, in consultation with the other members and the director, shall determine the type of review to be conducted, establish a date and determine the names of those persons who would be affected by the appeal if meritorious. The director shall cause a written notice of the review proceeding to be mailed to each person who may be designated by the commission, at the address furnished in the layoff plan, by certified U.S. mail, return receipt requested. Any of the persons so designated may intervene in the review by filing a written statement of position on the matter with the director by the day prior to its setting. To the extent practicable, only one review shall be conducted for each layoff process. The commission shall limit its inquiry to the issue of whether the layoff process was accomplished as to all employees involved, whether laid off not, in accordance with this rule, and it shall not at any time substitute its judgment or opinion for that of the department director as to any decision made within the legitimate discretion of the department director. The commission shall enter a written decision as soon as practicable after the conclusion of the review which shall be done by written documentation only (no testimony or oral argument) but not later than the twentieth day next following the date that the review is concluded. The commission may uphold the layoff as presented, uphold it in part and change it in part or take any other action necessary in order to conform the layoff to this rule. In accordance with its determination the commission may order the reinstatement of any laid off employee with back pay and the layoff of any other employee in lieu thereof. The filing of an appeal hereunder shall not defer the implementation of the layoff. However, the mayor may defer the implementation of the layoff process, in whole or in part, upon written recommendation of the director and the commission chairman that it be deferred due to an apparent

# REDLINE

violation of this rule. Layoffs reviewed and sustained by the commission shall be final and shall not be subject to any other administrative recourse, review, or appeal process.

(c) To the extent an employee association has been duly recognized by the city as the sole and exclusive bargaining agent for municipal employees under Chapter 146 of the Local Government Code, the city and bargaining agent shall, through meet and confer, arrive at an alternate expedited process by which an exemption afforded under that section 14-141.3 of this Code may be challenged by the employee association on the grounds that it does not meet the criteria under that section, and whereby a laid off employee with at least eight years of service may challenge a combined merit rating of 9 received by the employee on the grounds that such rating does not accurately represent the employee's performance for the covered period.

## **Sec. 14-145. Review by human resources department for nondiscrimination obligations.**

The mayor shall cause any plan for the implementation of a layoff to be reviewed by the human resources department to ensure that no employee is denied any benefit of employment or granted any preference on the basis of race, color, creed, sex, religion, national origin, age, gender, handicap or political or fraternal affiliation in the implementation of the layoff. If the commission finds that a denial of benefits or preference was undertaken for any of the foregoing reasons, then it shall order the reinstatement of the wronged employee(s) with back pay and the layoff of other employee(s) in lieu thereof. In order to facilitate such review the department director shall file a document reflecting the racial and sexual makeup of the department, including the employees to be laid off, with the documents provided to the ~~civil service~~ commission.

### EXHIBIT A CITY DEPARTMENTS

Administration and Regulatory Affairs

City Controller

City Council

City Secretary

Convention and Entertainment Facilities

Finance

Fire

Fleet Management

# REDLINE

General Services

Housing and Community Development

Houston Airport System

Houston Health Department

Houston Information Technology Services

Houston Public Library System

Human Resources

Legal

Mayor's Office—Administration

Mayor's Office—Houston Emergency Center

Municipal Courts

Neighborhoods

Office of Business Opportunity

Parks and Recreation

Planning and Development

Police

Public Works and Engineering

Solid Waste Management

**Secs. 14-146—14-149. Reserved.**

## DIVISION 12. RULE 12. RESIGNATIONS

**Sec. 14-150. Written resignation to be requested with copy forwarded to director.**

An employee in good standing who decides to leave ~~the service-city employment~~ for any reason shall be asked by his supervisor or department director for a formal resignation in writing and a copy of same shall be forwarded to the director.

# REDLINE

## **Sec. 14-151. Investigation; treatment of forced resignation as removal.**

The commission is authorized to make such investigation of ~~the any~~ resignation as it may think advisable. If it develops that a separation reported as a resignation did not result from the voluntary act of the employee, the commission shall notify the mayor and may treat the separation as a removal and the provisions of these rules relating to removals shall then apply.

## **Sec. 14-152. Forfeiture of rights; reemployment.**

Any employee in the classified service who voluntarily resigns his position shall forfeit all rights which he might have had under civil service. He can be reemployed ~~in the classified service~~ with the city only in the manner prescribed by the rules governing original appointment, except that the commission may decide, after considering the recommendation of the department director, that his name may be returned to the original ~~eligible list~~ list of eligibles, if still in existence, or to a new ~~eligible list~~ list of eligibles for that classification. However, such eligibility for reemployment shall not take precedence over the rights of those who were laid off for budgetary or force-reduction reasons and are on a reemployment register.

## **Sec. 14-153. Withdrawal of resignation.**

An employee, upon his written request before the effective date thereof and with the written approval of the department director, may be allowed to withdraw his resignation.

## **Sec. 14-154. Reinstatement of retired employees.**

No employee in the classified service who ~~has been~~ is retired on pension for service retirement shall be eligible for ~~reinstatement to active duty~~ reappointment to regular employment that includes eligibility for the same pension. Employees retired for disability shall file with the commission a letter requesting reinstatement, together with a physician's statement stating that the pension employee is now physically fit to resume his duties in the position from which he was retired. The commission shall transmit the letter and physician's certificate to the municipal employees pension board for its consideration. The pension board, after due investigation and satisfactory physical examination of the pensioned employee, shall notify the ~~civil service~~ commission that the pensioned employee is physically qualified to have his name placed on an eligibility register for his former position or a lower position in the department from which he was pensioned.

## **Sec. 14-155. Absence from work without notice considered as resignation job abandonment.**

Any employee who is absent for three consecutive working days, without having notified his immediate superior, shall be considered to have ~~resigned~~ abandoned his position from the employment of the city. The department director or designee shall take

# REDLINE

reasonable affirmative steps to ascertain the whereabouts of the employee before effectuating this rule.

## **Sec. 14-156. Candidacy for and holding of elective office.**

(a) Any employee in the classified or unclassified service of the city, except appointed or elected officers, who is a candidate for any public elective office, whether the same be federal, state, county or city, either paid or nonpaid, shall immediately, in writing make such candidacy known to the director. It shall be the duty of the director to determine if the candidacy poses a conflict of interest with the employee's city employment. If any such conflict is found, the director shall provide the employee's department director with a full report of his findings together with any recommendation that he may have. If the department director concurs that there is a conflict of interest, he shall forthwith report such findings to the mayor together with any recommendation he may have. ~~regarding disciplinary action.~~ The mayor shall finally determine whether a conflict of interest with the employee's city job exists, ~~and whether disciplinary action is appropriate.~~ ~~Disciplinary action shall then be handled consistent with the City Charter and these rules.~~

(b) In the event that the director determines that the employee's candidacy results in no conflict of interest, and the employee is elected to the office sought, the same procedures as outlined above where candidacy presents a conflict shall be followed to determine if the holding of the office presents a conflict of interest and if disciplinary termination from employment ~~action~~ is appropriate.

(c) Failure to make such candidacy known shall be a violation of this rule. Disciplinary action shall then be handled consistent with the City Charter and these rules.

## **Secs. 14-157—14-161. Reserved.**

### DIVISION 13. RULE 13. ~~SERVICE~~ SERVICE PERFORMANCE RATINGS

## **Sec. 14-162. System.**

The commission will assume that all employees are performing their assigned duties in a satisfactory manner unless and until the department director notifies the commission to the contrary.

## **Secs. 14-163—14-167. Reserved.**

### DIVISION 14. RULE 14. LEAVES OF ABSENCE AND OUTSIDE EMPLOYMENT

## **Sec. 14-168. Attendance; workweek; overtime compensation, etc.**

(a) Definitions. Unless otherwise indicated, the following words shall, for purposes of this section, have the following meanings:

## REDLINE

~~(1)~~ *Compensatory time or compensatory time off.* Hours during which eligible employees are not working but which are counted as hours worked during the applicable workweek for purposes of overtime compensation and for which the employee is compensated at the employee's regular rate of pay.

~~(2)~~ *Eligible employee.* All employees of the City of Houston other than exempt and noncovered employees as defined in this subsection and those employees classified pursuant to ~~subject to article 1269m, Texas Revised Civil Statutes, Chapter 143 of the Texas Local Government Code and classified as fire protection or law enforcement personnel.~~

~~(3)~~ *Exempt employees.* All ~~executive, professional, administrative and seasonal recreation~~ employees of the City of Houston who are exempted from the overtime compensation requirements of the Fair Labor Standards Act of 1938, as amended and the pertinent regulations and opinions interpreting that act and who have been designated as such by the human resources director and the ~~civil service~~ commission.

~~(4)~~ *Non-covered employees.* All employees of the City of Houston who:

~~a.~~(1) Are excluded from coverage under the Fair Labor Standards Act of 1938, as amended, and the regulations and administrative opinions interpreting that act; and

~~b.~~(2) Are designated as such by the human resources director and the ~~civil service~~ commission. In reaching the determinations required by this subsection or subsection (a)(3) above, the director and the ~~civil service~~ commission shall be guided by the various criteria which are applied to determine whether overtime must be paid under the wage and hour provisions of the Fair Labor Standards Act of 1938, as amended.

~~(5)~~ *Overtime.* Time actually worked in excess of 40 hours in a workweek.

~~(6)~~ *Regular rate of pay.* Regular rate of pay shall include:

~~(1)~~a. Base pay;

~~(2)~~b. Longevity pay; and

~~(3)~~c. Shift differential pay.

~~(4)~~ Assignment Pay

The term "regular rate of pay" shall not include compensation excluded under Section 7(e) of the Fair Labor Standards Act of 1938, as amended or the

## REDLINE

interpretative regulations and administrative or judicial opinions construing that section.

~~(7)~~ *Workweek.* The workweek shall consist of 40 hours of actual work within the consecutive 168 hour period beginning with the day shift on Saturday.

~~(8)~~ *Time actually worked or actual work.* The time the employee is actually on duty or on a council declared holiday, on authorized sick leave, vacation leave, compensatory time off, death in the family leave or any other authorized leave. However for clarification, if the holiday falls on an eligible employee's day off, and the employee does not work on the holiday, the employee will receive holiday compensation, but those hours will not count towards the overtime calculation for that week.

(b) All departments of the city shall maintain accurate, and complete ~~and permanent~~ records of all employee attendance and time actually worked during each work week. Each department director or designee shall certify the correctness of submitted time and attendance records in a manner prescribed by the director. ~~make such reports of attendance and time actually worked as may be prescribed by the civil service commission. Department directors or designees shall certify the correctness of the reports. The reports shall be forwarded to the human resources department on a weekly basis.~~

(c) All eligible employees of the City of Houston shall be compensated for working overtime beyond their regularly scheduled workweek by the payment of either monetary compensation at the rate of 1½ times their regular rate of pay or compensatory time at the rate of 1½ hours for each overtime hour worked. The following shall apply to the payment of overtime compensation:

- (1) The department director or designee of the department in which the employee works shall verify that the overtime is needed to complete a required city service or operation.
- (2) The department director or designee may determine whether overtime shall be paid in cash or compensatory time. Where overtime is paid in cash it shall be paid in the pay period in which it is earned or as soon thereafter as is possible, taking into consideration both the workweek and the payroll system used.
- (3) Where the employee is granted compensatory time the following shall apply:
  - a. The number of hours of compensatory time that may be accumulated shall not exceed 240.

## REDLINE

- b. Accrued compensatory time must be used within 120 calendar days from the date accrued, provided that it does not unduly disrupt departmental operations.
- c. Eligible employees shall be paid for accrued compensatory time not taken within 120 days from the date of accrual. Such payment shall be in cash at the greater of:

[1]- The employee's average regular rate of pay over the employee's last three years of employment by the city preceding the date of payment; or

[2]- The employee's regular rate of pay for the pay period immediately preceding the date of payment.

Such payment shall be made in the first full pay period following expiration of the 120-day period.

- d. Each department shall maintain detailed records of the accumulation and use of compensatory time ~~on~~in a form prescribed by ~~the human resources~~ director.
- e. Accumulated compensatory time shall be used in accordance with the first-in-first-out (FIFO) accounting principle.
- f. Any compensatory time accrued prior to April 15, 1986 and not used shall be carried on the records of the department until such time as it is used by the employee. The employee shall not be entitled to monetary compensation for any compensatory time accrued prior to April 15, 1986.

(d) A department director or designee may, subject to the operational requirements and needs of the department, require an eligible employee to work on a ~~city~~ council declared holiday.

- (1) Definitions. In this subsection only, the following definitions will apply:

*Actual hours worked.* The time an employee is working on duty performing assigned work required and authorized by the department director for the holiday starting with the actual time the work begins on the holiday and ending with the actual time the employee completes the required work or stops for the day on the holiday.

*Eligible employee.* For purposes of holiday compensation, holiday premium pay, and short notice premium pay, all permanent, full-time employees of the City of Houston other than those employees who are: (i) subject to Chapter 143 of the Texas Local Government Code, (ii)

# REDLINE

classified as fire protection or law enforcement personnel or (iii) subject to other civil service systems and/or other meet and confer or collective bargaining agreements under Chapter 143 or 174 of the Texas Local Government Code.

*Holiday.* A date that the ~~city~~ council has declared as a holiday on which city offices will be closed.

*Holiday compensation.* The payment an eligible employee is to receive for the observance of a holiday, to be paid at one times the regular rate of pay, for the appropriate number of hours as indicated below.

*Holiday hours.* The hours accrued in lieu of payment for holiday premium pay.

*Holiday premium pay.* The payment or accrual an eligible employee is to receive in addition to base pay and any other additional pay not provided by this subsection, for the appropriate number of actual hours worked on the holiday as indicated below. It is to be paid at one times the regular rate of pay times the appropriate number of actual hours worked on the holiday as indicated below, or accrued at one times the appropriate number of actual hours worked on the holiday as indicated below.

*Regular or scheduled hours.* The time an employee is usually and regularly scheduled to work on a day on which a holiday falls. The term excludes scheduled overtime hours.

*Short notice call to duty.* The director or designee determines that extraordinary circumstances or a true emergency exists that requires an employee to report to work or return to work on a holiday. Extraordinary circumstances or a true emergency occurs when the employee is provided less than 24 hours notice in advance of the starting time of the shift or hours to be worked on the holiday. It does not apply to those, scheduled or not, who know 24 hours or more in advance that they are required to work on the holiday.

*Short notice premium pay.* The payment or accrual an eligible employee is to receive in addition to base pay and any other additional pay not provided by this subsection, for the appropriate number of actual hours worked on the holiday as a result of Short Notice Call to Duty, regardless of the employee's regular work schedule. It will be paid at one and one-half times the regular rate of pay times the appropriate number of actual hours worked on the holiday as indicated below, or accrued at one and one-half times the appropriate number of actual hours worked on the holiday as indicated below.

## REDLINE

- (2) If an eligible employee's regular or scheduled hours to work fall on a holiday, but the employee is not required to and does not work on the holiday, the employee will be paid only holiday compensation at one times the regular rate of pay for the number of hours the employee is regularly scheduled to work on that day. Hours may not be accrued in lieu of payment.
- (3) Where an employee's regularly scheduled day off falls on a holiday, the employee may be given a day off in lieu of the holiday or the employee may receive straight-time payment equal in value to the employee's regularly scheduled workday at the employee's regular rate of pay. The department director shall determine whether the employee shall be paid for the holiday or be given a day off at a later date. For purposes of computing overtime, cash payment granted will not be considered payment for hours worked. If a day off in lieu of the holiday is granted, it must be granted and taken within 180 calendar days of the holiday or be paid.
- (4) If an eligible employee's regular or scheduled hours to work fall on a holiday and the employee is required to work on the holiday, but the employee does not work on the holiday because the employee has an excused absence or authorized leave for the date of the holiday, the employee will be paid only holiday compensation at one times the regular rate of pay for the number of hours the employee is regularly scheduled to work on that day; and no leave balance will be debited for that day. Hours may not be accrued in lieu of payment.
- (5) If an eligible employee's regular or scheduled hours to work fall on a holiday, and the employee is required to work on the holiday, but does not work, resulting in an unexcused absence, the employee will be paid only holiday compensation at one times the regular rate of pay for the number of hours the employee is regularly scheduled to work on that day. In addition, disciplinary action may be taken, the same as if the employee did not work on any scheduled non-holiday work day.
- (6) The department director or designee has discretion to determine whether holiday premium pay or short notice premium pay will be paid or hours accrued under the circumstances set out in items (7) and (8) below. The number of hours will be the same whether they are paid or accrued.
- (7) If an eligible employee is required by the department director or designee to work, and does work, on a holiday (regardless of whether regularly scheduled, or called to report to work more than 24 hours in advance of the starting of the shift), the employee will be paid or will accrue hours for the hours actually worked on the holiday for which the employee had 24 hours or more notice ("full notice hours") as follows:

## REDLINE

- a. Except as provided in (b) below, if the employee works on a holiday, the employee will be paid at one times the regular rate of pay for all actual full notice hours worked on the holiday, and additionally will receive holiday premium pay for the number of actual full notice hours worked on the holiday (For illustration purposes only: Total = 1 × regular rate of pay × number of actual full notice hours worked on the holiday, plus either 1 × regular rate of pay × number of actual full notice hours worked on the holiday or accrual of 1 × number of actual full notice hours worked on the holiday).
  - b. If the employee works fewer than the number of hours in his regular or scheduled hours on the holiday, or if not regularly scheduled to work on the holiday, fewer than the number of hours in the most frequently occurring daily schedule in the employee's work schedule the employee will be paid at one times the regular rate of pay for all actual full notice hours worked on the holiday, and additionally will receive holiday premium pay for the number of actual full notice hours worked on the holiday, plus holiday compensation only for the remaining hours of the regular or scheduled hours not worked on the holiday or if not regularly scheduled to work on the holiday, the remaining hours of the most frequently occurring daily schedule in the employee's work schedule. (For illustration purposes only: Total = 1 × regular rate of pay × number of actual full notice hours worked on the holiday, plus either 1 × regular rate of pay × number of actual full notice hours worked on the holiday or accrual of 1 × number of actual full notice hours worked on the holiday, and also paid additionally 1 × regular rate of pay × number of remaining regular or scheduled hours not worked on the holiday, or if not regularly scheduled, the remaining hours in the most frequently occurring daily schedule in the employee's work schedule not worked on the holiday.)
- (8) If an eligible employee was not previously scheduled to work on a holiday but is then required by the department director or designee to report to work or stay at work with less than 24 hours notice before the time required to report to work, the employee will be paid or will accrue hours for the hours actually worked on the holiday for which the employee had less than 24 hours notice ("short notice hours") as follows:
- a. The employee will be paid at one times the regular rate of pay for all actual short notice hours worked on the holiday, and additionally will receive short notice premium pay for the number of actual short notice hours worked on the holiday. Such payment will be made without regard to the employee's usual shift or regular scheduled hours. (For illustration purposes only: Total = 1 × regular rate of pay

## REDLINE

× number of actual short notice hours worked on the holiday, plus either 1.5 × regular rate of pay × number of actual short notice hours worked on the holiday or accrual of 1.5 × number of actual short notice hours worked on the holiday.)

- b. An employee required or called in to work on short notice call to duty should work only the hours necessary to do the required work and should not be required to work an entire shift or be held over unless operationally necessary.

(9) Holiday hours accrued must be used as follows:

- a. If accrued, the accrued holiday hours must be used on or before the 180th day after the date of the holiday for which they were accrued or they shall be paid in the first full pay period immediately following the expiration of the 180 days.
- b. Eligible employees who accrue holiday hours must make a good faith effort to use the accrued hours before the 180 day period expires. These hours shall be used before other forms of leave except Family and Medical leave or injury on duty leave.
- c. If an eligible employee has failed to submit a request for accrued holiday leave on or before the thirtieth day before the relevant period expires, the department may, upon notice to the employee, convert a request for vacation or sick leave to accrued holiday leave in order to avoid the conversion of the accrued holiday leave to pay. Departments also may direct employees with accrued holiday leave hours that are within 30 days of conversion to pay to take such leave before it expires and becomes payable.
- d. All accrued holiday hours of police and firefighter trainees not used on or before the date the trainee is scheduled to become a sworn classified officer or firefighter will be paid at one times the regular rate of pay with an effective date on the final day prior to the date on which the trainee is scheduled to become a sworn classified officer or firefighter.
- e. All remaining accrued holiday hours not used on or before the date an eligible employee separates from city employment are forfeited and will not be paid.

(10) Holiday compensation paid in lieu of base pay for a holiday observed is to be included in pay reported for pension purposes so as not to reduce base pay or service for pension purposes. Holiday premium pay is not to be included in pay or service reported for pension purposes.

## REDLINE

- (11) An eligible employee who is scheduled to work, but does not work and is not paid for the last scheduled workday (unless the day is an authorized furlough day) before the holiday or is scheduled to work but does not work and is not paid for the first scheduled workday (unless the day is an authorized furlough day) after the holiday will not be paid holiday compensation, holiday premium pay, short notice premium pay, or accrue holiday hours for the holiday.
- (12) If a holiday falls on a day that an eligible employee is on approved work-related injury leave or on transitional duty, the holiday will be compensated under Executive Order 1-33 and other applicable policies, but not under this section.

(e) Any employee who is exempt and, as a result, not eligible for overtime pay as prescribed in this section, may, notwithstanding and other provisions of this section to the contrary, be eligible for compensatory time ~~and on a straight time~~ (hour-for-hour) basis, upon the recommendation ~~or their~~ of his department director and the approval of the ~~human resources~~ director, subject to the following criteria:

- (1) The employee is in a classification assigned to pay grades 2426 and below.
- (2) The overtime work must be performed under unusual circumstances, which shall mean additional hours not ordinarily required to perform the employee's regularly assigned tasks including, but not limited to, unscheduled work hours on a council declared holiday or work performed over a confined period of time due to a special project assignment or a condition of emergency.
- (3) An employee may not receive more than 40 hours of compensatory time hereunder in any calendar year quarter.
- (4) Compensatory time granted under this subsection and its use shall be reported to the human resources director in accordance with subsection (c)(3)d., above.
- (5) Any compensatory time granted must be used within 120 calendar days following the payroll period in which it was earned, and the employee's department director shall afford the employee a reasonable opportunity to use the time within that period. Compensatory time that is not used within the 120-day period is forfeited.
- (6) Compensatory time granted hereunder may not be converted to any other form of leave benefit or be paid as a cash benefit under any circumstances, including the death, resignation or termination of the employee.

## REDLINE

- (7) The ~~human resources~~ director may, subject to the review and approval if of the mayor, issue administrative guidelines to the department directors for the granting and reporting of such compensatory time.

(f) Under certain extraordinary circumstances, the mayor may extend, amend and augment the above requirements in the following manner:

- (1) The mayor will declare that an extraordinary and/or catastrophic condition exists and will order the human resources director, in consultation with the appropriate department directors, to issue an event-specific procedure to provide ~~compensation~~ compensatory time to certain exempt employees.
- (2) The procedure will extend eligibility for compensatory time to exempt employees in specified pay grades required to address the extraordinary condition, but shall in no case, specify pay grades beyond pay grade 2629.
- (3) Maximum hours accumulated in a calendar year quarter may be increased, but shall in no case exceed 60 hours.
- (4) The time period for using the compensatory time accumulated under this special subsection may be increased, but shall in no case extend beyond 365 calendar days from the pay period in which the compensatory time was granted.

(g) Notwithstanding the provisions of subsection 14-168(e) of this section, full-time exempt employees may be eligible to be compensated in cash in the form of special assignment pay for time worked in excess of 40 hours in one week, subject to the following limiting criteria:

- (1) The work performed must be at a city-operated health clinic facility that is open to the public and provides a service to the public;
- (2) The work performed by the full-time, exempt employee must directly involve providing critical service to the public ~~as~~ at such a facility;
- (3) The hours worked must be in addition to the normal 40 hours of the work week; and
- (4) The employees must be employed by ~~be~~ the city in a licensed medical professional capacity.

Special assignment pay is subject to approval by ~~the human resources~~ director and requires conclusive justification by the director of the department requesting the special assignment pay. Authorized special assignment pay will be reviewed on an annual basis by the ~~human resources~~ director in conjunction with the requesting department. When authorized, the amount of assignment pay will be established on an individual

# REDLINE

basis for each affected classification by the ~~human resources~~ director but may not be payable at more than 1½ times the employee's regular hourly rate of pay. Authorized assignment pay will be funded by the requesting department's personnel budget.

**Sec. 14-169. Reserved.**

**Sec. 14-170. Vacations.**

(a) ~~Permanent Full-time employees, excluding temporary employees~~ in the classified and unclassified service\_ ~~who regularly work the prescribed work week for their department~~ shall be allowed vacation with pay in accordance with the employee's service time and the following schedule:

Years 1 through 4	80 hours
Year 5	120 hours
Years 6 and 7	128 hours
Years 8 and 9	136 hours
Years 10 and 11	144 hours
Year 12	152 hours
Year 13	160 hours
Year 14	168 hours
Year 15	176 hours
Year 16	184 hours
Year 17	192 hours
Year 18 and beyond	200 hours

Service time for purposes of the foregoing accrual rates shall be based upon the employee's total eligible length of service with the city, and for a rehired employee credit shall be afforded for prior service time. Accruals shall be allocated on a fractional basis

## REDLINE

per pay period, with applicable service time adjustments commencing on the first pay period following the employee's service time anniversary date. Accruals during the first six months of service shall be subject to subsection (c) below.

Accruals of vacation time shall be limited as follows:

- (1) Except as provided in item (2) below, accruals of vacation time shall be limited to a maximum of 360 unused hours.
- (2) Persons who are actually employed by the city on October 1, 2003, and who have a commencement date for vacation benefits purposes that is prior to January 1, 2000, shall be subject to an accrual limit of 720 unused hours for so long as they remain continuously employed by the city without a gap in service.

Once the applicable maximum limit is reached, accruals shall be suspended and shall not recommence until the employee reduces the balance by use of benefits.

(b) When vacation absence is requested and approved by the ~~commission~~ department director or designee, the absence during that period shall not be converted to any other type of authorized absence, such as absence with pay, without pay, or sick or injury leave, without approval of the ~~civil service commission~~.

(c) No employee will accumulate any vacation leave until he has been in the city's service for a period of six months. If he continues in the city's service beyond said six months' period, such employee will be allowed such vacation leave as would have accrued during such six months' period of time.

(d) Vacation leave may be accumulated to a total of 360 or 720 working hours, as applicable, subject to the following:

- (1) Each employee of the city shall, upon termination of employment, receive in a lump sum payment, the full amount of his salary for his unused accrued vacation leave. If the termination results from the death of the employee, then the amount shall be payable to the beneficiaries of the employee.
- (2) Each employee, upon leaving the employment of the city, shall be paid accumulated vacation in the amount to be determined by taking the average of the hourly base pay of the employee, plus the longevity rate he has attained and has received or been entitled to receive during his last 60 calendar days of employment; provided, however, that the employee has received, for at least another 60 calendar day period of time, a higher base pay than that which he was paid during his last 60 calendar days of employment, then the amount of such payment shall be determined by taking the average of the hourly base pay of the employee for the 60-day calendar period for which he was paid a greater hourly base pay, plus the

## REDLINE

longevity rate he has attained. The computation of the "hourly base rate of pay" shall be based upon the hourly equivalent for 80 hours of scheduled work (excluding overtime) per biweekly pay period, regardless of the actual work hours scheduled per day. For a rehired employee, all computations shall be based upon the employee's then current term of service.

(ef) Employees who take an extended leave of absence without pay for personal reasons, consisting of 80 or more hours of absence, shall not accumulate vacation allowances during such absences.

(fg) The provisions of this section are inapplicable to police officers and fire fighters serving in positions that are classified under Chapter 143 of the Texas Local Government Code. Vacation leave benefits for employees so classified shall be as provided by applicable provisions of Chapter 34 of this Code, the aforesaid Chapter 143, and any applicable agreements established between the city and employee bargaining groups under Chapter 143.

### **Sec. 14-171. Leave with pay.**

(a) Attendance of ~~permanent~~ employees at conventions, conferences and meetings of like nature is not to be considered a leave from duty but shall be noted on the payroll and such attendance must be authorized by the ~~mayor~~ department director or designee.

(b) In the case of death in the immediate family, the department director may excuse an employee for as many as three calendar days. Immediate family shall include father, mother, sister, brother, husband, wife, child, grandparents, and other relatives if, in the opinion of the department director, such employee's presence due to his individual relationship and the circumstances of the case, would be required. Such absences and the reasons therefore must be reported in a manner prescribed by the director. ~~to the human resources director on forms prescribed by his office.~~

(c) Absence of ~~full-time~~ employees during due to religious holidays may be charged to covered by the employee's accrued leave, except sick and wellness leave; however, vacation time, or debited to overtime the employee may have accumulated; ~~but such absences must be approved by the department director or designee, and reported promptly to the human resources director.~~

(d) ~~Permanent~~ Employees who leave to serve as members of the uniformed military forces of the United States are to be given pay for whatever time they may have accumulated as vacation time prior to their leaving but shall not accumulate leaves with pay during absences which extend for periods of longer than one month unless otherwise provided by law.

# REDLINE

## **Sec. 14-172. Leave without pay; voluntary leave without pay program.**

(a) Department directors may grant, upon good reason, leaves of absence without pay for as many as 14 consecutive calendar days for ~~permanent full-time~~ employees in the classified or unclassified service. All leaves in excess of 14 calendar days shall be reported promptly to the ~~civil service~~ commission on forms prescribed by the commission. ~~Civil service~~ commission approval of leaves without pay extending for more than ~~ten working days~~ 14 calendar days shall be required before such leaves shall be authorized. The commission, with the exception of those leaves known as military leave, shall not approve of more than 90 consecutive calendar days of leave at any one time, but the ~~civil service~~ commission may subsequently approve extensions of a leave as long as a total of 180 calendar days of leave without pay in one 12-month period is not exceeded. Leaves without pay extending for more than 180 calendar days shall be authorized only after the request for the same is approved by the ~~city~~ council. A leave for less than 180 days and more than 14 calendar days may be cancelled by the ~~civil service~~ commission upon reasonable notice to the employee.

(b) Employees who begin a leave on Monday shall be paid for the preceding Saturday and Sunday. Employees who begin a leave on Tuesday or other ~~weekday~~ week day which immediately follows a council-approved holiday, or who return from a leave on the day immediately following such a holiday, shall not be paid for that holiday. Saturdays, Sundays, off-days and holidays which come during a leave without pay shall be without pay, as also shall Saturdays, Sundays and off-days which terminate a leave.

(c) If an employee returns to work before his leave expires, the employee's department director shall notify promptly the human resources department in writing, and, furthermore, the employee's department director will notify the human resources department in writing if an employee fails to return on the working day next following the end of this leave. Failure to return within three days from a leave shall be taken as evidence of a ~~resignation without notice~~ job abandonment.

(d) In time of war or emergency, an employee who serves in the uniformed military forces of the United States shall be granted a military leave without pay but shall be eligible for reinstatement to his former position and all other entitlements consistent with the requirements of the Uniformed Services Employment and Reemployment Rights Act of 1994, as amended. ~~only if he is able to present to the civil service commission a certificate of honorable discharge within 90 days after his discharge, is physically and mentally qualified for reinstatement, and if his services with the military forces began at or about the time he left the city's service therefor. If and when he is reinstated, he shall receive full seniority credit for the time he was absent for military service. Physical or mental incapacity to perform his former duties shall not make him ineligible for placement in some other work provided he is qualified therefor.~~

(e) When budgetary constraints require a reduction in expenditures, the mayor is authorized to implement, as needed, a program of voluntary and/or involuntary leaves of

## REDLINE

absence without pay (furloughs) whereby employees will not come to work and will not be paid on a regular work day. The mayor must designate and approve the parameters of such a program (the Furlough Plan) in advance. The Furlough Plan must specify: (1) whether furloughs will be voluntary, involuntary, or both, (2) the limited duration of time either or both shall be in effect, (3) whether furloughs will be citywide or department specific, (4) the date(s) either or both programs will be activated and implemented, (5) the civil service systems and respective employee groups, pay grades or classifications affected, (6) the minimum and maximum number of days or hours to be taken as furlough, and (7) the time period during which furloughs must be taken. Furloughs must affect all designated employee group members consistently (i.e. all employees in each affected group will be treated the same as all other members of that group) and (8) all Federal and State laws concerning labor standards and pay will be followed.

(f) At the direction of the mayor, the director will promulgate procedures for each type of furlough authorized consistent with sections 14-172(a) through 14-172(e) of this Code and the parameters specified in the Furlough Plan. During the course of a furlough, whether voluntary or involuntary, the mayor may alter or revise specific components of the program to respond to changes in the city's financial condition and the director will modify procedures accordingly. Any furlough taken will be appropriately noted on each affected employee's attendance records and will in no way be regarded as an unauthorized absence, a permanent reduction in pay, a reduction in force or contribute toward disciplinary action. A furlough shall not affect the employee's accrual of sick and vacation leave or eligibility for health insurance or other benefits, subject, however, to any relevant provisions in an applicable pension agreement.

### **Sec. 14-173. Outside employment of employees.**

~~The commission will not permit any member of any department to~~No employee shall contract for, or be engaged in, any work of any kind after regular working hours for compensation or non-monetary compensation, unless specifically authorized, in writing, to do so by his department director or designee. An employee shall submit a new outside work authorization form annually and/or for each new work, and under no circumstances will the assignment. The department director or designee shall not approve a request permitting a member of his department to hold a full-time or part-time position which would deprive another from regular employment by the city. The department director or designee will be required to maintain in his office a permanent record of all outside employment— authorization forms for which approval has been sought, has been authorized. Such records shall be maintained for a minimum period of three years.

### **Secs. 14-174—14-181. Reserved.**

### **Sec. 14-182. Removal; demotion; suspension.**

(a) A department director may terminate the employment of, demote, reduce in pay or temporarily suspend for any period of time any ~~non-civil~~ noncivil service

# REDLINE

employee in his department (or division), which action shall not be subject to appeal or review by the commission.

(b) A department director may, for just cause, indefinitely suspend the employment of, demote, or reduce in pay, any civil service employee in his department (or division) which action shall be subject to appeal and review by the commission pursuant to the authority vested in it by the Charter and these rules.

(c) A department director may temporarily suspend without pay any civil service employee in his/her department (or division) for any period of time not to exceed 90 days. An employee temporarily suspended for up to 15 calendar days, shall not have a right of appeal before the commission, but civil service employees may request a ~~review and hearing~~ which may be granted at the discretion of the commission. An employee temporarily suspended for 16 to 90 calendar days shall have a right of appeal before the commission pursuant to the authority vested in it by the Charter and these rules.

(d) No indefinite suspension, demotion or reduction in pay of any civil service employee shall become effective until the employee has been given an opportunity by his/her department director to explain the conditions or actions which prompted consideration of one or more of these disciplinary actions. The department director shall give to the employee written notice of the indefinite suspension, demotion or reduction in pay, the effective date thereof, and the reasons or grounds for such action with a copy of the notice to the commission. The disciplinary action shall then become effective immediately, but the employee shall retain the right of appeal to the commission as prescribed in these rules. After hearing the appeal, the commission shall either sustain the action, ~~lessen the penalty, increase~~ modify the penalty, or reject the action of the department director and if applicable, reinstate the employee to the employment roster. The decision of the commission shall be final.

## **Sec. 14-183. Violation of certain standards of conduct to result in disciplinary action.**

(a) Any civil service employee, ~~either full- or part-time~~, may be disciplined under the provisions of subsections 14-182(a) and (b), for violating any of the standards of conduct enumerated and listed herein below. Any noncivil service employee, ~~either full- or part-time~~, may be disciplined at the discretion of the employee's department director and the mayor for violating any of the following standards of conduct:

(a) — An employee shall not:

- (1) Accept or solicit any money, property, service or other thing of value by way of gift, favor, loan or otherwise which the employee knows or should know is being offered or given with the intent to influence said employee in the discharge of official duties.

## REDLINE

- (2) Accept or solicit any money, property, service or other thing of value from a private person or group of people in return for having exercised, performed or failed to perform official duties. Excepted from this prohibition are regularly scheduled wages and other employee benefits paid or given to an employee of a private person or company while such employee is working for the city as a loaned executive.
- (3) Engage in any business or professional activity which might tend to impair independence of judgment in the discharge of official duties.
- (4) Engage in any outside employment without first securing approval, in writing, from the department director.
- (5) Invest or hold any investment or interest directly or indirectly in any financial, business, commercial or other transaction, which creates or might reasonably tend to create a conflict between the public trust held as an employee of the city and the employee's private interests.
- (6) Disclose confidential information concerning the property, operations, policies or affairs of the city, nor use such confidential information to advance the personal interests, financial or otherwise, of said employee or others.
- (7) Use one's official position or the city's facilities, equipment or supplies, nor use or attempt to use one's official position to secure special advantage, privilege or exemption for the employee or others.
- (8) Negotiate for or accept future employment with any person, firm, association or corporation which has a substantial interest in any proposed ordinance or decision within such person's area of responsibility and upon which the employee may or must act or make a recommendation.
- (9) Represent, directly or indirectly, any private person, group or interest before any agency of the city, except in matters of purely civic or public concern and when doing so without compensation or remuneration.
- (10) Represent directly or indirectly, any private person, group or interest in any action or proceeding against the interests of the city, or in any litigation in which the city or any agency thereof is a party. However, this provision shall not prohibit representation by a group, firm or organization the employee is associated with if such employee does not participate in the action proceeding or litigation in any manner.
- (11) Represent, directly or indirectly, any private person, group or interest in any action or proceeding in the municipal courts of the city which was instituted by a city officer or employee in the course of official duties.

## REDLINE

- (12) Violate any provision or set of provisions of a departmental code of ethical conduct promulgated pursuant to subsection (f) herein~~\_below~~ for the city department of which the employee is a member.

(b) If an employee has a personal interest, direct or indirect, financial or otherwise, in any decision pending before such employee or a body or group of which the employee is a member, the employee shall not participate in the consideration of the matter. If such employee is in attendance at such meeting, he or she shall publicly disclose a conflict of interest to the body or group prior to any determination of the matter.

(c) ~~Reserved.~~

~~(d)~~ Certain classifications of employee may be required by a department director to report all gifts received from any person, business entity or organization. An employee in a classification so designated by a department director shall report all gifts, including the estimated amount of the gift and the source, on April 30 of each year, for the preceding calendar year. The department director shall file with the city secretary a list of the job classifications required to make this report. Excluded from the requirement are gifts received from relatives within the second degree of consanguinity or affinity, and food and beverages of trivial benefit.

~~(e)~~ Department directors may require certain classifications of employees to report a list of all real property held legally or beneficially by them. An employee in a classification so designated by a department director shall report all such real property held legally or beneficially by him on April 30 of each year for the preceding calendar year. The department director shall file with the city secretary a list of the job classifications required to make this report.

~~(f)~~ Department directors shall, in consonance with the foregoing standards, establish by administrative rules or regulations additional requirements for the ethical conduct of salaried municipal employees, or classifications of such employees, within their respective departments. Such administrative rules or regulations shall be approved by the mayor and placed on file with the city secretary and the applicable department director.

~~(g)~~ The term "salaried municipal employee," as used in this section, shall include civil service employees and ~~non-civil~~ noncivil service employees.

### **Sec. 14-184. Carrying of dangerous weapons while on duty or on city property.**

(a) All employees, except those who are required to do so in the performance of their official duties, are prohibited from ~~carrying~~ possessing dangerous weapons while on duty, in a city vehicle, or while on city property. This prohibition does not extend to off-duty possession by a handgun license holder in a public area as authorized by state law. ~~Possession alone is "carrying" for the purpose of this rule, no transporting of the~~

## REDLINE

~~weapon is necessary. Further, possession~~ Possession includes all enumerated weapons within the employee's actual care, custody, control, or management, except for a firearm or ammunition transported or stored in a locked, privately owned motor vehicle in accordance with state law. ~~either on his or her person or in his or her vehicle.~~ Those weapons which are specifically prohibited include:

- (1) Any instrument that is specially designed, made, or adapted for the purpose readily capable of inflicting serious bodily injury by striking a person with the instrument, including but not limited to:
  - a. Blackjack.
  - b. Nightstick.
  - c. Mace.
  - d. Tomahawk.
  - e. Other instruments which are readily capable of but not specifically designed to cause serious bodily injury.
- (2) Any explosive or incendiary bomb, grenade, rocket, or mine that is designed, made, or adapted for the purpose which is capable of inflicting serious bodily injury, death, or substantial property damage, or for the principal purpose of causing such a loud report as to cause undue public alarm or terror, and includes a device designed, made, or adapted for delivery or shooting an explosive weapon.
- (3) Any device designed, made or adapted to expel a projectile through a barrel by using the energy generated by an exploding or burning substance, by compressed air or gases or by any device readily convertible to that use, including but not limited to:
  - a. Rifles.
  - b. Shotguns.
  - c. Handguns.
  - d. Machine gun.
  - e. Short-barrel firearm.
  - f. Hunting guns.
  - g. Antique guns.
  - h. Zip gun.

## REDLINE

- (4) Any bladed hand instrument that is capable of inflicting serious bodily injury or death by cutting or stabbing a person with the instrument, including but not limited to:
- a. Any jackknife with a blade over three inches.
  - b. Throw-blade knife or hand instrument designed to cut or stab another by being thrown.
  - c. Dagger, including dirk, stiletto, poniard, etc.
  - d. Bowie knife.
  - e. Sword.
  - f. Spear.
  - g. Switchblade knife.
- (5) Any conducted-energy device that is used or intended to be used as either an offensive or defensive weapon, which is capable of temporarily immobilizing a person by inflicting an electrical charge, including but not limited to:
- a. Stun gun.
  - b. Taser.
- (6) Any chemical dispensing device that is designed, made, or adapted for the purpose of dispensing a substance capable of causing an adverse psychological or physiological effect on a human being.
- (7) Any device that reasonably appears to be an explosive or incendiary device or by its design causes alarm or reaction of any type by an official of a public safety agency or a volunteer agency organized to deal with emergencies.
- (8) Any bladed hand instrument that consists of finger rings or guards made of a hard substance and that is designed, made, or adapted for the purpose of inflicting serious bodily injury or death by striking a person with a fist enclosed in the knuckles.

(b) Violation of this rule will subject the employee to disciplinary action up to and including indefinite suspension.

# REDLINE

## **Sec. 14-185. — Removal because of medical impairment.**

~~— (a) This section provides the exclusive procedure for determining whether an employee who is not subject to chapter 143 of the Local Government Code is sufficiently physically or mentally fit to continue the employee's duties or assignment.~~

~~— (b) As used in this section, the terms "reasonable accommodation" and "undue hardship" shall have the same meaning as those terms appearing in the Americans with Disability Act of 1990 (42 U.S.C. section 1210 et seq.) enacted by Congress on July 29, 1990 and as defined by regulations issued under it by the United States Equal Employment Opportunity Commission.~~

~~— (c) Whenever an employee has a known disability, the department director shall be responsible for restructuring the employee's duties and responsibilities as a reasonable accommodation so long as the employee can perform the essential job functions of his or her position. Whenever a question exists whether the employee is sufficiently physically or mentally fit to continue the employee's essential job functions, whether or not the employee is on leave of absence, upon receiving a written order by the department director, the employee shall submit to the civil service commission a report from the employee's personal physician, psychiatrist, or psychologist, as appropriate. If the report by the employee's personal physician, psychiatrist, or psychologist establishes that the employee is unable to perform the essential job functions of the employee's position, the department director shall attempt to make a reasonable accommodation by transferring the employee to another vacant position in the department that the employee can perform. If reasonable accommodation cannot be made within the department, then the department director shall notify the human resources director, who shall institute a city-wide search for available positions. The human resources director shall make a report and recommendation to the civil service commission, and the commission shall hold a hearing to determine whether a reasonable accommodation for the employee's disability can be made either in the employee's current position or by transfer to another available position. If the commission determines that a reasonable accommodation can be made, it shall enter an order changing the duties of the employee's current position, reclassifying the employee's position, or transferring the employee to another available position. The commission shall not transfer the employee to another department if there is a vacancy in the employee's department that the employee is capable of performing with reasonable accommodation. If the commission determines that no reasonable accommodation can be made and that the employee will not be able to resume his or her essential job functions within a reasonable period of time, the commission shall enter an order removing the employee from active employment with the city; however, such order shall not prejudice the employee's ability to seek re-employment with the city in the future, should there be a change in the employee's medical condition.~~

~~— (d) If the commission, the department director, or the employee questions the report, the commission may appoint a physician, psychiatrist, or psychologist, as~~

# REDLINE

~~appropriate, to examine the employee and to submit a report to the commission, the department director, and the employee.~~

~~—— (e) If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the personal physician, psychiatrist, or psychologist, as appropriate, the commission may appoint an independent three-member board composed of a physician, a psychiatrist, and a psychologist or any combination, as appropriate, to examine the employee. The board shall submit to the commission a written report of its finding regarding whether employee is sufficiently physically or mentally fit to continue the person's essential job function. The commission, at its next regularly scheduled meeting after the date it receives the report of the board, shall determine whether the employee is sufficiently physically or mentally fit to continue the assignment. The commission shall hold a hearing to make the determination of fitness and reasonable accommodation as is provided in subsection (b) above and enter an order accordingly.~~

~~—— (f) The employee shall be responsible for paying the cost of the services of the employee's personal physician, psychiatrist, or psychologist, as appropriate. The city shall pay all other costs.~~

**Secs. ~~14-18514-186~~, ~~—14-187~~. Reserved.**

## DIVISION 16. RULE 16. APPEALS, HEARINGS AND INVESTIGATIONS

### **Sec. 14-188. Right of appeal; correction of improper disciplinary action.**

(a) Any regular, ~~permanent~~ employee in the classified service who believes he has been unjustly indefinitely suspended, retired, demoted, transferred, or reduced in any pay may file an appeal with the commission in the same manner as prescribed in section 3 of ~~article~~ Article Va of the City Charter pertaining to an appeal and hearing.

(b) No disciplinary action shall be taken by the commission, the mayor, a supervisor, or department director against an employee because of membership in any political, religious, or fraternal labor organizations. ~~And if~~ if the commission finds a disciplinary action has been taken for these reasons, the employee shall be reinstated immediately ~~in his position~~ to the employment roster and may be reimbursed for any loss of pay occasioned by such action.

### **Sec. 14-189. Investigations generally.**

If, at any time, there is brought to the attention of the commission a condition whereby it appears that an injustice has been done an employee in the classified service with respect to his position or duties in the service of the city, the commission is vested with authority to investigate the facts, and if it finds the employee is entitled to relief, it shall make such appropriate order, after review, as will grant the relief to which the employee is entitled, and its finding thereon shall be final; provided, however, that in any instance herein mentioned the commission shall first direct, in writing, the attention

## REDLINE

of the mayor to the purported injustice and take no action thereon for a period of ten days following delivery of such notice, and only then in the event it finds that the injustice as to such employee has not been corrected by the mayor.

### **Sec. 14-190. Right to counsel at hearings.**

Any person appearing at a hearing as a party to the cause being heard shall be entitled to legal counsel, but this fact shall not be construed to mean that such representation is necessary.

### **Sec. 14-191. Power to administer oaths and require attendance of witnesses and production of records.**

In the course of any hearing, investigation, or tests of fitness conducted under the provisions of these rules and regulations, the commission and any other person authorized by it as its representative for such purposes shall have the power to administer oaths, to subpoena, and to require the attendance of witnesses within the ~~county~~ legal limits and the production by them of books and papers pertinent to any matter of inquiry, and to examine such witnesses under oath, in relation to any matters properly involved in such proceedings.

### **Sec. 14-192. Refusal to testify.**

If any officer or employee ~~in the classified service~~ shall ~~willfully~~ willfully refuse on any grounds to testify or to answer any question relative to the matter being heard by the commission, such refusal shall constitute sufficient grounds for either suspension or ~~discharge~~ termination, and the commission may recommend to the mayor the suspension or discharge if, in its judgment, such disciplinary measure is advisable. Any employee indefinitely suspended for refusing to testify before the ~~civil service~~ commission shall have no right of appeal.

### **Sec. 14-193. Investigations on commission's own initiative.**

The commission may, upon its own initiative, make such inquiries and investigations as it may deem to be warranted regarding the administration and effect of the provisions of ~~article~~ Article Va and of ordinances and rules adopted in accordance therewith and to make such recommendations to the mayor, or take such other action as in its judgment is warranted in the premises.

### **Sec. 14-194. Hearings to conform to Charter.**

All hearings shall be held in conformity with Charter provisions covering civil service hearings.

### **Secs. 14-195—14-199. Reserved.**

# REDLINE

## DIVISION 17. RULE 17. RECORDS, REPORTS, ETC.

### **Sec. 14-200. Official roster.**

The director shall ~~provide and~~ maintain a complete official record of employees, showing for each employee his name, address, classification, rate of pay, changes in any of these, and such other information as he may deem desirable. The form and manner in which such information shall be maintained shall be determined by the ~~commission~~director.

### **Sec. 14-201. Report of change in employee's status; personnel actions.**

Every temporary or permanent change in the status of employees in the classified service shall be reported to the director at such time and in such form, together with such supporting or pertinent information, as the ~~commission~~director may prescribe.

### **Sec. 14-202. Personnel files generally.**

There will be only one official personnel file maintained on each employee of the city and that file shall be maintained in the custody of the director. Any action designated by the director ~~of any nature~~ pertaining to any employee shall be forwarded to the director for proper filing.

### **Sec. 14-203. Review of employee files.**

(a) Any department director or his designated supervisor of the city may, upon request, review any file of any employee in his respective department, but shall not be allowed to review the official personnel file of an employee of another department, unless consideration is being given to the transfer of that employee from one department to another department. All ~~employee~~ official personnel files shall be reviewed under the supervision of an employee of the human resources department, and no files shall be allowed to be taken from the human resources department. Information from any file of any employee of the city may be released to persons not employees of the city only at the discretion and under the supervision of the director.

(b) The names of special investigators or special employees who may be temporarily employed by the city and whose usefulness would be impaired were their identity disclosed, and the confidential reports on any applicant, eligible, or employee are to be held as confidential data and are to be guarded accordingly.

### **Sec. 14-204. Preservation of records.**

Official employee records, minutes of the commission meetings, and lists of eligibles shall be kept for a period of three years, or longer as may be required by the City's official retention policy. Employment related records of employees shall be made a part of the personnel files of individuals who become employees of the city; otherwise,

# REDLINE

they shall be kept by the commission for a period of three years after the establishment of the list of eligibles. Roster cards or records, payroll records, minutes of the commission meetings, lists of eligibles, and records pertaining to any examination, including correspondence, applications, and examination papers of persons who scored non-passing grades shall not be removed from the possession of the commission.

~~Employment related records, Roster cards or records, payroll records,~~ minutes of the commission meetings, and eligible records shall be kept ~~permanently~~ as required by the city's retention policy. ~~All such R~~records pertaining to any ~~examination, including~~ correspondence, applications, and ~~examination papers with passing grades,~~ shall be preserved for at least ~~two~~ three years after the establishment of the ~~eligible list~~ list of eligibles, after which period of time they may be destroyed if deemed by the commission to be of no further value. Such papers shall be made a part of the ~~permanent~~ official files of individuals who become employees of the city in the interim. The papers and records of those who do not make a passing grade may be destroyed after ~~60 days~~ three years, computing from the date the ~~eligible list~~ list of eligibles is created, but in no event shall these cards, papers, or records be removed meanwhile from the possession of the ~~commission~~ human resources department.

**Secs. 14-205—14-209. Reserved.**

## DIVISION 18. RULE 18. PAYROLL PROCEDURE

**Sec. 14-210. Automated payroll system.**

(a) The administration and regulatory affairs department, central payroll division, has authority for maintaining the automated payroll system and for maintaining the integrity of data therein. However, no payroll transaction that is made necessary by the hiring, ~~terminating~~ discharge, or change in the rate of pay for an employee, when such transaction is used to generate payroll warrants for employees of the city shall be entered into the payroll data base unless and until the transaction has been audited by the controller and delivered to the administration and regulatory affairs department, central payroll division, signifying that such audit has been conducted.

(b) The administration and regulatory affairs department, central payroll division, has authority for preparing all necessary payroll system reports, including payroll warrants. However, the city controller and the director of administration and regulatory affairs shall not issue any warrant or order in payment of any salary or compensation to any person for filing or holding a classified position unless either the payroll, warrant, or check for that work bears the certification of the ~~commission~~ director, that the persons named thereon are correctly named and titled, at the legal rate of pay, and were appointed or employed in accordance with the provisions of these rules and regulations. Subsequent to such certification and upon receipt of the payroll warrants, the city controller has exclusive authority for verifying, signing, and distributing the warrants, ~~to department directors and their designees.~~

# REDLINE

## **Sec. 14-211. Notice to the controller.**

The director shall be responsible for ~~sending~~ making available to the controller a ~~copy of all forms, reports, and certificates~~ affecting the status and rates and amounts of salary and compensation of all employees.

## **Secs. 14-212—14-216. Reserved.**

### DIVISION 19. RULE 19. VALIDITY OF RULES

## **Sec. 14-217. Effect of invalidity of part.**

If any part of these rules and regulations is held by competent authority to be invalid, each and all of the other part or parts thereof not so held shall continue in full force and effect as though such invalid part had not been included herein.

## ~~Sec. 14-218. "Officer" defined.~~

~~For the purposes of division 20, the term "officer" shall mean those employees who are employed and classified as city marshals in the municipal courts department, or any successor to such department or airport police officers in the aviation department.~~

## ~~Sec. 14-218.1. Indefinite suspensions of city marshals and airport police officers.~~

~~(a) Whenever the mayor, pursuant to section 14-182, indefinitely suspends an officer who is entitled to civil service protection under Texas Revised Civil Statutes Annotated, article 1269m, the mayor shall, within 120 hours thereafter, file a written statement with the commission, giving the reasons for such suspension, and immediately shall furnish a copy thereof to the officer affected by such act, said copy to be delivered in person to such suspended officer by said department director or his representative. Said order of suspension shall inform the officer that he has ten days after receipt of a copy thereof within which to file a written appeal with the commission. The commission shall hold a hearing and render a decision in writing within 30 days after it receives said notice of appeal. Said decision shall state whether or not the suspended officer shall be permanently or temporarily dismissed from his department or be restored to his former position or status in the classified service in the department. In the event that such suspended officer is restored to the position or class of service from which he was suspended, such officer shall receive full compensation at the rate of pay provided for the position or class of service from which he was suspended for the actual time lost as a result of such suspension, it being further provided that the commission may assess a temporary suspension or other discipline in lieu of an indefinite suspension.~~

~~(b) The written statement provided above to be filed by the mayor with the commission shall not only point out the civil service rule alleged to have been violated by the suspended officer, but shall contain the alleged acts of the officer that the mayor contends are in violation of the civil service rules. It shall not be sufficient for the mayor~~

# REDLINE

~~merely to refer to the provisions of the rules alleged to have been violated, and in case the mayor does not specifically point out the act or acts complained of on the part of such officer, it shall be the duty of the commission promptly to reinstate such officer. In any civil service hearing hereunder, the mayor is hereby restricted to the original written statement and charges, which shall not be amended, and no act or acts may be complained of by said mayor which did not happen or occur within six months immediately preceding the date of suspension by the mayor. No officer shall be suspended or dismissed by the commission except for violation of the civil service rules, and except upon a finding by the commission of the truth of the specific charges against such officer.~~

~~— (c) In the event the commission orders that such suspended officer be restored to his position as above provided, it shall be the duty of the department director immediately to reinstate him as ordered, and in the event the department director fails to do so, the officer shall be entitled to his salary just as though he had been regularly reinstated.~~

~~— (d) In the event such department director willfully refuses to obey the orders of reinstatement of the commission, and such refusal persists for a period of ten days, it shall be the duty of the mayor to discharge such department director from his employment with the city.~~

## **~~Sec. 14-218.2. Disciplinary suspensions of city marshals and airport police officers.~~**

~~— The head of either the municipal courts department or the aviation department shall have the power to suspend any officer under his jurisdiction or supervision for disciplinary purposes for reasonable periods, not to exceed 15 days; provided that in every such case, the department director shall file with the commission within 120 hours, a written statement of action, and the commission shall have the power to investigate and to determine whether just cause exists therefor. In the event the department director fails to file said statement with the commission within 120 hours, the suspension shall be void and the officer shall be entitled to his full salary. The commission shall have the power to reverse the decision of the department director and to instruct him immediately to restore such officer to his position. In the event such department director refuses to obey the order of the commission, then the provisions with reference to salaries of the officers and to the discharge of the department director as well as other provisions of section 14-218.1 pertaining to such refusal of the department director shall apply.~~

## **~~Sec. 14-218.3. Appeal by city marshals and airport police officers.~~**

~~— (a) An officer may appeal an indefinite suspension, a suspension, a promotional passover, or a recommended demotion to the commission or an independent third party hearing examiner.~~

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~~—(b) In order for an officer to appeal, it shall only be necessary for him to file, within ten days with the secretary of the commission, a written statement denying the truth of the charges as made, a statement taking exception to the legal sufficiency of such charges, or a statement alleging that the recommended action does not fit the offense or alleged offense and in addition, asking for a hearing by the commission. The officer shall also include in the statement whether he is requesting a hearing before the commission or an independent third party hearing examiner. In hearing an appeal under this section, an independent third party hearing examiner shall act in the same capacity as the commission.~~

### **~~Sec. 14-218.4. Appeal to district court.~~**

~~—In the event any officer is dissatisfied with the decision of the commission, he may, pursuant to article 1269m, Texas Revised Civil Statutes Annotated, and within ten days after the rendition of such final decision, file a petition in the district court, asking that his order of suspension or dismissal be set aside, and that he be reinstated in the department. Such cases shall be advanced on the docket of the district court and shall be given preferential setting over all other cases. An officer who elects to appeal to an independent hearing examiner waives all rights of appeal to district court except as provided by section 16c(f) to article 1269m.~~

### **~~Sec. 14-218.5. Causes of dismissals and suspensions.~~**

~~—No officer shall engage in, or be involved in, any one of the following acts or conduct and the same shall constitute cause for the removal from service or the suspension of an officer:~~

- ~~(1) That the officer has been convicted of a criminal offense or of a misdemeanor involving moral turpitude.~~
- ~~(2) That the officer has been guilty of an immoral or criminal act.~~
- ~~(3) That the officer has willfully, wantonly, or through culpable negligence been guilty of brutality or cruelty to an inmate or prisoner of the city institution or to a person in custody, provided the act committed was not necessarily or lawfully done in self-defense, or to protect the lives of others, or to prevent the escape of a person lawfully in custody.~~
- ~~(4) That the officer has violated any of the provisions of the Charter of the City of Houston or has violated any of the provisions of the civil service rules and regulations for municipal employees, or the rules or orders of the municipal courts or aviation departments.~~
- ~~(5) That the officer has been guilty of an act that amounts to an act of insubordination, or to disgraceful conduct, whether such act was committed while on duty or off duty.~~

## REDLINE

- ~~(6) That the officer has been guilty of incompetency or inefficiency in the performance of the duties of his position.~~
- ~~(7) That the officer has been guilty of drinking intoxicants or the use of intoxicants while on duty, or being intoxicated while off duty.~~
- ~~(8) That the officer has been absent from duty without leave contrary to the rules of the commission, or has failed to report after leave of absence has expired, after such leave of absence has been disapproved or revoked and cancelled by the director of the department and the commission; provided, however, that if such absence or failure to report is excusable, the commission or the mayor may revoke such discharge.~~
- ~~(9) That the officer has failed to pay or make reasonable provisions for future payment of his just debts due or owing by him, causing thereby annoyance to his superior officer or scandal to the service.~~
- ~~(10) That the officer has been wantonly offensive in conduct or language towards the public or toward city officials or officers or employees, or shows discourtesy to the public or to fellow employees while said officer is in line of duty.~~
- ~~(11) That the officer has been guilty of any conduct unbecoming to an officer of the City of Houston.~~
- ~~(12) That the officer has willfully shown lack of good moral character.~~
- ~~(13) That the officer has violated any lawful and reasonable direction made and given by his superior officer, where such violation or failure to obey amounts to an act of insubordination or a breach of proper discipline, or resulted or reasonably might be expected to result in loss or injury to the City of Houston, to the public, or to the prisoners or wards of the City of Houston.~~
- ~~(14) That the officer has been guilty of neglect of duty.~~
- ~~(15) That the officer has been guilty of conduct which was prejudicial to good order of the Municipal Courts or Aviation Departments of the City of Houston.~~
- ~~(16) That the officer has been guilty of shirking duty or has shown cowardice while in the line of duty.~~
- ~~(17) That the officer has been habitually tardy in reporting for duty or absent frequently from duty during regular working hours, or has refused to perform a reasonable amount of emergency work after working hours when directed to do so by his superior officer or department director.~~

## REDLINE

- ~~(18) That the officer has been wantonly careless or negligent in the care and handling of the property and equipment of the City of Houston.~~
- ~~(19) That the officer has been induced or has attempted to induce an officer or employee in the service of the city to commit an unlawful act or to act in violation of any lawful and reasonable departmental or official regulation or order; or has taken any fee, gift, or other valuable thing in the course of his work or in conjunction with it, for his personal use from any citizen, when such fee, gift, or other valuable thing is given in the hope or expectation of receiving a favor or better treatment than that accorded other citizens.~~
- ~~(20) That the officer has solicited, accepted, or has agreed to accept any money, service or other thing of value from any person in exchange for the officer's retirement.~~
- ~~(21) That the officer has directly or indirectly given, delivered or paid, or offered or promised to give, deliver or pay any money, service, or other valuable thing to any person for or on account of, or in connection with his promotion.~~

### **Sec. 14-218.6. Demotion of city marshals and airport police officers.**

~~— (a) By his initiative pursuant to the City Charter and section 14-182, or upon the recommendation of the head of the municipal courts department or aviation department, the mayor may recommend in writing to the commission that an officer be demoted to a lower rank, giving the reasons therefor, and requesting that the commission make such order of demotion.~~

~~— (b) A true copy of such recommendation shall be immediately provided, in person, to the officer to be affected by such demotion. If an officer desires to exercise his right to have the recommended demotion heard by a third party hearing examiner as provided by section 14-218.3., he shall so inform the commission, in writing, within ten days after his receipt of the copy of such recommendation.~~

~~— (c) Said commission shall have authority to refuse to grant said request for demotion. If, however the commission feels that probable cause exists for said demotion, it shall give such officer ten days' advance written notice to appear before the commission at a time and place specified in said written notice to the officer, and said officer shall have the right to a full and complete public hearing upon such proposed demotion. If the officer has elected to have the recommended demotion heard by a third party hearing examiner, the commission shall refer such recommendation along with the officer's request to the secretary of the commission. The secretary shall immediately institute the proceedings established for such hearings as provided in section 16c of article 1269m, Texas Revised Civil Statutes Annotated.~~

# REDLINE

~~(d) No officer shall be demoted without such hearing, unless the officer has accepted, in writing, the terms of the demotion.~~

**Secs. 14-218, 219. Reserved.**

## ARTICLE III. SICK LEAVE AND INJURY

### DIVISION 1. GENERALLY

#### Sec. 14-220. Definitions.

As used in this article, the following words and phrases shall have the meanings ascribed to them in this section unless the context of their usage clearly indicates another meaning:

~~*Actively at work status*~~ means that the employee is following an approved schedule, actually performing all the regular duties of his employment at a regularly established business location of the city or another location to which he may be required to travel to perform the regular duties of his employment. ~~Although not actively at work as defined hereinabove, an employee, for purposes of this provision, An employee shall be deemed to be remain on~~ actively at work status for compensable sick leave plan or modified sick leave plan benefits purposes on each day of leave compensated as a city benefit, such as each day of a regular paid vacation or holiday, on authorized paid sick or injury leave, on a scheduled nonworking off day (exempt employees only), on relief of duty with pay, or on an unpaid absence of 80 consecutive work hours or less. An employee on an unpaid absence in excess of 80 consecutive work hours for any reason will not be considered to be on actively at work status for sick leave benefits purposes under either plan while on such unpaid absence. Employees serving temporary disciplinary suspensions of 15 calendar days or less shall be considered to be on actively at work status, but employees serving longer term temporary disciplinary suspensions shall not be considered to be on actively at work status for sick leave benefits purposes under either plan.

*Base pay* means the employee's current ~~base biweekly~~ approved salary rate of pay stated in hourly, biweekly or other appropriate rate of pay ~~for his classification, excluding overtime, assignment pay, higher classification pay, shift differential, allowances, incentives~~ or any additional compensation based upon his normal working hours.

*Benefit* or *benefits* means compensation in the form of continuation of salary.

*Benefit year* means a plan year commencing on September 1 of each calendar year and ending on August 31 of the next calendar year.

## REDLINE

*Break in service* means any termination of employment of any duration for any reason. The term "break in service" shall not include an authorized leave of absence (paid or unpaid) or a temporary disciplinary suspension of any duration.

*Compensable sick leave* means a benefit payable to an employee only when the employee has available sick leave hours and has been authorized sick leave by the department director because he cannot discharge his regular duties due to a bona fide illness, disease or off duty injury of the employee, or in order to care for a family member due to the family member's bona fide illness, disease or injury, or because the employee requires time off to consult with or receive testing or treatment from a health care provider for the diagnosis or treatment of his bona fide illness, disease or off duty injury.

*Compensable sick leave plan* means the program of benefits created in division 2 of this article.

*Department director* means the director of the department to which an employee is assigned or the department director's designee.

*Director* means the human resources director of the city.

*Employee* means any permanent or temporary full-time employee of the city in the classified or unclassified service, including firefighters and police officers who are classified under chapter 143 of the Texas Local Government Code.

*Family member* means the spouse, child or step-child, or parent or step-parent of the employee.

*Frozen days* means unused accumulated benefit days that an employee who was employed prior to September 1, 1985, had accrued as of August 31, 1985, through the city's former sick leave plan as provided under former section 14-169 of the City Code which was repealed effective September 1, 1985.

*Full-time* means regularly assigned to work not less than 40 hours per week.

*Modified sick leave plan* means the program of benefits created in division 3 of this article.

*Part-time* means regularly assigned to work less than 40 hours per week.

*Sick leave* means time off authorized at the discretion of an employee's department director for an employee's own bona fide illness, disease, or off duty injury, or because the employee requires time off to consult with or receive testing or treatment from a health care provider for the diagnosis or treatment of the bona fide illness, disease or off duty injury. Sick leave may also mean time off

## REDLINE

authorized at the discretion of an employee's department director in order to care for a family member due to the family member's bona fide illness, disease, or injury. Sick leave may be authorized as uncompensated if the employee has no compensable sick leave plan or modified sick leave plan hours available.

### **Sec. 14-221. Application.**

The provisions of this division shall apply to employees who are covered by either the compensable sick leave plan or the modified sick leave plan. No employee may be covered by both plans. Sick leave benefits will not be provided for persons who are employed by the city on a part-time basis or to emergency employees.

### **Sec. 14-222. Outside employment.**

No employee shall engage in any outside employment on any day for which the employee has requested or received compensable or uncompensated sick leave, whether or not related to family medical leave, or workers' compensation benefits with or without salary continuation. Approval of outside employment pursuant to applicable civil service regulations and department policies shall not be construed as authorizing an exception to the foregoing prohibition. A violation of this section shall be grounds for appropriate disciplinary action, including indefinite suspension or termination.

### **Sec. 14-223. Off days, holidays.**

Benefits may only be utilized and will only be charged for days and hours upon which an employee is regularly scheduled to work. Benefits will not be provided for any extra work days or work hours to which an employee may have been assigned to work on an overtime basis.

### **Sec. 14-224. Benefit amount.**

When sick leave is utilized by an active employee, compensable sick leave plan or modified sick leave plan, benefits will be computed for payment purposes on the basis of the employee's then current base pay plus any permanent pay components, such as longevity pay, assignment pay or bilingual pay to which the employee is regularly entitled, regardless of whether charged to available sick leave time allowances or charged to frozen days (in the case of employees whose service commenced prior to September 1, 1985, who may have frozen days available).

### **Sec. 14-225. Coverage, transitional provisions.**

(a) The modified sick leave plan is a closed enrollment plan that is available only to those employees who have been employed by the city since on or before August 31, 1985, without a break in service and who did not elect to convert to the city's former income protection plan as authorized by law in 1985. Other employees eligible for sick leave benefits, including members of the former income protection plan and persons

## REDLINE

hired or rehired following a break in service on or after September 1, 1985, shall be members of the compensable sick leave plan.

(b) Employees who are rehired following a break in service shall be members of the compensable sick leave plan and shall be treated in all respects as new employees thereunder, unless entitled to restoration of modified sick leave plan membership or restoration of other benefits following a layoff or a military leave as provided by law or by civil service regulations.

(c) The modified sick leave plan shall remain unaffected by the creation of the compensable sick leave plan. An employee who is a member of the modified sick leave plan shall continue to accrue benefits as set forth in division 3 of this article for so long as he remains continuously employed by the city without a break in service. The value of frozen days for a modified sick leave plan member determined as of August 31, 1985, under former section 14-225(a) of the City of Houston Code of Ordinances shall apply to his payment upon termination pursuant to section 14-233 or 14-244 of this Code, as applicable; however, frozen days shall be payable as provided in section 14-224 of this Code when utilized by an active employee for authorized compensable sick leave.

### **Sec. 14-226. Injury in course and scope of employment, workers' compensation benefits and salary continuation.**

(a) In a circumstance in which an employee is injured in the course and scope of performing his duties on behalf of the city, the employee's department director may grant the injured employee an injury leave of absence not to exceed 12 months' duration. An employee who qualifies for workers' compensation income benefits under state law shall be paid in accordance with applicable state law for supplemental income or other benefits for which the injured employee may be eligible. In addition to statutory workers' compensation benefits, an injured employee may be paid supplemental salary continuation in an amount not to exceed in the aggregate the maximum of his base salary plus any permanent pay components, such as longevity pay, assignment pay or bilingual pay, to which the employee is regularly entitled. Salary continuation may only be paid in accordance with rules and terms promulgated by the mayor as required elsewhere herein.

(b) Salary continuation benefits provided under this section shall not be charged to the available compensable sick leave plan time allowances or to the modified sick leave plan balance otherwise authorized in these provisions for compensable sick leave.

(c) If, at the end of the first 12-month period of injury leave, the employee is still not able to return to full-time employment but medical prognosis indicates that the employee will be able to resume full-time employment following an additional period of treatment and/or convalescence, the city council may, upon the request of the department director with the concurrence of the director and the mayor, grant additional

# REDLINE

leaves of absence at full or reduced pay for a period not to exceed an additional 12 months, to be granted in increments of three months.

## **Sec. 14-227. Sick leave regulations.**

The mayor may, upon recommendation of the director, establish regulations for the accounting of sick leave use and benefits under either plan, for the verification of bona fide illness, disease, off duty injury or medical or other treatment by a health care provider, and for discipline of employees who have excessive absences. Any such regulations shall be consistent with this article and other applicable laws and shall be written so as to ensure that benefits and their use are properly accounted for and that sick leave benefits are limited to eligible uses. The director shall submit accounting regulations to the city controller for approval prior to recommending them to the mayor. With the exception of any provisions that relate to employees who work shifts of unusual duration, the foregoing regulations shall provide, as a qualification for sick leave hereunder, that each absence for an eligible reason after 64 hours within a benefit year, regardless of the duration of the absence, whether taken cumulatively or in a single event, must be verified by an attending health care provider's statement on a form promulgated by the director. No assessment by telephone will be accepted as a verification required herein. Verification may be required prior to the use of 64 hours of sick leave in any instance of potential abuse of sick leave.

## **Sec. 14-228. Coordination.**

All payments for sick leave benefits under this article (whether paid pursuant to the modified sick leave plan, the compensable sick leave plan or as salary continuation under section 14-226 of this Code) shall be subject to coordination with:

- (1) Payments to which an employee is entitled by virtue of any policy or ~~self funded~~self-funded plan of disability insurance benefits provided in whole or in part at the expense of the city; and
- (2) Payments to which an employee is entitled by virtue of any state or federally provided or mandated benefit program including, but not limited to, state workers' compensation benefits and federal social security benefits.

The coordination shall extend to payments made thereunder for the purpose of compensating an employee for lost wages or lost capacity to earn wages, but it shall not extend to payments expressly made thereunder for the reimbursement of actual medical expenses incurred by an employee. In any instance where such other payments as described in section 14-228(2) are available, then the sick leave compensation benefits under this ~~article~~Article shall be reduced by an amount equal to the other benefits that are available to the employee, so that the employee shall not receive more than an amount equal to his base salary plus any other permanent pay components.

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## **Sec. 14-229. Removal because of medical impairment.**

(a) This section provides the exclusive procedure for determining whether an employee, whether full-time or part-time, who is not subject to chapter 143 of the Local Government Code is sufficiently physically or mentally fit to continue the employee's duties or assignment.

(b) As used in this section, the terms "reasonable accommodation" and "undue hardship" shall have the same meaning as those terms appearing in the Americans with Disability Act of 1990, as amended, (42 U.S.C. section 1210 et seq.) enacted by Congress on July 29, 1990 and in regulations issued under that Act by the United States Equal Employment Opportunity Commission.

(c) The department director shall be responsible for restructuring the employee's duties and responsibilities as a reasonable accommodation so long as the employee can perform the essential job functions of his or her position. Whenever a question exists whether the employee is sufficiently physically or mentally fit to continue the employee's essential job functions, whether or not the employee is on leave of absence, upon receiving a written order by the department director, the employee shall submit to the department a report from the employee's personal physician, psychiatrist, or psychologist, as appropriate. If the report by the employee's personal physician, psychiatrist, or psychologist establishes that the employee is unable to perform the essential job functions of the employee's position, the department director shall attempt to make a reasonable accommodation. If reasonable accommodation cannot be made within the department, then the department director shall notify the director, who shall institute a city-wide search for available positions. The director shall make a report and recommendation to the civil service commission, and the commission shall hold a hearing to determine whether a reasonable accommodation for the employee's disability can be made either in the employee's current position or by transfer to another available position. If the commission determines that a reasonable accommodation can be made, it shall enter an order of accommodation and/or if applicable, reclassifying the employee's position or transferring the employee to another available position, in consultation with the department director or designee. The commission shall not transfer the employee to another department if there is a vacancy in the employee's department that the employee is qualified to perform with or without reasonable accommodation. If the commission determines that no reasonable accommodation can be made and that the employee will not be able to resume his or her essential job functions with or without a reasonable accommodation within a reasonable period of time, the commission shall enter an order removing the employee from the city's employment roster; however, such order shall not prejudice the employee's ability to seek reappointment with the city in the future, should there be a change in the employee's medical condition.

(d) If the commission, the department director, or the employee questions the report, the commission may appoint a physician, psychiatrist, or psychologist, as

# REDLINE

appropriate, to examine the employee and to submit a report to the commission, the department director, and the employee.

(e) If the report of the appointed physician, psychiatrist, or psychologist, as appropriate, disagrees with the report of the personal physician, psychiatrist, or psychologist, as appropriate, the commission may appoint an independent three-member board composed of a physician, a psychiatrist, and a psychologist or any combination, as appropriate, to examine the employee. The board shall submit to the commission a written report of its finding regarding whether employee is sufficiently physically or mentally fit to continue the person's essential job function. The commission, at its next regularly scheduled meeting after the date it receives the report of the board, shall determine whether the employee is sufficiently physically or mentally fit to continue the assignment. The commission shall hold a hearing to make the determination of fitness and reasonable accommodation as is provided in subsection (b) above and enter an order accordingly.

(f) The employee shall be responsible for paying the cost of the services of the employee's personal physician, psychiatrist, or psychologist, as appropriate. The city shall pay all other costs.

## DIVISION 2. COMPENSABLE SICK LEAVE PLAN

### **Sec. 14-230. Application.**

The compensation benefits provided in this division shall constitute the compensable sick leave plan and shall be available only to those employees who are entitled to coverage hereunder.

### **Sec. 14-231. Compensable sick leave.**

(a) The compensable sick leave plan is created effective September 1, 1996. A member of the city's former income protection plan, which is replaced by the compensable sick leave plan, may be entitled to an initial sick leave time allowance hereunder as provided by section 6 of Ordinance No. 96-1088 and regulations promulgated thereunder. The initial sick leave time allowance, if any, shall be in addition to the biweekly sick leave time allowances received under subsection (b).

(b) A compensable sick leave plan member who is actively at work shall receive a biweekly sick leave time allowance of 2.5 hours per biweekly payroll period up to a maximum of 65 hours per benefit year.

(c) Sick leave may not be compensated unless sufficient unused sick leave time allowances are currently available to the employee at the time of the absence. If sick leave time allowances are not available, any authorized sick leave shall be uncompensated unless the employee elects to use other available benefits, such as vacation, to supplement any deficiency in sick leave time allowances.

# REDLINE

(d) In his first full biweekly payroll period that commences in October, each member of the compensable sick leave plan who has used fewer sick leave time allowance hours than he received during the previous benefit year shall be given additional sick leave time allowance hours in an amount equal to the difference between the number of hours received and the number of hours used. However, no additional sick leave time allowance hours shall be given that would cause the employee's available sick leave time allowance hours to exceed 1,040 hours. Once an employee has 1,040 hours of unused sick leave time allowances, the annualized addition for unused hours shall not be provided. The annual addition authorized in this subsection for unused sick leave time allowance hours shall not apply to initial sick leave time allowances provided under subsection (a).

(e) Upon ~~termination~~discharge of employment, all unused sick leave time allowances in excess of 1,040 hours shall be payable to the employee or to the employee's beneficiaries, as applicable, at the employee's rate of base pay, plus longevity, at the time of termination. The first 1,040 hours of unused sick leave time allowances shall have no value, except when used for compensable sick leave benefits and may not be converted to any other use or benefit, nor shall they be payable upon ~~termination~~discharge or death of the employee under any circumstances.

**Sec. 14-232. Personal leave hours.**

(a) Compensable sick leave plan members are eligible to receive personal leave hours in accordance with the following schedule:

<b>Hours of Benefits Used in Preceding Benefit Year</b>	<b>Personal Leave Hours Earned</b>
None	24
From one minute to eight hours	16
From eight hours and one minute to 16 hours	8
More than 16 hours	None

In order to qualify, an employee must have been employed without a break in service during the preceding full benefit year.

(b) Personal leave hours granted for each benefit year will be awarded as of the first full pay period in October of each succeeding benefit year. Personal leave hours may not be accumulated past August 31 of each benefit year and may only be used during the benefit year in which they are awarded. No compensation of any sort will be

## REDLINE

granted for personal leave hours that are not timely used during the benefit year awarded.

(c) Personal leave hours may be used in the same manner as vacation and may be taken separately or in conjunction with regular vacation or other authorized leave. Department directors may impose internal regulations, including reasonable advance notice requirements for taking personal leave hours, in order to ensure that working schedules are maintained. However, no department director shall unreasonably continually or arbitrarily deny an employee the right to use earned personal leave hours.

### **Sec. 14-233. Frozen days.**

(a) Those compensable sick leave plan members who were employed by the city before September 1, 1985, and who have frozen days may utilize them as supplemental compensation in the event of illness or injury and exhaustion of sick leave time allowances available under the compensable sick leave plan. Frozen days may not be utilized for sick leave benefits while compensable sick leave plan time allowances remain available. Also, frozen days may not be utilized to supplement the benefits received through any long term disability policy that may be provided by the city as an adjunct benefit to the compensable sick leave plan.

(b) The value of an employee's remaining frozen days that have not been used as supplemental benefits under subsection (a), above, shall be payable to the employee upon termination of employment with the city, or to the employee's beneficiaries in the event of the death of the employee. Payment under this subsection will be limited to the value of the employee's remaining frozen days that were not used as supplemental benefits; the payment value therefor shall be as calculated as of August 31, 1985, under former section 14-225(a) of the City of Houston Code of Ordinances, regardless of whether the employee is earning a lesser or greater amount at the time of termination.

### **Sec. 14-234. Long-term disability.**

The city may, if it so elects, provide an insurance policy or a ~~self-funded~~self-funded plan of long term disability coverage for members of the compensable sick leave plan who meet certain eligibility criteria therefor in such form and upon such terms as the city council may, from time to time, elect to offer.

### **Sec. 14-235. Wellness leave.**

(a) During each benefit year, a compensable sick leave plan member may take up to eight hours of wellness leave to go to health care providers for examinations and physicals, annual check ups and prospective health screening/testing of any kind in order to ensure that the employee\_ continues to stay in good health or for the purpose of encouraging early detection of potentially debilitating or life threatening illness or diseases that might otherwise be ignored.

# REDLINE

(b) ~~Department~~The directors may impose internal regulations, including reasonable advance notice requirements for taking any of such hours, in order to ensure that working schedules are maintained. No department director shall unreasonably refuse to allow such leave, but shall ensure that the time is taken when mutually beneficial or convenient for both the employee and the department.

(c) Wellness leave taken by compensable sick leave plan members will be payable in the same manner as sick leave, but shall not be regarded as use of sick leave time allowances, nor shall it be regarded as a use of sick leave for other purposes, such as attendance awards.

(d) Unused wellness leave hours may not be carried from one benefit year to the next; remaining unused hours will be canceled on August 31 of each benefit year. No compensation of any sort will be paid or granted for wellness leave that is not timely used.

**Secs. 14-236—14-239. Reserved.**

## DIVISION 3. MODIFIED SICK LEAVE PLAN

**Sec. 14-240. Application.**

The benefits provided in this division 3 shall constitute the modified sick leave plan and shall be available only to those employees who are covered by the modified sick leave plan. The meaning of the word "employee" as used in this division shall be so restricted.

**Sec. 14-241. Benefit days—Accrual.**

(a) Employees shall receive benefit sick days at the rate of 1¼ eight-hour working days for each full month of employment so that they shall be eligible to receive 15 eight-hour benefit days per benefit year.

(b) Benefit days may be accumulated without limitation.

**Sec. 14-242. Same—Days charged.**

When an employee utilizes an accumulated benefit day for sick or injury leave purposes, it will be charged to his or her accumulated benefit days on a first-in-first-out accounting basis so that days used during any benefit year will be charged:

- (1) First to frozen days, if any;
- (2) Then to unused days accumulated, if any, from the earliest benefit year and then to unused days accumulated, if any, from each succeeding benefit year until all days earned through the expiration of the last preceding benefit year have been exhausted; and

## REDLINE

- (3) Finally to unused days accumulated, if any, during the then-current benefit year.

No further benefits will be paid when all unused accumulated benefit days have been exhausted.

### **Sec. 14-243. Same—Annual valuation.**

After the conclusion of each benefit year, the director shall determine the number of benefit days accrued during the benefit year that were not utilized during the benefit year, if any, by each employee and the per day value thereof. Such per day value shall be based upon the employee's average daily rate of base pay plus longevity during the benefit year, and it shall be computed by adding an amount equal to the employee's daily rate of base pay plus longevity as applicable for each biweekly city payroll cycle that commenced during the benefit year and dividing that sum by the number of city biweekly payroll cycles that commenced during the benefit year. To the extent that the city may have two or more different biweekly payroll cycles in effect, then the computation for each employee shall be based upon the payroll cycle applicable to that employee. The per day value of the days so determined shall apply to their payment upon ~~termination~~discharge pursuant to section 14-244 of this Code; however, they shall be payable as provided in section 14-224 of this Code when utilized by an active employee for compensable sick leave plan benefits.

### **Sec. 14-244. Same—~~Termination~~Discharge benefit.**

The combined value of any unused accumulated benefit days will be payable to the employee, or to the employee's beneficiaries in the event of the death of the employee, upon the ~~termination~~discharge or death of the employee, in the following manner:

- (1) Remaining frozen days, if any, will be payable at their per day value calculated as of August 31, 1985, as established under former section 14-225(a) of the City of Houston Code of Ordinances.
- (2) Remaining days, if any, from each benefit year elapsed since the inception of this plan (September 1, 1985), will be paid at their per day value as established pursuant to section 14-243 of this Code.
- (3) Remaining days, if any, from the benefit year in which the employee's employment with the city is ~~terminated~~discharged will be paid at the employee's daily average rate of base pay plus longevity during the benefit year of ~~termination~~discharge, to be computed through the biweekly payroll period in which the ~~termination~~discharge occurs in the same manner provided in section 14-243 of this Code.

# REDLINE

## **Sec. 14-245. Wellness.**

Members of the modified sick leave plan may utilize up to eight hours per benefit year of their accrued benefit days for wellness leave to go to health care providers for examinations and physicals, annual ~~check-ups~~checkups and prospective health screening/testing of any kind in order to ensure that the employee continues to stay in good health or for the purpose of encouraging early detection of potentially debilitating or life threatening illness or diseases that might otherwise be ignored. Even though the wellness time used will be charged to their available benefit balance, it shall not be regarded as a use of sick leave for other purposes, such as attendance awards.

## **Secs. 14-246—14-250. Reserved.**

### **ARTICLE IV. MILITARY LEAVES**

## **Sec. 14-251. Definitions.**

As used in this article the following words and terms shall have the meanings ascribed in this section, unless the context of their usage clearly indicates another meaning:

*Armed forces* means the state military forces of Texas and the reserve components of the United States armed forces and national guard.

*Called to duty* means ordered on proper authority to assume active duty status as a full-time member of the military forces during a time of war or a state of emergency for service relating to the war or emergency.

*City salary* means the employee's regular rate of base pay from the city inclusive of longevity allowances; ~~however, it shall not include any other allowances~~, incentives, differentials or other compensation ordinarily received by the employee for service to the city. The regular rate of pay shall not include clothing or equipment allowances.

*Director* means the human resources director of the city.

*Employee* means a member of armed forces who is a full-time employee of the city.

*Military salary* means base pay plus any incentive pay, duty pay or other compensation payable to the employee by the military for full-time service while called up, exclusive of allowances for travel, uniforms and other personal expenses of the employee.

# REDLINE

## **Sec. 14-252. Rights cumulative.**

The provisions of this ~~article~~Article shall not be construed to abridge any right of compensation or benefits arising under state or federal law or regulations, including those benefits arising under section 431.005 of the Texas Government Code.

## **Sec. 14-253. Military leave.**

\_\_\_\_\_ (a) An employee who is called to duty shall be entitled to be placed on military leave upon written application to the director. Each application shall be accompanied by duly authenticated copies of state or federal military orders, and any other documentation reasonably required by the director to establish the employee's right to leave status under this article. Upon receipt of an application and related documents establishing the right to leave status under this article, the director shall place the employee on military leave status.

\_\_\_\_\_ (b) An employee on active military duty can be authorized to use up to eighty (80) hours of accrued leave per pay period.

\_\_\_\_\_ (ac) Accrued hours include, but are not limited to, floating holiday or deferred holiday, personal leave hours, compensatory time, vacation hours, or Paid Time Off (PTO) under the Houston Police Department Paid Time Off Program. Sick leave hours and no-value PTO hours may not be used. Value of leave used will be computed using bi-weekly base pay plus longevity rates of pay, and shall include any other pay to which the employee would be entitled to if the employee was using time for a reason other than military leave including, but not limited to, all allowances, assignment pays and certification pays to which the employee was entitled prior to being placed in a military leave status.

## **Sec. 14-254. Compensation.**

(a) A ~~full-time~~ employee who is granted military leave under this article and whose military salary is less than his city salary shall be entitled to compensation for the difference. Such compensation shall not apply to any period prior to the reporting of the employee for the military call up or following the employee's discharge from the call up. In those instances in which an employee is eligible for compensation at full pay under section 431.005 of the Texas Government Code, the compensation hereunder shall not be payable for any period during which the employee is entitled to compensation thereunder.

(b) The compensation payable under this section shall be paid from time to time in accordance with administrative regulations established by the director with the consent of the city controller. Without limitation, such regulations may require that the employee regularly submit proof that he remains on active duty status with the military and the amount of the military salary that is payable.

# REDLINE

## **Sec. 14-255. Status for other purposes.**

The military leave provided under this ~~article~~Article shall not be construed to make any employee of the city who is on military leave an active employee of the city during his period of service in the armed forces while called up. For all other purposes the employee shall be regarded as being on leave without pay status entitled to those rights of restoration of employment and benefits that are provided by applicable state and federal law.

## **Sec. 14-256. Time limitation.**

The compensation to any employee under section 14-254 of this Code shall be limited to a period of 90 calendar days from the date that the employee is called up, unless the city council determines, based upon the nature of the war or emergency, the number of city employees involved and the potential costs to the city, that the benefits should be extended.