

# Layoff and Reassignment

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### PURPOSE

This section describes the policy and procedures for administering layoffs involving the City workforce. Layoff occurs when it is necessary to discontinue positions because of economic conditions, lack of work, reorganization, or other reasons and as a result, the number of employees in a job class exceeds the number of authorized positions.

The City's layoff rules, contained in the Civil Service Rules and the bargaining unit Memoranda of Agreement, provide certain rights and options to employees. With the use of these rules, employees who are displaced from a job class, may not necessarily be laid off from City employment-- they may retain a different City job through the "bumping" process, or be offered the opportunity for "redeployment" in lieu of layoff. Therefore, for purposes of this document, the term "layoff" includes situations that result in an employee either leaving City employment involuntarily, or leaving his/her classification involuntarily.

Employees whose positions are discontinued may have rights to other positions in their class. The process for determining which employees are to be relocated to different positions in the same classification is also covered in this section under the description of "Reassignment."

### AUTHORITIES

San Jose Municipal Code, Civil Service Rules Part 9, Section 3.04.1150 – 3.04.1230.  
Memoranda of Agreement with City Bargaining Units

### DEFINITIONS

#### 1. Bumping

Bumping is the ability of an employee to displace another employee, either within the same class, or in a lateral or lower class, based on comparisons of seniority. A lateral class is a class with the same salary range. A lower class is a class with a lower salary range, based on a comparison of top steps. See Procedures # 6 – 10 below for additional information.

#### 2. Layoff

Layoff refers to position reductions due to lack of work, purposes of economy, or other reasons that result in an employee: (1) leaving City employment involuntarily, or (2) leaving his/her classification involuntarily.

#### 3. Reassignment

Reassignment refers to the placing or transferring of an employee to a different position in the same job class. A reassignment is necessary when a filled position is eliminated but a vacant position in the

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same class exists elsewhere in the City. The process for determining which employees are to be reassigned in situations where more than one employee is eligible to be reassigned, is covered in Appendix A.

### 4. Reinstatement

Reinstatement refers to the right of an employee who has been laid off from his/her class, to be offered the next vacant position that occurs in the class, without a competitive process, for a period of three years from the date of the layoff.

### 5. Redeployment

Redeployment is a process that assists employees, who are subject to layoff and have no bumping rights, in obtaining a vacant position in lieu of leaving City employment. Redeployment may result in the offer of an appointment into a new class, for which an employee is qualified but not entitled. Redeployment is subject to the availability of suitable vacant positions, and is at the City's discretion. See Appendix B for more information.

### 6. Seniority

Seniority is defined as the time accrued within a classification (Class seniority), or the time accrued as a classified City employee (City seniority). See Appendix C for additional information on how seniority is determined.

## POLICY

### 1. Scope of coverage

The provisions of this section and the City's layoff rules apply only to *full-time* City employees in the Classified Civil Service, and do not apply to those employees who are Unclassified.

Part-time employees are not covered by layoff rules; however, when it is necessary to reduce part-time hours because of budget reductions, the departments affected will use a systematic method for determining how the reductions are determined. See Appendix D for part-time employee guidelines.

Employees in the Unclassified Service work on an "at-will" basis. They may be subject to a position reduction and layoff, but are not entitled to the layoff rights and processes available to Classified employees and described in this document. However, Unclassified employees who previously served and attained permanent status in the Classified Service have the right to return to the Classified Service (Municipal Code 3.04.1080). If an Unclassified employee does return to the Classified Service, he/she will retain "any rights and privileges...as if he had remained" in the Classified position. Consequently, the class seniority for such an employee will include time in the Unclassified Service time.

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### 2. Layoff in lieu of leaving a department or appointment to a lower class

When an employee would be required, as a result of layoff, to displace the least senior employee in the same classification but in a different department because of the bumping procedure described below, that employee may request to be laid off by the City, in lieu of displacement to the other department. The Director of Human Resources has discretion to approve or deny such requests.

When an employee is displaced from his/her class as a result of layoff and is entitled to be assigned to a position in a lower class, the employee may elect to be laid off from City service in lieu of accepting the appointment to the lower class.

### 3. Flexibly-staffed classes

Flexibly-staffed classes, where either the I- or the II- level may be used to fill a position, are treated as one class for purposes of layoff administration. Therefore, seniority calculations include the combined time in both classes and there is no bumping between the levels of flexibly-staffed classes. See [City Policy Manual Section 3.2.2, Flexibly Staffed Classes](#) for a listing of flexibly-staffed classes.

### 4. Reinstatement lists

When an employee is laid off from a class, his/her name will be placed on a reinstatement list. If more than one employee is laid off from a class, their names will be listed on a reinstatement list for the class in order of seniority, i.e. the employee with the most seniority for the class shall be ranked at the top of the list and shall be offered reinstatement first when a vacancy exists. In the event the person refuses the offer of reinstatement (except for a temporary position), the person's name shall be removed from the reinstatement list for that class. Reinstatement lists shall be in effect for three (3) years from the date of the layoff from the class.

At the discretion of the Director of Human Resources, a reinstatement list may be used for a lower or lateral class. In the event an employee accepts reinstatement to a lower class than he/she is entitled to, the person's name shall remain on the reinstatement list to his/her former class. Any person who is reinstated to a class which is the highest class to which he/she would have been entitled at the time of the layoff, shall have his/her name removed from all reinstatement lists.

In the event that a person on a reinstatement list cannot be contacted by the City through usual and customary channels within 10 working days, that person's name shall be removed from the reinstatement list, within the original three-year term of the list, and the Director of Human Resources shall have sole discretion for approving or denying the request.

### 5. Exemptions from bumping

An employee who is otherwise eligible to bump another employee must possess the ability to perform the essential duties of the position he/she is bumping in to. If a position is designated to require special knowledge, experience, certification or skills, then the employee bumping in to the position must

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possess these qualifications.

Bilingual certification in another language, or specialized knowledge that would not be expected to be attained in a 6-month period, are examples of the types of qualifications that may be considered as essential for the position and exempted from bumping.

Department Directors may request an exemption from bumping for a particular position through a memo to the Director of Human Resources. The memo should describe in detail the unique qualities that must be possessed for satisfactory performance in a particular position and would not be reasonably expected to be attained in a six (6) month period.

## 6. Probationary periods.

Employees who are redeployed or bumped into another class will be subject to the probationary period for that class, unless it is a lower classification in the same series, or it is a classification that they previously held with permanent status. Employees who are reassigned to a different position in the same classification will not be subject to a new probationary period.

## PROCEDURES

| <u>Responsibility</u> | <u>Action</u>  |
|-----------------------|--|
| City Council          | 1. Authorize positions to be reduced and the effective date for the reductions. [Note: Aside from Council authorized position reductions, other actions that result in an employee leaving his/her class involuntarily and may necessitate the use of the layoff process include: <ol style="list-style-type: none"> <li>(1) an employee fails promotional probation and has rights to his/her former class, which requires displacing another employee from that class,</li> <li>(2) a permanent employee works in a temporary position which ends, and the employee has rights to displace another employee in the classified service,</li> <li>(3) an employee who previously worked in the classified service, is appointed to the unclassified service and subsequently is removed or resigns from the unclassified position, and therefore has the right to a position in the classified service (Municipal Code 3.04.1080)].</li> </ol> |
| Budget Office         | 2. Determine position numbers of positions reduced and notify the Employee Services Department.  |
| Human Resources       | 3. Determine the impact of each position reduction on employees <i>in each affected class</i> , by calculating whether there are a sufficient number of vacant authorized positions available after the position reductions to   |

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|   | <p>accommodate displaced employees.</p> <ol style="list-style-type: none"> <li>a. If there are sufficient vacant positions available in the same class to accommodate employees whose positions are reduced, then no layoffs are required for the classification. See “Reassignment” Appendix to this section.</li> <li>b. If there are not sufficient vacant positions available, then layoffs from the classification will be required.</li> </ol> <ol style="list-style-type: none"> <li>4. Determine the number of employees who will be displaced from each class.</li> <li>5. Prepare a seniority list for each classification for which employees will be displaced. See “Seniority” Appendix to this section.</li> </ol>  |
| <p><b><u>Responsibility cont.</u></b></p> | <p><b><u>Action cont.</u></b></p>   |
| <p>Human Resources</p>                    | <ol style="list-style-type: none"> <li>6. Determine which employee(s) will be displaced from each class, using the following sequence:             <ol style="list-style-type: none"> <li>a. First, <i>probationary employees</i>, in the order determined by the Appointing Authority.</li> <li>b. Next, <i>permanent employees</i>, in order of ranking by the lowest class seniority. Tie-breaking procedures are as follows:                 <ol style="list-style-type: none"> <li>1. If two or more permanent employees have the same class seniority, then ranking is based on the lowest Citywide seniority.</li> <li>2. If two or more permanent employees have the same class and same Citywide seniority, then ranking is based on the scores on the eligible list that was used for their original hiring.</li> <li>3. If two or more permanent employees have the same class and same Citywide seniority, and no eligible list exists for the original hiring, then ranking is determined by random draw.</li> </ol> </li> </ol> </li> <li>7. Determine whether any bumping rights to another class apply to each displaced employee based on:             <ol style="list-style-type: none"> <li>a. Permanent status attained in any lower class,</li> <li>b. Permanent status attained in a lateral class,</li> <li>c. A lower class exists in the same class series that contains the employee’s classification.</li> </ol> </li> <li>8. If an employee qualifies to bump into another class or classes where vacant positions exist, place the employee in a vacant position in that class.</li> <li>9. If an employee qualifies to bump into another class but no vacant positions are available, determine which employee is to be displaced from this class based on #5 – 7 above.             <ol style="list-style-type: none"> <li>a. When bumping to a lower class, the employee who is bumping down uses his/her Citywide seniority; the employees in the lower</li> </ol> </li> </ol> |



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## APPENDIX A: REASSIGNMENT

### Reassignment of Employees during the Budget Process

The reassignment process described below only applies to reassignment during the budget process and does not in any way affect the City's right to reassign employees within the same classification. This process also does not affect the layoff process or an employee's layoff rights.

1. When a reduction is made in a classification that contains two or more employees in the same class within a department, and at least one of the employees will be required to leave the department, the determination of which employee(s) will be reassigned to a different department will be based on seniority. That is, the employee with the least amount of classification seniority will move out of the department to a position in the same classification in a different department.
2. In special instances, the decision on reassignment will not be based on seniority if service-delivery and business disruptions would result from displacing and re-training two or more employees instead of affecting only one employee (i.e. if a particular position requires special knowledge, experience, certification or skills, such as language skills).
3. Reassignment may also not be based on seniority if the work done by the least senior employee(s) is significantly different from that done by the employee(s) whose position is being eliminated. However, work would not be considered significantly different if:
  - The employees were assigned as members of a work crew or an office support staff where the duties were overlapping; or,
  - It could reasonably be expected that another employee(s) in the same class would be able to satisfactorily perform the essential duties within 120 calendar days.

Bargaining unit(s) of any employee affected by such an exception will be notified by Human Resources before any employee is notified.

4. In instances where an exception to the seniority rule have been approved, thus retaining the least senior employee(s) in their current assignment and department, the next employee(s) with the least amount of classification seniority will be subject to displacement from the department to a position in the same classification.
5. If an employee who is not the least senior is subject to be reassigned to a different department based on the above exceptions but would like to continue in the same department and believes that the above criteria were not fairly applied, the decision may be appealed via the employee's bargaining unit Grievance Procedure (Step III - the Director of Employee Relations).

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## APPENDIX B: REDEPLOYMENT

The following apply to employees who accept redeployment to a vacant position in another class:

- Employees accepting a position offered through redeployment receive all the rights normally associated with the classification in the job they have accepted, including pay, benefits, eligibility to return to former class, and seniority, and will be placed on a reinstatement list.
- Redeployment without competition is generally available to a lateral or lower job. A redeployment that would result in a promotion (to a class with higher pay) may occur without competition only when no other qualified internal candidates are available through the standard hiring process. Placement to a class with higher pay is limited to classes with no more than 5% difference between the top step of the higher class and the top step of the employee's current class.
  - Employees with prior permanent status in a higher class will be offered any redeployment opportunities in that class before employees without prior permanent status.
  - Employees with permanent status in a class will be offered redeployment opportunities before employees with probationary status in that class.
  - Employees redeployed into a higher class are not entitled to the 5% promotional increase; they will be placed at the step closest to their current step.
- Employees who have “bumping” rights are not eligible for redeployment.

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## APPENDIX C: SENIORITY

### Types of Seniority

- **Class seniority** is the time accrued within a classification in the Classified Service.
- **City seniority** is the total time accrued in all classes in the Classified service.

### Seniority and Employee Status

- **Unclassified:** Time in the Unclassified Service, including time as a Temporary Unclassified, or as a Provisional employee, generally does not count toward seniority; see page 2 (Policy – Scope of Coverage) for further information.
- **Probationary:** Probationary time counts towards class and City seniority only after an employee has passed probation in the class, but does not count while an employee is serving on probation. If the probation did not result in a permanent appointment, the probation time counts toward seniority in the employee's former lower class, if any, and City seniority.
- **Temporary:** Temporary time in the Classified Service counts towards class and City seniority only if the temporary status results in a subsequent permanent appointment, but does not count while an employee is on temporary status. If the temporary appointment did not result in a permanent appointment, the temporary time counts toward seniority in the employee's former lower class if any.
- **Higher Class Time:** Time served in a higher class on temporary, probationary or permanent status counts toward class seniority in the employee's current class, and toward City seniority. Time when an employee received higher class pay also counts toward class seniority in the employee's current class.
- **Reemployment:** Time served prior to being reemployed (hired back to a City position in the same or lower class, within three years from separating) counts toward class and City seniority.
- **Part-time status:** Part-time service generally does not earn seniority credit; see page 2 (Policy – Scope of Coverage) for further information. However, for employees who are represented by MEF who are full-time employees at the time of layoff, part-time hours since January 1, 1976, are counted toward Citywide seniority.

**Layoff and Reassignment****3.2.5****APPENDIX C: SENIORITY cont.**Components of Seniority

Seniority is calculated on the basis of hours worked. The following table shows which types of employee time count toward class and City seniority, and which do not.

| <b>Component</b>        | <b>Counts Toward Seniority?</b> |
|-------------------------|---------------------------------|
| Regular hours worked    | Yes                             |
| Paid sick leave         | Yes                             |
| Paid disability leave   | Yes                             |
| Vacation                | Yes                             |
| Holidays                | Yes                             |
| Comp time off           | Yes                             |
| Executive leave         | Yes                             |
| Personal leave          | Yes                             |
| Funeral leave           | Yes                             |
| Jury duty               | Yes                             |
| Administrative leave    | Yes                             |
| Paid military leave     | Yes                             |
| Unpaid military leave   | Yes                             |
| Unpaid holiday closures | Yes                             |
| Other unpaid leaves     | No                              |
| Suspensions             | No                              |
| Lost time               | No                              |
| Overtime                | No                              |
| Standby & callback      | No                              |

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## **APPENDIX D: PART-TIME EMPLOYEE GUIDELINES**

### ***Part-time Benefited Employee Reductions***

When identifying PT benefited positions to be eliminated, Departments should consider the following factors:

- a. Seniority (as determined by total hours worked)
- b. Special skills (e.g., language)
- c. Department & program needs

### ***Reassignment of Part-time Benefited Employees***

PT benefited employees whose positions are identified for deletion or unassignment should be reassigned to vacant positions before unassignment.

For example, if a B-level PT benefited position is identified for unassignment, the employee should be considered for any other vacant benefited position within the class and department, including lower level (C or D-level) vacancies. If no alternate PT benefited position is available, the employee should be offered a vacant unbenefited position before being unassigned.

When possible, please provide affected employees with reasonable notification, i.e. a minimum of one pay period or two weeks notice, prior to implementing changes.

### ***Appeal of Displacement Decision for Employees Represented by MEF***

Please refer to Section 11.8 of the Memorandum of Agreement between the City of San Jose and the Municipal Employees' Federation for additional information regarding the layoff process for PT benefited positions, including appeals of displacement decisions.

Approved:

/s/ Joe Angelo  
Director of Human Resources

September 12, 2016  
Date

Approved for posting:

/s/ Jennifer Schembri  
Director of Employee Relations

September 12, 2016  
Date