

CITY OF SIERRA MADRE

Terms & Conditions of Employment

For Full-time Fire Department Employees

Implemented by Resolution 14-73

Effective October 5, 2014

TABLE OF CONTENTS

Article 1 PREAMBLE2

Article 2 MANAGEMENT RIGHTS2

Article 3 PUBLIC EMPLOYEES RETIREMENT SYSTEM.....2

 Section 1 CalPERS Membership2

 Section 2 Salary Subject to PERS2

 Section 3 City Payment of Employer Contribution for CalPERS Retirement2

 Section 4 Employee Contribution for CalPERS Retirement3

Article 4 INSURANCE3

 Section 1 Employee Insurance3

 Section 2 Retiree Medical Insurance.....4

Article 5 SENIORITY4

Article 6 SHIFTS4

 Section 1 Shift Exchanges.....4

 Section 2 Work Day5

 Section 3 Work Period.....5

 Section 4 Pay Period.....5

Article 7 OVERTIME.....5

Article 8 ADDITIONAL COMPENSATION6

 Section 1 Good Driving Incentive6

Article 9 LEAVES6

 Section 1 Holiday Leave6

 Section 2 Sick Leave Accrual.....6

 Section 3 Vacation Leave Accrual.....6

Article 10 LIGHT DUTY.....7

Article 11 OUTSIDE EMPLOYMENT7

Article 12 GRIEVANCE PROCEDURE7

 Section 1 Informal Grievance Procedure7

 Section 2 Formal Grievance Procedure8

 Section 3 General Provisions.....9

Article 13 DISCIPLINARY ACTION9

 Section 1 Cause for Discipline9

 Section 2 Imposition of Disciplinary Action.....10

 Section 3 Appeals11

 Section 4 Hearing Procedure.....11

Article 14 SUPPLEMENTAL PROCEDURES FOR APPEAL BY FIREFIGHTERS OF PUNITIVE ACTION UNDER THE
FIREFIGHTERS PROCEDURAL BILL OF RIGHTS ACT12

 Section 1 Definitions12

 Section 2 Appeal of a Punitive Action Not Involving Discharge, Demotion, or Suspension of a Firefighter13

 Section 3 Appeal of a Disciplinary Decision Involving Discharge, Demotion, or Suspension of a Firefighter ...14

Article 15 TERMS AND CONDITIONS OF EMPLOYMENT15

Article 1 PREAMBLE

It is the intent and purpose of these Terms and Conditions of Employment to set forth the wages, hours and/or other items and conditions of employment for the unrepresented full-time employees, excluding the Fire Chief, Assistant Chief, or Battalion Chiefs, of the Fire Department ("employees") and the City of Sierra Madre ("City"), in accordance with Chapter 2.48 of the Sierra Madre Municipal Code.

Article 2 MANAGEMENT RIGHTS

The rights of the City include and are not limited to all rights provided under State law, and the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards and levels of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; determine the content of job classifications; determine style and/or types of City-issued wearing apparel, equipment or technology used; establish and enforce dress and grooming standards; assign work to and schedule employees in accordance with requirements as determined by the City; establish and change work schedules and assignments as necessary; and exercise complete discretion over its organization and the technology of performing its work.

Article 3 PUBLIC EMPLOYEES RETIREMENT SYSTEM

Section 1 CalPERS Membership

Consistent with the Government Code, employees who are local safety or miscellaneous members of the California Public Employees Retirement System are entitled to the benefits as indicated in the most recent amendment to the contract between the Board of Administration of CalPERS and the City Council.

Section 2 Salary Subject to PERS

The City will include the employer paid member contribution to CalPERS (EPMC) as "salary subject to PERS". The City will follow "CalPERS Public Agency & Schools Procedures Manual" as it pertains to "reportable and unreportable wages". Total hours reported will not exceed 212 in a 28 day FLSA work period.

Section 3 City Payment of Employer Contribution for CalPERS Retirement

The City shall pay the employer share of the CalPERS retirement contribution as actuarially determined by CalPERS for each fiscal year covered by the Agreement. For classic members, as defined in Section 4 of this Article, the retirement benefit is 3% at 55. For new members, as defined in Section 4 of this Article, the retirement benefit is 2.7% @ 57.

Section 4 Employee Contribution for CalPERS Retirement

Classic member employees shall pay the full statutorily required amount of the employee contribution to CalPERS for classic members, which is currently 8% for miscellaneous employees. Classic members are those members who do not qualify as new members under Government Code section 7522.04.

Pursuant to the Public Employees' Pension Reform Act of 2013, new member employees shall pay 50% of the normal cost rate for the defined benefit plan in which the new member employee is enrolled, rounded to the nearest quarter of 1%. (Government Code section 7522.30.) New members are defined under Government Code section 7522.04.

Article 4 INSURANCE

Section 1 Employee Insurance

The City shall maintain the following overall level of insurance benefits for each employee covered by these Terms and Conditions of Employment. The specific coverage is subject to the provisions of the individual insurance company's master contract(s) as issued to the City of Sierra Madre for each type of insurance.

Insurance Benefits offered by the City include:

- Health Insurance
- Dental Insurance
- Vision Insurance
- Life and Accidental Death Insurance (\$50,000 coverage for the employee only)

The City has participated in the CalPERS medical program since 1999 to provide health coverage for members covered under these Terms and Conditions of Employment. Pursuant to Government Code Section 22892 of the Public Employees' Medical and Hospital Care Act (PEMHCA), for the calendar year beginning January 2014, the City will contribute \$89.25 for each member towards the PERS Health Care Plan. This amount is adjusted annually.

The City will contribute an amount over its contribution under PEMHCA (which is \$89.25 per month for the calendar year beginning January 2014). The total contribution, including the City's contribution under PEMHCA, shall be up to \$650 per month for health, dental and vision insurance coverage, plus 25% of premiums in excess of \$650 per month, through an IRS Section 125 Flexible Benefit Plan (FBP) administered by either the City or its designee.

An employees who elects not to purchase medical, dental, and vision insurance through the City's plan and is covered by another group insurance plan, will receive a medical stipend of \$325 per month.

All insurance benefits offered by the City are subject to COBRA upon an employee's resignation, retirement or other COBRA defined event. Additional insurances are available through payroll deduction.

Section 2 Retiree Medical Insurance

The City has participated in the CalPERS medical program since 1999 for members covered under these Terms and Conditions of Employment. As such, the City is obligated to contribute toward the cost of retiree medical coverage for the retiree's and spouse's lifetime so long as they remain eligible for and covered by this medical program. The City provides additional benefits based on these Terms and Conditions beyond those required under PEMHCA.

All members who retire from the City (including disability retirement) and continue coverage in the CalPERS medical program are eligible for the benefit provided in the PEMHCA resolutions. Those resolutions provide for the City to contribute toward retiree premiums at an equal amount to the active employees, for 2014 this amount is \$89.25. Additionally, an employee will be extended "employee only" health insurance coverage for the lowest cost plan available from the City at the time of retirement until age 65. An employee must be a minimum of age 60 on the effective date of retirement and have worked 30 years of full-time service with the City to be eligible for this coverage.

Dependent health insurance coverage may be extended by co-payment by the employee. Premiums for dependent co-payment must be submitted monthly in advance prior to the 15th of each month. The employer portion of dependent co-pay coverage will terminate at age 65 or five years after the employee's death, whichever occurs first or within the guidelines of COBRA; these benefits do not preclude a member or dependent's membership in PEMCHA.

Article 5 SENIORITY

Seniority shall be determined based on: 1) rank, and 2) within a rank, the length of uninterrupted full-time service as an employee or volunteer in the services of the City. Seniority shall be utilized in scheduling shifts and will be used for allocating time off.

Article 6 SHIFTS

The Captain's normally assigned shifts begin at 0700 hours. Employees will generally work nine (9), twenty-four (24) hour rotating shifts in a 28-day cycle. An employee's regular work week will generally consist 53 hours per week or 2756 hours per year; all hours over 212 in the 28-day work period will be compensated according to the FLSA.

Section 1 Shift Exchanges

Employees may voluntarily trade shifts among themselves within the 28-day FLSA work period. The Chief or his/her designee must approve the shift trade in writing. The Chief or his/her designee establishes the employees' schedules to meet the needs of the Department and therefore, shift trading is exclusively for the employees' convenience. A shift trade under this section results in one (1) employee working the shift of another employee or a portion thereof. The employee working the extra shift will receive no overtime compensation for doing so, nor

will the hours be counted toward FLSA overtime.

Section 2 Work Day

A work day shall include "roll call," two 15 minute rest periods and three 30 minute meal breaks; all on a paid status, but subject to recall.

Section 3 Work Period

Employees' work period shall constitute 28 calendar days per the 7(k) exemption of the Fair Labor Standards Act.

Section 4 Pay Period

A pay period shall constitute 14 calendar days. All Fair Labor Standards Act (FLSA) overtime will be paid on every other pay period.

Article 7 OVERTIME

The Fire Chief may require employees in the Fire Department to work at any other time other than during regular working hours until such work is accomplished. Employees working a special detail, including but not limited to movie detail, strike team, or special events, will be paid their hourly rate until such time that an employee works more than 212 hours in a 28-day work period.

Overtime shall be paid in accordance with the Federal Fair Labor Standards Act ("Act") and specifically in accordance with the partial overtime exemption of Section 7(k) of the Act. In determining an employee's eligibility for overtime compensation in a work period, paid leaves of absence and unpaid leaves of absence shall be excluded from the total hours worked. Paid leaves of absence include, but are not limited to, the following:

- Vacation Leave
- Holiday Leave
- Sick Leave
- Administrative Leave
- Compensatory Leave
- Worker's Compensation Leave
- 4850 Time
- Jury Duty
- Bereavement Leave
- Military Leave

Overtime will be paid at a rate of one and one half after an employee has worked 212 hours in a 28-day work period.

Article 8 ADDITIONAL COMPENSATION

Section 1 Good Driving Incentive

Employees required to obtain and maintain a valid Class B License will receive \$350 at the end of each calendar year, so long as the employee has not been involved in any preventable driving accidents.

Article 9 LEAVES

Section 1 Holiday Leave

On July 1 of each year, or prorated thereto, each employee will be granted 104 hours of Holiday Leave. A *Request for Leave of Absence* form shall be submitted fifteen working days prior to any use of holiday leave. The balance of any Holiday Leave will be automatically cashed out at the employee’s regular hourly rate on June 30th on the regular paycheck for that pay period. This leave may not be cashed out at any other time during the fiscal year.

Section 2 Sick Leave Accrual

Employees shall accrue 4.88 hours of sick leave per pay period for a total of 127 hours per year. Sick leave may be accrued to a maximum of 2,000 hours. Employee shall have no financial claim to reimbursement for unused sick leave upon leaving City employment, except as follows:

- Employees who voluntarily resign after completion of five years of continuous service shall receive 50% of any unused sick leave. Such compensation shall be calculated based on the employee’s existing range and step at the time of resignation. No employee shall receive compensation for more than 1000 hours.
- Employees, upon retirement from the City’s service and after completion of five years of continuous service, shall receive 50% of any unused sick leave. Such compensation shall be calculated based on the employee’s existing range and step at the time of retirement. No employee shall receive compensation for more than 1000 hours.

Section 3 Vacation Leave Accrual

Every full-time probationary and regular employee shall accrue paid vacation leave per payroll period as follows:

<u>Length of Service</u>	<u>Service Years</u>	<u>Per Payroll</u>	<u>Annually</u>
0 - 48 months	1 – 4	4.88 hours	126.78 hours
49 - 60 months	5	5.12 hours	133.12 hours
61 - 72 months	6	5.38 hours	139.78 hours
73 - 84 months	7	5.65 hours	146.76 hours
85 - 96 months	8	5.93 hours	154.10 hours
97 - 108 months	9	6.23 hours	161.81 hours
109 - 120 months	10	6.54 hours	169.70 hours
121 month & above	11 & over	6.78 hours	176.28 hours

Vacation shall accrue bi-weekly on a pro rata basis and increases shall occur at the beginning of the month.

Article 10 LIGHT DUTY

At the discretion of the Department, a limited number of temporary light duty positions may be identified. The Department may assign employees injured on duty to light duty positions. The Department has the discretion to consider approving requests that involve off-duty injuries for light duty positions; however, on-duty or industrial injuries will take precedence.

Light duty assignments will be limited to 90 calendar days. The Personnel Officer may approve a one-time extension of that time frame where circumstances warrant. If an extension is granted, it does not create a permanent light duty position, but is intended solely to reasonably accommodate an employee on a temporary basis.

If the Chief determines that the department is unable to accommodate the restrictions, the employee will be subject to the City's Transitional Return to Work Policy.

Article 11 OUTSIDE EMPLOYMENT

No full-time employee shall engage in any outside employment without first obtaining permission of the Chief prior to the commencement of employment. Once permission is granted, the employee must again request permission annually on January 1st of each year. The request for outside employment must be done in writing and it must be completed for any outside employment regardless of length or classification of employment. The Chief may deny permission to an employee to engage in any outside employment which is incompatible with City employment as described in Government Code section 1126 or if the Chief determines that the outside employment would render the employee incapable of, or less effective in performing his/her duties as an employee of the City. Failure of any employee to obtain prior written approval of the Chief is grounds for discipline, up to and including termination.

Article 12 GRIEVANCE PROCEDURE

A grievance is an alleged violation of these Terms & Conditions of Employment or a written City policy, and excludes any discipline or proposed discipline. The goal of this procedure is to make every reasonable effort to resolve complaints as near as possible to the point of origin.

Section 1 Informal Grievance Procedure

The grievant and the City's representative shall make every effort to resolve the grievance at the lowest level of supervision. Thus, the grievant shall attempt to discuss the grievance with the immediate supervisor before resorting to the Formal Grievance Procedure. However, if the grievant is unable to resolve the grievance informally before the time period for filing a Formal Grievance expires (10 calendar days from the date the grievance arose), the grievant must proceed to the Formal Grievance Procedure in accordance with the time limits therein or he/she will have waived the right to proceed with the Formal Grievance Procedure.

Section 2 Formal Grievance Procedure

First Level of Review

The grievant shall present the formal grievance in writing to his/her supervisor within ten (10) calendar days from the alleged occurrence of the violation.

The written grievance shall contain the following information:

- Name of grievant and job title;
- Department/Section;
- Clear and concise statement of the nature of the grievance including the circumstances and dates involved;
- The specific provision(s) of the Terms and Conditions of Employment, Rules, or written policy alleged to have been violated;
- Requested remedy;
- Name of the grievant's representative, if any;
- Date and signature of the grievant.

The supervisor shall render a decision and comments in writing and return them to the grievant within ten (10) calendar days after receiving the written grievance. If the grievant does not agree with his/her supervisor's decision or if no answer has been received within the specified time period, the grievant may present the grievance in writing to the department head or his designee within five calendar days of the date the supervisor's decision is rendered or should have been rendered pursuant to the specified time period.

Second Level – Department Review

The department head or designee shall upon request discuss the grievance with the grievant, the grievant's representative if any, and with other appropriate persons. The department head or designee shall render a decision and comments in writing and return them to the grievant within ten (10) calendar days after receiving the formal written grievance or after the meeting with the grievant, whichever is later. If the grievant does not agree with the decision reached or if no answer has been received within the specified time period, the grievant may appeal the formal grievance to the next level of the grievance procedure. In order to do so, the grievant must submit the grievance to the Personnel Officer, along with a written request that the grievance be considered at the Third Level, within ten (10) calendar days of the date the department head's decision is rendered, or should have been rendered, pursuant to the specified time period.

Third Level – City Manager

If the grievance is submitted to the City Manager for review and settlement, the City Manager may elect the methods he/she considers appropriate for the study of the issues and shall render a written decision to the parties within fifteen (15) calendar days. The City Manager's decision shall be the final determination.

Section 3 General Provisions

The grievant is entitled to representation of his/her choice at any point in the grievance procedure.

Failure by the grievant to meet any of the specified time lines shall constitute a withdrawal and waiver of the grievance. Failure by the City to meet any of the specified time lines shall entitle the grievant to proceed to the next level of review.

Since it is important that grievances be processed as rapidly as possible, the number of days indicated at each level shall be considered as maximum, and every effort should be made to expedite the process. If the last day of the specified time period falls on the weekend or a City observed holiday, it shall be moved to the next working day. Otherwise, the time specified may be extended only by mutual written consent.

Probationary employees may not grieve a rejection from probation.

Employees shall be assured of freedom from reprisal and challenges to performance evaluations for using the grievance procedures.

The Personnel Office shall act as a central repository for all grievance records.

Any decision or finding involving an unbudgeted expenditure or budgetary actions, resolutions, and ordinances of the City Council, etc. must be submitted to the City Council for ratification before that decision can become final and binding.

Failure on the part of an employee or his representative to appear in any case without good cause shall result in forfeiture of the case and responsibility for payment for all associated costs by the employee.

Article 13 DISCIPLINARY ACTION

The City follows a system of progressive discipline when appropriate, but may impose discharge for a first offense if the situation warrants such action. Disciplinary action includes: written reprimand, suspension without pay, reduction in pay, demotion and discharge.

Section 1 Cause for Discipline

Regular employees may be counseled, admonished, reprimanded, suspended, demoted, discharged or incur a reduction in pay for, including but not limited to, any of the following causes for discipline:

- Dishonesty;
- Incompetence;
- Insubordination;
- Inefficiency;
- Disobedience

- Neglect of duty;
- Actions which adversely affect the safety of the employee or of others;
- Violation of City policy regarding employee drug and alcohol abuse;
- Unexcused or excessive absences, including tardiness;
- Abuse of sick leave;
- Working overtime without prior authorization;
- Violation of the rules, regulations or orders established by a supervisor, department or City Council;
- Conviction or commission of a crime which adversely affects employment;
- Discourtesy to the public or fellow employees;
- Misuse or abuse of City property or equipment;
- Substandard job performance;
- Willful disobedience or insubordination;
- Outside employment which conflicts with the employee's position and has not been specifically approved by the department head and Personnel Officer;
- Harassment of or retaliation against fellow employees;
- Falsification of any City report or record (including application form) or work time keeping records;
- Fraud in securing employment, or otherwise making a false statement on an application for employment;
- Violation of any City policy;
- Other acts which are incompatible with service to the public including, but not limited to, any conduct or behavior, either on or off duty, which causes discredit or would reasonably tend to cause discredit to fall upon the City, its officers, agents or departments.

Section 2 Imposition of Disciplinary Action

Disciplinary action may be imposed upon an employee as follows:

The Department Head shall serve a notice of intended disciplinary action upon the employee stating the disciplinary action that is being proposed, the charges upon which the proposed disciplinary action is based, and a general description of the facts and/or circumstances supporting the charges. The notice shall inform the employee that he or she may respond to the notice in writing and/or in person. Any written response must be submitted to the Department Head within five business days of receipt of the notice. If the employee wishes to respond to the notice in person, he/she must submit a written request for a meeting with the Department Head. The request must be submitted to the Department Head within five business days of receipt of the notice.

If a timely request is made by the employee, the Department Head shall conduct an informal meeting with the employee to permit the employee to respond to the notice. The employee is entitled to be represented at the meeting by an attorney or association representative. The meeting shall be conducted at a time and in the manner determined by the Department Head. The Department Head shall have the authority to impose, reject, or modify the proposed

disciplinary action. If a timely request for a meeting is not made by the employee, the Department Head may immediately impose the proposed disciplinary action.

The Department Head shall give the employee written notice of his/her decision which shall, in the absence of an appeal, be considered final and conclusive. At this time the disciplinary action shall be imposed.

Section 3 Appeals

A permanent employee, against whom disciplinary action has been taken, may appeal to the City Manager within 10 business days after receiving a copy of the Department Head's decision and by filing a written answer to such decision with the Department Head. Appeal can be made on the following grounds:

- That the procedures set forth herein have not been followed.
- That the action taken was not in accord with the facts.

Upon receipt of a timely appeal, the Department Head shall advise the City Manager thereof and shall forward a copy of the statement of charges, the Department Head's notice of decision and the employee's answer to such decision. The City Manager shall give the appealing party written notice of the time and place of the hearing to be held before the City Manager upon such appeal. The hearing shall be limited to items which are disputed by the employee and contained within employee's written answer to the Department Head's decision. All items not disputed by the employee shall be deemed admitted by the employee for the purposes of the hearing.

Section 4 Hearing Procedure

Hearings shall be conducted in the manner most conducive to determination of the truth, and the City Manager shall not be bound by technical rules of evidence. Decisions made by the City Manager shall not be invalidated by any informality of the proceedings.

The formal rules of evidence shall not apply. All hearings shall be conducted in an orderly and expeditious manner with a view to the presentation of all material facts so that a fair and impartial decision may be made. The City Manager shall have full authority at all times to maintain orderly procedure and to restrict the hearing to facts and witnesses that are relevant to the appeal, and that are not unduly time consuming, cumulative, prejudicial, confusing or misleading.

Each side will be permitted an opening statement (Department Head or designee first) and closing arguments (Department Head or designee first, employee second, followed by rebuttal by Department Head or designee). The Department Head or designee shall first present the witnesses and evidence to sustain the charges. Then, the employee shall present his/her witnesses and evidence in defense. Each side will be allowed to examine and cross-examine witnesses. The hearing may be recorded by a certified shorthand reporter.

The City Manager shall have the authority to issue subpoenas to compel the attendance of witnesses. If any person in proceedings before the City Manager disobeys or resists any lawful order or fails to respond to a lawfully issued subpoena, refuses to take the oath or affirmation as a witness, or thereafter refuses to be examined, or is guilty of misconduct during the hearing or so near the hearing location as to obstruct the proceeding, the City Manager may, pursuant to the authority of Government Code sections 11455.10 et seq., certify the facts to the Superior Court and request the Court to issue an order directing the person to appear before the Court to show cause why he or she should not be punished for contempt.

Each party may be represented by an attorney. Each party shall bear its own costs, including attorney fees, in connection with the proceeding.

In his/her discretion, the City Manager may designate a neutral hearing officer to conduct the hearing. The hearing officer shall have the same powers as the City Manager in conducting the hearing on behalf of the City Manager. The hearing officer shall render a recommended decision to the City Manager who shall set forth proposed findings of fact and conclusions of law in support of the recommended decision. The City Manager may adopt, modify, or reject the recommended decision. The City shall bear the costs of the neutral hearing officer.

The final decision by the City Manager shall be subject to judicial review under Code of Civil Procedure section 1094.5 within the time limits described in Code of Civil Procedure section 1094.6.

Article 14 SUPPLEMENTAL PROCEDURES FOR APPEAL BY FIREFIGHTERS OF PUNITIVE ACTION UNDER THE FIREFIGHTERS PROCEDURAL BILL OF RIGHTS ACT

The following appeals procedures were adopted pursuant to Government Code section 3254.5 of the Firefighters Procedural Bill of Rights Act (the Act) and shall apply to any administrative appeal of a punitive action that is required to be afforded to a firefighter under the Act. The procedures supplement any requirements of section 2.68 (Standard Appeal Procedure) of the City Municipal Code and the applicable Terms and Conditions of Employment. Only firefighters (as defined below) are afforded the rights delineated below.

Section 1 Definitions

Firefighter means an employee who is considered a “firefighter” under Government Code § 3251(a).

Punitive Action means any action defined by Government Code § 3251(c), i.e., “any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment.”

Section 2 Appeal of a Punitive Action Not Involving Discharge, Demotion, or Suspension of a Firefighter

Pursuant to Government Code section 11445.20, the following informal hearing procedure shall be utilized for an appeal by a firefighter of a punitive action not involving a discharge, demotion or suspension.

Notice of Appeal

Within five (5) calendar days of receipt by a firefighter of notification of punitive action as set forth above, the firefighter shall notify the City Manager in writing of the firefighter's intent to appeal the punitive action. The notice of appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal.

Presiding Officer

In an informal hearing, the City Manager or his/her designee shall be the presiding officer. The City Manager or his/her designee shall conduct the informal hearing in accordance with these procedures. In such cases, the determination of the City Manager shall be final and binding.

Burden of Proof

The City shall bear the burden of proof at the hearing.

If the action being appealed does not involve allegations of misconduct by the firefighter, the limited purpose of the hearing shall be to provide the firefighter the opportunity to establish a record of the circumstances surrounding the action. The City's burden of proof shall be satisfied if the City establishes by a preponderance of the evidence that the action was reasonable. The City's burden of proof may be satisfied even though reasonable persons may disagree about the appropriateness of the action.

If the punitive action involves charges of misconduct, the City shall have the burden of proving by a preponderance of the evidence the facts which form the basis for the charge and that the punitive action was reasonable under the circumstances.

Conduct of Hearing

The formal rules of evidence do not apply, although the Presiding Officer shall have discretion to exclude evidence which is incompetent, irrelevant or cumulative, or the presentation of which will otherwise consume undue time.

The parties may present opening statements.

The parties may present evidence through documents and testimony.

Witnesses shall testify under oath.

Subpoenas may be issued pursuant to Government Code §§ 11450.05 - 11450.50.

Unless the punitive action involves a loss of compensation, the parties shall not be entitled to confront and cross-examine witnesses.

Following the presentation of evidence, if any, the parties may submit oral and/or written closing arguments for consideration by the hearing officer.

Recording of the Hearing

If the punitive action involves the loss of compensation, then the hearing may be stenographically recorded by a certified court reporter. Otherwise, the hearing may be tape recorded. The per diem cost of the court reporter shall be equally borne by the parties. The cost to receive a transcript of the hearing shall be borne by the party requesting the transcript.

Representation

The firefighter may be represented by an association representative or attorney of his or her choice at all stages of the proceedings. All costs associated with such representation shall be borne by the firefighter.

Decision

The decision shall be in writing pursuant to Government Code §11425.50. The decision shall be served by first class mail, postage pre-paid, upon the firefighter as well as his/her attorney or representative, shall be accompanied by an affidavit or certificate of mailing, and shall advise the firefighter that the time within which judicial review of the decision may be sought is governed by Code of Civil Procedure § 1094.6.

Section 3 Appeal of a Disciplinary Decision Involving Discharge, Demotion, or Suspension of a Firefighter

In those instances where the procedures in Government Code §§ 11400, et seq. are inapplicable to an administrative appeal, the administrative appeal shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code.

Notice of Discipline as Accusation

The final notice of discipline which is issued at the conclusion of any pre-disciplinary procedures shall serve as the accusation as described in Government Code §§ 11500, et seq. The notice shall be prepared and served in conformity with the requirements of Government Code §§11500, et seq.

Pursuant to Government Code § 3254, subsection (f), the discipline shall not be effective sooner than 48 hours of issuance of the final notice of discipline.

The notice shall be prepared and served in conformity with the requirements of Government Code §§11500, et seq. The notice shall include a post card or other form entitled Notice of Defense which, when signed, will acknowledge service of the accusation and constitute notice of defense under Government Code § 11506.

The accusation shall include or be accompanied by a statement to respondent (firefighter) stating that the respondent may request a hearing by filing a notice of defense as provided in Government Code § 11506 within 15 days after service of the Accusation, and that failure to do so will constitute a waiver of the respondent's right to a hearing. The statement to respondent shall be prepared in conformity with the requirements of Government Code § 11505.

A copy of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall be provided to the firefighter concurrently with the notice of discipline.

Administrative Law Judge

Pursuant to Government Code § 11512, the City has determined that appeals shall be heard by the City Council or a designated mutually agreed upon advisory hearing officer with an administrative law judge presiding over the hearing. The administrative law judge shall rule on the admission and exclusion of evidence and advise on matters of law. The City Council or the mutually agreed upon advisory hearing officer shall exercise all other powers relating to the conduct of the hearing.

Time and Place of Hearing

Pursuant to Government Code § 11508, unless otherwise decided by the City Council, a hearing shall be conducted at City Hall or another location designated by the City Council, at a time to be determined by the City Council.

Notice of the Hearing

Notice of the hearing shall be provided to the parties pursuant to Government Code § 11509.

Burden of Proof

The burdens of proof and production of evidence shall be borne by the City. The standard of proof shall be by a preponderance of the evidence.

Judicial Review

Judicial review of the City Council's decision (or that of the mutually agreed upon advisory hearing officer) may be had pursuant to Government Code § 11523.

Article 15 TERMS AND CONDITIONS OF EMPLOYMENT

These Terms and Conditions of Employment are subject to all future and current applicable Federal and State laws and regulations. If any part or provision of these Terms and Conditions of Employment are in conflict with such applicable provisions of Federal and State laws and regulations, or are otherwise held to be invalid or unenforceable by any tribunal of competent jurisdiction, such part of the provision shall be suspended and superseded by such applicable law or regulations, and the remainder of these Terms and Conditions of Employment shall not be affected.

If any City rule or ordinance is in conflict with these Terms and Conditions of Employment, it shall supersede these Terms and Conditions of Employment.

This document is intended to be used in conjunction with the City of Sierra Madre Personnel Rules and Regulations and the Fire Services Manual. The Personnel Rules and Regulations address items including, but not limited to, sick and vacation leaves, tuition reimbursement, employee evaluations, personnel files and computer loan program. Sections of the Rules and Regulations and/or the Fire Services Manual that do not deal with matters covered by these Terms and Conditions of Employment shall remain in full force and effect.