Career Service Rules

City and County of Denver

Important – Disclaimer:
The Career Service Rules do not create or constitute any contractual rights between or among the City and County of Denver, the Career Service Board, the Office of Human Resources and any employee or applicant for employment. The Career Service Rules may only be modified, rescinded, or revised, in writing, by the Career Service Board, which reserves the right to unilaterally modify, rescind, or revise the rules at any time consistent with its rule-making process.

RULE 1
DEFINITIONS
(Revised February 21, 2017; Rule Revision Memo 25D)

Purpose:
The purpose of this rule is to provide meaning to terms that are used throughout these Career Service Rules.

Agency:

A unit of government identified by a "fund organization" number in an appropriation ordinance.

Appointing authority:

A municipal official designated by the annual appropriation ordinance to approve expenditures for a given appropriation; hence the official authorized to appoint employees to be paid from such appropriation. Such an official may designate an agent within the department or agency to act as an appointing authority.

Appropriation:

An authorization by the City Council to a specified agency to expend a specified sum of money from a specified fund during a specified period for a specified purpose.

Appropriation sub-account:

Includes all divisions of appropriations recognized by the Office of Budget and Management, up to and including the lowest level of the account code at which expenditures and revenues are recorded.

Benefits:

Paid time off, vacation leave, holiday leave, sick leave, payments for injuries or sickness received in the line of duty, health insurance, life insurance, pensions, uniform and equipment allowances, dependents' benefits, and any other financial or economic benefits as determined by the Office of Human Resources.

Break in service:

Any lapse of working time between the official separation of an employee and his subsequent re-hiring.

Career Service:

All employees of the City and their positions subject to the exceptions in the Denver City Charter.

Career Service Board:

The board created by the Denver City Charter to direct the Career Service. See Rule 2 **OFFICE OF HUMAN RESOURCES** for additional information about the Board's responsibilities.

Career Service employee:

The incumbent of a position in the Career Service.

Classification series:

The arrangement in sequence of classes that are alike in kind but not in level. For the purposes of market adjustments and lay-offs, a classification series shall include first line supervisors and lead workers, if so designated for the class.

Continuous service date:

For purposes of leave and layoffs, the continuous service date is the effective date of an employment appointment or a re-employment appointment in the career service, whichever is later; or the effective date of appointment from a re-instatement list plus credits for service prior to lay-off. This definition does not affect employee rights to paid time off, sick leave and vacation leave as established in the Revised Municipal Code or the Career Service Rules.

Demotion:

An appointment of an employee to a position in a classification in which the range minimum of the pay grade of the new classification is lower than the range minimum of the classification previously held.

Effective date:

The date when a personnel action takes effect.

Incumbent:

The current occupant of a position.

Lay-off:

The involuntary separation of a career status unlimited employee resulting from the abolishment of a filled position.

Lay-off unit:

An appropriation account, appropriation sub-account, combinations of appropriation sub-accounts, or combinations of appropriation accounts which have been consolidated or de-consolidated in accordance with Rule 14-52 B. Consolidation of Appropriation Accounts for the purposes of lay-off.

Length of Service:

Total number of years, months and days of continuous service, including time an employee is on unpaid leave, but exclusive of service in on-call status positions.

Month of service:

The period of time between a given date in one month and the preceding day in the following month (e.g., April 16 through May 15).

Office of Human Resources:

The agency created by the Denver Revised Municipal Code to administer the Career Service.

Promotional appointment:

An appointment of an employee to a position in a classification in which the range minimum of the pay range for the new classification is higher than the range minimum of the pay range for the employee's previous classification.

Promotional re-instatement appointment:

An appointment of an employee who has been demoted in lieu of lay-off which is made as a result of referral from a re-instatement list.

Re-promotional appointment:

A promotion of an employee to a position in a higher classification in which the employee was previously employed within the preceding five (5) years, or to a successor classification; or to any classification for which the employee is qualified, with the same or intervening range minimum as the previous classification.

Transfer appointment:

An appointment of an employee from a position in one classification to a different position in the same classification or a classification with the same range minimum for which the employee meets the minimum qualifications.

RULE 2
CAREER SERVICE BOARD

Purpose statement:

The purpose of this rule is to establish how the Career Service Board ("Board") carries out its duties as provided for under the authority of the City Charter § 9.1.1 and Chapter 18 of the Denver Revised Municipal Code.

Section 2-10 Career Service Board

2-11 Officers and Duties

A. Duties and Organization of the Board:

1. The five-member Board shall foster and maintain a merit-based personnel system for the Career Service and shall be committed to equal employment opportunity in accordance with the City Charter and the Denver Revised Municipal Code. The Board shall carry out all other duties delegated by the Denver Revised Municipal Code.

2. The Board's primary functions are to oversee the Office of Human Resources ("OHR"), oversee the Career Service Hearing Office, and serve as a quasi-judicial body to decide appeals of decisions of the Career Service Hearing Officers ("Hearing Officers").

3. The Board shall have two Co-Chairpersons who shall be elected on an annual basis from the members of the Board.

B. The Board is responsible for adopting, administering and enforcing rules necessary to foster and maintain this merit-based personnel system including, but not limited to rules providing:

1. For the conduct of competitive examinations of competence (Rule 3 **RECRUITMENT AND SELECTION**);

2. That appointments and promotions of employees in the Career Service shall be made on the basis of merit and ability (Rule 3 **RECRUITMENT AND SELECTION**);

3. For probationary periods (Rule 5 **APPOINTMENTS AND STATUS**);

4. For like pay for like work and for the payment of generally prevailing compensation and benefits to Career Service employees (Rule 7 **CLASSIFICATION AND COMPENSATION**);

5. For equal employment opportunity without regard to any status protected by federal, state or local laws (see Rule 16 **CODE OF CONDUCT AND DISCIPLINE**);

6. That dismissals, suspensions or disciplinary demotions of non-probationary employees in the Career Service shall be made only for cause, including the good of the service (Rule 16 **CODE OF CONDUCT AND DISCIPLINE**);

7. For grievance procedures (Rule 18 **DISPUTE RESOLUTION**); and

8. For appeals from actions of appointing authorities (Rule 19 **APPEALS**). (Revised February 12, 2016; Rule Revision Memo 18D)

C. Duties of the Co-Chairpersons:

1. One of the Co-Chairpersons shall preside at all meetings of the Board and each Co-Chairperson shall perform such other duties as may be assigned or delegated by the Board, but shall have no authority to act on behalf of the Board or in its name in any respect whatever except by special authorization of the Board. Such authorization shall be entered in the minutes of the Board meeting when such authorization is given.

2. The Co-Chairpersons may vote on all questions before the Board.

3. The Board shall designate, at its discretion, which Co-Chairperson shall have primary responsibility for presiding at Board meetings. In the absence of the Co-Chairperson assigned to preside, the other Co-Chairperson shall preside.

4. If neither Co-Chairperson is present, the remaining members of the Board shall designate a Chairperson pro tem.

D. Minutes and Record Keeping:

The OHR Executive Director shall be the official custodian of all Board minutes, correspondence, documents and files.

E. Appointments:

The Board is responsible for appointing and overseeing the OHR Executive Director, Hearing Officers, and other appointees as allowed by the City Charter and Denver Revised Municipal Code.

2-12 Meeting Requirements

A. Meetings:

1. The Board shall meet on the first and third Thursday of each month, or as deemed necessary by the Board.

2. The OHR Executive Director shall call special meetings of the Board

when directed to do so by a Co-Chairperson, or by two or more members of the Board, or when the OHR Executive Director deems it necessary.

3. All meetings shall be public in accordance with the open meetings requirements of the Denver Revised Municipal Code, unless an executive session or private meeting is otherwise authorized.

B. Quorum:

The presence of at least three Board members shall be required at a Board meeting before a quorum exists and the Board can transact business legally. No action or order of the Board shall be valid unless at least three members of the Board concur. Board members shall be considered present at a Board meeting if physically present at the meeting, or if participating remotely to the extent that the Board member can hear Board proceedings and be heard by those at the Board meeting simultaneously.

C. Notice:

1. Advance notice of all public meetings of the Board shall be given in accordance with the open meetings requirements of the Denver Revised Municipal Code. Such notice shall be posted at least forty-eight (48) hours in advance of such meetings.

2. Such notice shall be posted in the public area of the OHR on a bulletin board provided for such notices, on the first floor of the City and County Building, and on the Career Service Board's internet page.

3. The notice shall include the date, time and place of the meeting and a general description of the subject or subjects to be discussed. No subjects other than those specified in the notice may be addressed.

4. The Board may cancel any meeting without notice if there is insufficient business to warrant a meeting, or if there is the absence of a quorum.

D. Disqualification of a Board Member:

1. Members of the Board shall disqualify themselves in any proceeding in which the Board member's impartiality might be reasonably questioned, including but not limited to, instances where the Board member:

a. Has a personal bias or prejudice concerning a party, or personal knowledge of disputed facts concerning the matter;

b. Served as an attorney or witness in the matter;

c. Is likely to be a material witness in the matter; or

d. Has any interest that could be substantially affected by the

outcome of the proceeding.

2. Members of the Board may disqualify themselves at any time for any other good cause.

2-13 Communications with the Board

A. Written communications and requests to the Board shall be directed to the OHR Executive Director or to one of the Co-Chairpersons.

B. Such written communications or requests shall be provided to all members of the Board.

C. If any action is taken as a result of a written communication to the Board, notice of such action shall be given to the individual and/or agency concerned.

D. Verbal communications to the Board will be allowed during scheduled meetings of the Board or as otherwise directed by the Board.

2-14 Pilot Programs

The Board may authorize the OHR Executive Director to implement new and innovative compensation/performance management programs on a pilot basis within selected agencies. If the pilot program achieves its objectives, the Board may approve citywide implementation of the new policy or rule. If the pilot program does not achieve its objectives, the Board may end the program.

2-15 Investigations by the Board and Subpoenas

The Board or its designee may, at its discretion or as requested by any City department or agency, retain a qualified investigator to conduct personnel–related investigations.

The Board has the authority under the City Charter to issue subpoenas as may be necessary to conduct an investigation.

Section 2-20 Adoption, Amendment or Repeal of Career Service Rules ("Rules")

A. Changes to the Rules may be proposed by appointing authorities, employees, or other interested citizens. Such proposals shall be in writing and shall be directed to the OHR Executive Director or one of the Board Co-Chairpersons.

B. When the Board or the OHR Executive Director determines that a change in the Rules is necessary or desirable, the procedure shall be as follows:

1. The OHR Executive Director may submit to the City Attorney the proposed rule change for review, including a ruling as to legality, at any time prior to posting for public comment by the Board and before final publication.

2. The proposed rule change shall be posted on the same bulletin boards as the local, state, and federal-mandated posters, as well as the Career Service Board's internet page, and made available to appointing authorities, employees, and the general public for comments and suggestions. A short summary of the proposed rule change and the reason(s) for the proposed change shall be posted with the proposed rule change.

3. A final proposed rule change shall be posted with the Board Agenda for the meeting in which the public hearing will be held.

4. A public hearing on the proposed rule change shall be held by the Board.

5. The Board shall accept, reject or modify the proposed rule change. If the Board modifies a proposed rule change, the Board need not re-post the rule for public comment unless the Board, in its own discretion, determines that reposting is necessary.

6. When a rule is adopted, amended or repealed by the Board, such rule shall be published and made available to appointing authorities, employees and the public as promptly as possible.

7. The effective date of the rule change shall not be more than thirty (30) days after the date of adoption, amendment or repeal by the Board unless another date is designated by the Board.

8. The following changes to the Rules may be made by the OHR Executive Director without following the above-stated procedure: re-numeration; spelling and typographical error corrections; and revision and updating of internal references, appendices, and/or table of contents. Such changes may be published as administrative changes without the approval of the Board.

Section 2-30 Public Hearings by the Board

2-31 Types of Public Hearings

A. Mandatory Public Hearings: The Board shall hold a public hearing on the following:

1. Proposed changes to classification titles and/or attendant pay rates covered by the classification and pay plan resulting from:

   a. Annual pay survey recommendations; or

   b. Normal maintenance and administration of the classification and pay plan and related classifications (Effective May 3, 2006; Rule Revision Memo 8C).

2. Proposed changes to employee benefits prior to the OHR Executive Director making any recommendations to the Mayor and City Council as provided in the Denver Revised Municipal Code;

3. Adoption, amendment or repeal of a fund consolidation or de-consolidation for lay-off purposes;

4. Determination of prevailing wages, in accordance with the Denver Revised Municipal Code;

5. Adoption, amendment or repeal of a rule, except for changes that are administrative.

B. Discretionary Public hearings: The Board may hold a public hearing, at its discretion, on any matter within the jurisdiction of the Board.

2-32 Notice and Conduct

A. Notice of Hearings:

1. Notice of public hearings by the Board shall be given at least thirteen (13) calendar days in advance of the hearing, and shall state the time, date, place, and subject of the hearing, who may be heard, and the process to be heard.

2. Such notice shall be posted in the public area of the OHR on a bulletin board provided for such notices, on the first floor of the City and County Building, and on the Board's internet page.

B. Special Additional Notice Requirements:

1. When the subject of a hearing is proposed fund consolidations or de-consolidations for purposes of lay-off, the department or agency affected by the proposed consolidation or de-consolidation shall post the notices in such locations that employees affected by the consolidation or de-consolidation shall be given reasonable notice of the time, date, place and subject of the hearing.

2. When the subject of a hearing is a proposed pay plan adjustment or a proposed rule change, the OHR shall provide electronic copies of the notice of public hearing to appointing authorities who shall post such notices in conspicuous locations in the work places.

C. Conduct of Hearings by the Board:

1. Persons wishing to speak at a hearing shall have their names placed on the agenda in advance of the hearing. The Board, in its discretion, may, at any time, admit more speakers preceding or during the hearing. The Board may, in its discretion, place reasonable limitations on the hearing.

2. Proceedings of a mandatory hearing shall be recorded, but need not be transcribed unless required in litigation. If a transcript is required, the party requesting the transcript shall pay the costs.

3. At the discretion of the Board, hearings may be continued for good cause.

Section 2-40 OHR Executive Director

A. Powers and Duties:

The OHR Executive Director shall serve at the pleasure of the Board, report directly to the Board, and perform all duties and responsibilities as directed by the Board, including those contained in these Rules, and as delegated by the Denver Revised Municipal Code. In addition, the OHR Executive Director's powers and duties are:

1. To interpret and enforce the Rules adopted by the Board in such a manner as to promote and maintain the principles of a merit-based personnel system and the just, speedy and effective resolution of disputes (Revised January 22, 2010; Rule Revision Memo 44C);

2. To prepare and administer examinations, determine qualifications of applicants, establish eligible lists and refer eligible applicants to appointing authorities to fill vacancies;

3. To establish and maintain a roster of all Career Service employees;

4. To establish and maintain such records, forms and procedures as necessary to control personnel actions;

5. To consider reasonable suggestions from appointing authorities, the public, and employees or their representatives, pertaining to any phase of the personnel program;

6. To delegate to a designee such duties as, in his/her opinion are appropriate, unless otherwise specifically provided in these rules;

7. To administer the Education Refund Program in accordance with the Denver Revised Municipal Code; and

8. To perform such other duties as may be necessary to foster and maintain a merit-based personnel system for the Career Service, further equal employment opportunity, or otherwise ensure the efficient operation of OHR.

B. Normal Working Hours:

The OHR Executive Director shall keep the OHR open for business from 8:00

a.m. to 5:00 p.m. Monday through Friday of each week, holidays excepted, unless good cause warrants a temporary or permanent change.

C. Interim OHR Executive Director:

1. When the OHR Executive Director will be absent for sixty (60) days or less, the OHR Executive Director shall designate a suitable and competent person as interim OHR Executive Director, unless the Board elects to designate one instead.

2. If the absence is going to be more than sixty (60) days, the Board shall designate an interim OHR Executive Director.

Section 2-50 Career Service Hearing Officers

A. Powers and Duties:

Career Service Hearing Officers serve at the pleasure of the Board, report directly to the Board, and perform all duties and responsibilities including those contained in these Rules, and as delegated by City Charter, to maintain a fair and efficient appeal process. In addition, the Hearing Officers' powers and duties are:

1. To ensure due process and to have authority to preside over all appeals permitted by Rule 19 **APPEALS** regarding employment disputes, and to perform the functions necessary to implement and maintain a fair, speedy, and efficient process for appeals.

   a. Hear and evaluate testimony under oath or affirmation to determine case facts and maintain order and decorum, dispose of objections expressed, and permit questioning and cross-examination of witnesses.

   b. Make rulings on motions; hold pre-hearing conferences; set hearing dates; grant continuances or stays; issue subpoenas; administer oaths; continue, dismiss, or rule on cases subject to appeal; research case law; render written decisions and orders; and related activities.

   c. Take necessary action to control proceedings.

2. To administer the Alternative Dispute Resolution Program.

RULE 3
RECRUITMENT AND SELECTION

(Revised January 3, 2017; Rule Revision Memo 23D)

Purpose statement:

The purpose of this rule is to provide policy and practices for an efficient and consistent competitive hiring process that promotes equal employment opportunity and a highly productive, engaged workforce.

As defined in the City Charter, the Office of Human Resources (OHR) oversees and administers hiring principles and practices, made on the basis of merit and ability for all Career Service system jobs.

Career Service employees have a right to work in an environment free of discrimination and harassment because of any status protected by federal, state or local laws (see Rule 16 **CODE OF CONDUCT AND DISCIPLINE**).

Section 3-5 Accommodation Pursuant to the Americans with Disabilities Act (ADA)

Upon request, the OHR will work with a qualified individual with a disability, as defined in the ADA, in a good faith effort to make necessary reasonable accommodations related to the application, assessment, test, interview, and any other aspect of the hiring process. A documented medical need for accommodation, prepared and signed by a health care provider, may be required.

Section 3-10 Definitions

A. Agency Hiring Authority: The person in an agency or department who is responsible for the final hiring decision.

B. Agency Hiring Manager: The person in an agency or department who is the primary contact for the OHR throughout the recruit-to-hire process.

C. Applicant: The person who submits an application for employment in the City's applicant tracking system.

D. Assessment: A tool to measure competencies and work behaviors that predict successful performance on the job such as customer focus and reliability.

E. Candidate: The applicant who meets qualifications and is referred by OHR to an Agency Hiring Authority and/or Hiring Manager for review and consideration for a job opening.

F. Evergreen requisition: A requisition that typically remains perpetually open for continuous hiring due to high-turnover, high volume jobs, or to proactively build our talent pool.

G. Merit-based system: As described in the City Charter, a set of principles designed to ensure fair employment practices and selection of hires based on merit and ability, free of political influence, favoritism, or discrimination.

H. Minimum qualifications: The amount, type, and level of education, work experience, licensure, and/or certification as minimally required to be considered and/or hired into a job as specified in the OHR job classification specification.

I. Referred list: A list of candidates that meet the qualifications for the job opening which is sent to the Agency Hiring Authority and/or Agency Hiring Manager.

J. Test: A tool to measure specific skills needed for the job such as Microsoft Word® or data entry.

Section 3-20 Delegation of Authority by the OHR Executive Director

The OHR Executive Director may delegate any authority given under this rule to a subordinate employee or to a designee (an appointing authority outside of OHR).

When the designation is outside of OHR, a formal agreement must be written and signed by both the OHR Executive Director and the designee prior to the delegation of authority. The designee shall act as an extension of the OHR and operate in accordance with Career Service Rules, and OHR's policies, practices and governance. At the discretion of the OHR Executive Director, the designee is subject to regular compliance reviews and the delegation may be revoked at any time and for any reason.

Section 3-25 Responsibilities in the Recruitment and Selection Process

The OHR and Agency Hiring Authority and/or Agency Hiring Manager work collaboratively on the following steps in the recruitment and selection process for Career Service jobs:

A. Review job classification specifications and identify targeted qualifications for the posting;

B. Outline the recruitment strategy, action plan, and timeline;

C. Advertise a job opening and source applicants;

D. Oversee and administer pre-employment assessments and tests;

E. Review and evaluate applicants in accordance with the job classification specifications and targeted qualifications to identify candidates for interviews;

F. Schedule and conduct candidate interviews;

G. Select a candidate for hire;

H. Extend a conditional verbal offer to the selected candidate;

I. Prepare a conditional offer letter and send to the selected candidate;

J. Facilitate the necessary pre-employment screening of the selected candidate;

K. Upon successful completion of pre-employment screening, contact and confirm start date with the new hire;

L. Notify candidates who were interviewed and not selected; and

M. Update the status of all applicants in the applicant tracking system.

Section 3-30 Types of Recruitments and Posting a Job

A. A recruitment for a job opportunity in the Career Service may be either an:

1. External and internal recruitment: Open to all applicants; or

2. Internal recruitment: Open only to applicants who are currently City employees, including anyone who has been the subject of a layoff within the past twelve (12) months.

B. 1. A job opportunity that is announced must be posted on the City's web site for at least two (2) business days and may not be posted for more than three (3) months. Posting a notice of a job opening for a transfer, demotion, re-promotion, or re-instatement appointment is not required.

2. Continuously-posted evergreen requisitions must be refreshed at least every three (3) months.

C. Content of Job Postings:

1. The notice must contain the job classification title, business title, pay range, position type (limited/unlimited/on-call), job description, minimum qualifications, target qualifications, physical requirements (where applicable), information on assessments and/or tests, pre-employment screening, and probation requirements.

2. Evergreen requisitions must state whether the job is open continuously and if a job opening is currently available.

Section 3-40 Applicant and Candidate Evaluation Methods

Applicants and candidates are evaluated on one or more of the following:

A. Evaluation of experience and education;

B. Pre-employment assessments and tests;

C. Interviews;

D. References and performance history of current or former employees; or

E. Any other appropriate measures based on the requirements of the job.

3-41 Substitution of Experience for Education

The City recognizes that there are occasions when people gain valuable experience for which the appropriate type and level of experience can be equivalent to formal education achieved or completed. Therefore, one year of the appropriate type and level of experience may be substituted for each required year of post-high school education for all classifications, subject to the limitations below:

A. Two years of the appropriate type and level of experience may be substituted for each required year of post-high school education for all classifications at or above the type and level of a first-level manager, such as the classification title of "Manager."

B. No substitution of experience for education will be permitted for:

1. Classifications that require a college degree or graduate degree in order to obtain a license or certification to practice within the discipline. Examples include, but are not limited to, physicians, pharmacists, engineers, and attorneys;

2. Classifications that require a college degree to provide optimum successful performance at the time of job entry. Examples include, but are not limited to, accounting, environmental and scientific occupations; or

3. Classifications where vocational, or other specialized education beyond high school is required to meet certification or licensure requirements. Examples include, but are not limited to, licensed and certified skilled trades workers and paralegals.

C. One year of the appropriate type and level of education and/or experience may be substituted for a high school diploma or its equivalent for classifications that require a high school diploma. Acceptable equivalents are:

1. GED (General Education Development);

2. HiSET (High School Equivalency Test); or

3. TASC (Test Assessing Secondary Completion).

3-42 Disqualification of Applicants and Candidates

Applicants and candidates shall be disqualified from further consideration in the recruitment and selection process for any valid reason including, but not limited to, the following:

A. Failure to meet minimum qualifications and/or licensing or certification requirements as defined in the job classification specification;

B. Failure to attain the required minimum passing score on an assessment(s) or test(s);

C. The candidate did not pass the required pre-employment background screening, or provided false information on the background screening documents;

D. Acting unprofessionally or inappropriately such as committing, or threatening to commit, any acts of violence against City employees involved in the recruitment and selection process, including intimidation, threats, or other behavior reasonably perceived as hostile;

E. Dismissal from employment for any reason from the City and County of Denver in the last five years;

F. Providing false information in an application or resume, falsification of assessment scores or records, cheating, taking assessments or tests for which the applicant is not the registered applicant;

G. If a former employee refuses an offer of re-instatement to the layoff unit as described in Rule 14 **SEPARATION OTHER THAN DISMISSAL**, that former employee is no longer eligible for that specific opening but can remain in consideration for other jobs; or

H. The Agency Hiring Authority and/or Agency Hiring Manager did not follow this Rule 3 in the recruitment and selection process.

3-43 Veterans' Preference

Veterans' preference for applicants will be provided under the terms as set forth in the Colorado Constitution (see Appendix 3.A).

3-44 Pre-Employment Assessments and Tests

A. The OHR is solely responsible for overseeing, developing, and/or approving all pre-employment assessments and tests.

B. Departments and agencies, other than the OHR, are not authorized to develop, acquire, revise or administer pre-employment or on-the-job tests or assessments as part of the selection process. Performance-based skills tests may be administered by the department supervisor or subject matter expert if approved in advance by the OHR Executive Director in writing.

C. The OHR Executive Director determines what classifications require an assessment or test, how assessments and tests are scored, the appropriate passing score and the applicability of current scores for future recruitments.

1. Multiple part assessments and tests: The OHR may decide that failing one part of a multiple part assessment or test determines an overall failing result. In this case, the applicant is considered to have failed the full assessment or test and the other parts of the assessment or test cannot be taken.

2. Reusing assessment and test results:

a. Applicant assessment and test results may be applied to future recruitments. The applicability of assessment and test results is at the discretion of the OHR and depends on various factors including but not limited to: duties and responsibilities of the job, assessment or test content and duration, length of time elapsed since last assessment or test, changes in industry standards, and/or changes in job classification specifications.

b. The creation of a new or revised assessment or test may require all applicants to take and pass the new assessment or test to gain eligibility.

3. Retaking assessments and tests:

a. A waiting period may apply before retaking certain assessments or tests. Applicants' eligibility to retake a test or assessment will be determined based on OHR testing guidelines.

b. Assessment and test results are valid for the duration of a recruitment. If a job is posted, closed and re-opened, applicants may not reapply or retest for that position since their application and test or assessment is already attached to the recruitment for that position. To retake an assessment or test, applicants must wait for a new job opening.

4. Applicant access to assessment and test results:

a. All applicants can view their assessment and test results by accessing their personal profile in the applicant tracking system.

b. Current employees may request feedback on their assessment or test results from the OHR.

5. Confidentiality of assessment and test results: A confidential record of assessment and test results are kept by the OHR. Results are only shared with the Agency Hiring Authority and/or Agency Hiring Manager in conjunction with a job vacancy unless otherwise requested by the applicant.

3-45 Scheduling of Assessments and Tests

A. All assessments and tests must be taken by applicants when scheduled for an in-person appointment or completed by the due date as specified for online assessments and tests.

B. Under certain circumstances, deferred assessments or tests are permissible for applicants who miss a scheduled due date. At the discretion of the OHR Executive Director, a request for deferral may be granted for the following reasons when supported by appropriate documentation:

1. The applicant has jury duty;

2. The applicant has been subpoenaed to appear in court or before an administrative tribunal;

3. The applicant has been ordered to perform City business;

4. The applicant is a City employee who has a work-related injury, which renders the candidate unable to take the assessment when scheduled; or

5. Any other good cause in the OHR Executive Director's judgment.

C. A deferred assessment or test must be taken within seven (7) days of the approval of the deferment. An applicant that takes and successfully passes a deferred assessment or test after the seven (7) days will be eligible at that point in the recruitment process only if a candidate has not yet been selected.

Section 3-50 Candidate Referral List and Interviews

A department or agency may request any number of eligible candidates to be included on the Referred List for a job vacancy. However, at least three (3) eligible candidates will be provided and must be interviewed. If there are less than three (3) eligible candidates on the list, the department or agency must interview all the candidates on the list.

A. The OHR and Agency Hiring Authority and/or Agency Hiring Manager will jointly determine the best qualified candidate for a job and are not required to provide a specific reason for not selecting any candidate.

B. 1. To avoid favoritism in hiring, the City's Code of Ethics prohibits an employee from appointing, hiring, or being in a direct line of supervision over a member of his or her immediate family for any type of employment. The Board of Ethics must approve any waivers to this requirement. Refer to the Denver Code of Ethics, as it may be amended from time to time.

2. Immediate family in this context means spouse, child (and step-child), parent (and step-parent), grandparent, grandchild, sibling, domestic partner, any person with whom he or she is cohabiting, and any person to whom he or she is engaged to be married.

3-51 Selecting a Candidate for Hire

A. An Agency Hiring Authority and/or Agency Hiring Manager may only fill a vacant Career Service job with a candidate whose name appears on the Referred List provided by the OHR as described in this Rule 3, or who falls within one of the following exceptions:

1. Career Service employees who are eligible for re-promotion, transfer, or demotion appointments (including employees who are eligible for an ADA re-assignment under Rule 12 **LEAVE FOR EXTENDED ILLNESSES AND INJURIES**), or former employees who are eligible for re-employment, as defined in Rule 5 **APPOINTMENTS AND STATUS**.

2. Paid trainees and paid interns who have successfully completed the training or internship as provided in Rule 5 **APPOINTMENTS AND STATUS** may be promoted into the job that the trainee or intern was being trained to perform.

3. Trades apprentices who meet the minimum qualifications of the applicable trade's classification specification and have successfully completed the required apprenticeship program requirements (as documented by the employee's department or agency and verified by the OHR) may be promoted into the applicable trade.

4. Employees in the Deputy Sheriff pay schedule classifications who are appointed to Deputy Sheriff Major and Deputy Sheriff Division Chief jobs after May 31, 2014.

B. If the candidate is a current or former City employee, the Agency Hiring Authority and/or Agency Hiring Manager should work with the OHR to review the employee's past performance after completion of the interviews and before a conditional offer of employment is made. The Agency Hiring Authority and/or Agency Hiring Manager should contact the employee's current supervisor for a reference, and (if a former City employee) review the employee's official personnel records. This requirement does not apply to candidates being re-assigned under the ADA.

C. Work Visas – Eligibility of Foreign Nationals to Work in the Career Service System:

1. The City and County of Denver does not provide any employment based non-immigrant or immigrant visa sponsorship.

2. Subject to pre-approval by the OHR Executive Director, an exception may be granted to an appointing authority to sponsor a work visa for a foreign national.

3. No manager has the authority to represent, promise, or commit to an employee or applicant that the City will sponsor or finance any portion of the visa application process.

3-52 Re-instatement After Layoff

Employees or former employees who have been laid off within the past twelve (12) months shall be re-instated to the job classification within the layoff unit from which they were terminated in accordance with Rule 14 **SEPARATION OTHER THAN DISMISSAL**.

Section 3-60 Extending a Conditional Job Offer to a Candidate

An offer of employment is contingent on the verification of credentials and other information required by law and City policies, including the successful completion of a background check. Candidates must pass a criminal background check and other verifications required for the position which may include, but are not limited to, employment and/or education verification, motor vehicle record check, drug test, and/or physical.

For more information on compensation, including Recruitment Premium and Relocation Premium, please refer to Rule 9 **PAY ADMINISTRATION**.

3-53 Re-use of Assessment Scores

After an eligible list is inactivated, candidates who were formerly on the list may re-use passing assessment scores in other recruitments for a period of time designated by the OHR Executive Director. The period of time may vary based on the subject matter contained in the assessment. A candidate may request the use of a passing assessment score for all recruitments for which the candidate has applied and for which the same assessment is used. The creation of a new or revised assessment for a classification may require all candidates to take and pass the new assessment to gain eligibility.

3-54 Removal of Names from Referral Lists: Restoration Permitted

The name of an eligible candidate shall be removed from all lists for the reasons listed below, but may be restored if the eligible candidate provides a satisfactory explanation to the OHR Executive Director, provided that list eligibility remains:

A. The eligible candidate does not answer when asked by the City if available or ready to work, or the eligible candidate cannot be reached for two consecutive days.

B. The eligible candidate turned down a referral or a job offer for reasons that would make it impossible to take other jobs in the same job classification.

C. The employee or former employee on a re-instatement list refuses an offer of re-instatement to a position equivalent in terms of duration and hours worked to the position the employee or former employee was in immediately prior to the lay-off.

D. The eligible candidate requested that his or her name be removed from the list.

E. The eligible candidate did not pass the appropriate post-employment offer health assessment.

F. Evidence has been produced that the eligible candidate no longer meets minimum qualification requirements.

G. The eligible candidate did not report for work after being hired. The names of eligible candidates who did not report for work after being hired will not be added to any lists for five (5) years.

3-55 Removal of Names from Referral Lists: Restoration Not Permitted

The name of an eligible candidate shall be removed from all applicable lists for the reasons listed below. Restoration is not permitted when:

A. Evidence has been produced that the eligible candidate should not have been admitted to the assessment.

B. An eligible candidate who was not a City employee has been appointed to an unlimited position in the Career Service.

C. A re-instatement list eligible candidate has been appointed to an unlimited Career Service position at the same or higher pay grade than the classification from which the eligible candidate was laid off or demoted from in lieu of lay-off.

D. The name of an eligible candidate who has been promoted to a higher classification is removed from all lists at or below the level of the promotional classification.

E. The eligible candidate has been dismissed from the Career Service. The names of dismissed employees will not be added to any lists for five (5) years after the date of dismissal.

APPENDIX 3.A.

CONSTITUTION OF COLORADO
ARTICLE XII, SECTION 15. VETERANS' PREFERENCE

(1) (a) (I) The minimum requirements for a candidate to be placed on an eligible list for a position shall be the same for each candidate for appointment or employment in the state personnel system or in any comparable civil service or merit system of any agency or political subdivision of the state, including any municipality chartered or to be chartered under article XX of this constitution.

(II) If a numerical method is used for the comparative analysis based on objective criteria, applicants entitled to preference under this section shall be given preference in accordance with paragraphs (b) to (e) of this subsection (1). If a nonnumerical method is used, applicants entitled to preference under this section shall be added to the interview eligible list.

(b) Five points shall be added to the comparative analysis score of each candidate who is separated under honorable conditions and who, other than for training purposes, (i) served in any branch of the armed forces of the United States during any period of any declared war or any undeclared war or other armed hostilities against an armed foreign enemy, or (ii) served on active duty in any such branch in any campaign or expedition for which a campaign badge is authorized.

(c) Ten points shall be added to the comparative analysis score of any candidate who has so served, other than for training purposes, and who, because of disability incurred in the line of duty, is receiving monetary compensation or disability retired benefits by reason of public laws administered by the department of defense or the veterans administration, or any successor thereto.

(d) Five points shall be added to the comparative analysis score of any candidate who is the surviving spouse of any person who was or would have been entitled to additional points under paragraph (b) or (c) of this subsection (1) or of any person who died during such service or as a result of service-connected cause while on active duty in any such branch, other than for training purposes.

(e) No more than a total of ten points shall be added to the comparative analysis score of any such candidate pursuant to this subsection (1).

(2) The certificate of the department of defense or of the veteran's administration, or any successor thereto, shall be conclusive proof of service under honorable conditions or of disability or death incurred in the line of duty during such service.

* * * * * * * * * * * *

(5) No person shall receive preference pursuant to this section with respect to a promotional opportunity. Any promotional opportunity that is also open to persons other than employees for whom such appointment would be a promotion, shall be considered a promotional opportunity for the purposes of this section.

(6) Repealed.

(7) This section shall be in full force and effect on and after July 1, 1971, and shall grant veterans' preference to all persons who have served in the armed forces of the United States in any declared or undeclared war, conflict, engagement, expedition , or campaign for which a campaign badge has been authorized , and who meet the requirements of service or disability, or both, as provided in this section. This section shall apply to all public employment examinations, except promotional examination, conducted on or after such date, and it shall in all respects be self-executing.

This Appendix is provided for informational purposes and is not considered a part of the Rules.

RULE 5
APPOINTMENTS AND STATUS
(Revised May 9, 2016; Rule Revision Memo 19D)

Purpose statement:

The purpose of this rule is to identify:

A. Types of appointments (the process of moving employees into vacant positions) and the process of making appointments;

B. Types of positions and employee status;

C. Medical groups and standards following a conditional offer of employment;

D. Dual incumbency and dual employment; and

E. Compliance with the Immigration Reform and Control Act of 1986.

(Revised May 9, 2016; Rule Revision Memo 19D)

Section 5-10 Appointments

A. The Career Service shall comprise all employees of the City and their positions, subject to the exceptions in the City Charter.

B. Appointing authorities, including the Office of Human Resources ("OHR") Executive Director, may delegate any authority provided under this Rule 5 to a subordinate employee.

5-11 Appointments of Applicants Who Are Not in the Career Service
(Revised February 21, 2017; Rule Revision Memo 25D)

The following is a list of the types of appointments of applicants who are not in the Career Service as defined in Career Service Rule 1 **DEFINITIONS**:

A. Employment appointment: An appointment made as a result of referral of an employment list in accordance with Rule 3 **RECRUITMENT AND SELECTION**.

B. Re-instatement appointment: An appointment of a former employee who had been laid off or who resigned in lieu of a lay-off, which is made as a result of referral from a re-instatement list in accordance with Rule 3 **RECRUITMENT AND SELECTION**.

C. Re-employment appointment: An appointment of a former employee to a position in the classification in which the employee was previously employed within the preceding five (5) years, or to a successor classification; or to any classification for which the employee is qualified, with the same or lower range minimum than the former classification, subject to the following conditions:

1. Former employees whose separation was the result of a dismissal are not eligible for re-employment;

2. An appointment that is a re-instatement is not a re-employment appointment;

3. In order to determine eligibility for re-employment into a successor classification, the OHR Executive Director may, on a case-by-case basis, review the duties previously performed as well as classification and pay; and

4. A former employee who is re-employed shall serve in an employment probationary status.

5-12 Appointments of Employees Who Are in the Career Service
(Revised February 21, 2017; Rule Revision Memo 25D)

The following is a list of the types of appointments of employees who are in the Career Service as defined in Career Service Rule 1 **DEFINITIONS**:

A. Promotional appointment:

B. Promotional re-instatement appointment:

C. Re-promotional appointment:

1. Appointments that are promotional re-instatements are not re-promotions; and

2. In order to determine eligibility for re-promotion into a successor classification, the OHR Executive Director may, on a case-by-case basis, review the duties previously performed as well as classification and pay.

D. Transfer appointment:

1. An employee may be given a transfer appointment between departments or agencies provided that the employee and the receiving appointing authority consent.

2. Unless otherwise agreed upon, a transfer appointment between departments or agencies becomes effective thirty (30) calendar days after the releasing department or agency is notified that the employee and the receiving department or agency have both consented to the transfer. However, the time may be shortened if the effective date is set jointly by the releasing appointing authority and the receiving appointing authority.

E. Demotion appointment

1. Reasons for demotion: An appointing authority may give a demotion appointment in the following instances:

a. Voluntary:

i. When an employee requests the demotion, or accepts a voluntary demotion in lieu of lay-off as defined in Rule 14 **SEPARATION OTHER THAN DISMISSAL**; or

ii. When an employee accepts the offer of a position with lower pay and benefits as a reasonable accommodation in the ADA Interactive Process.

b. In lieu of lay-off: When a position is to be abolished, in accordance with Rule 14 **SEPARATION OTHER THAN DISMISSAL**.

c. Involuntary:

i. Through disciplinary action in accordance with Rule 16 **DISCIPLINE AND DISMISSAL**; or

ii. In lieu of separation during employment probation in accordance with this Rule 5.

2. Notice to employee: Before a demotion appointment is effective, the following documentation shall be provided to the employee and submitted to the OHR:

   a. Written consent of the employee to a voluntary demotion; or

   b. A written notice of demotion in lieu of lay-off as required by Rule 14 **SEPARATION OTHER THAN DISMISSAL**; or

   c. A written notice of disciplinary demotion as required by Rule 16 **DISCIPLINE AND DISMISSAL**; or

   d. A written notice of demotion in lieu of separation during employment probation, or during paid trainee or paid intern status.

Section 5-20 Types of Positions

5-21 General

All positions in the Career Service shall be identified by the following two (2) characteristics:

A. Duration; and

B. Number of hours worked.

5-22 Duration

The duration of each position in the Career Service shall be determined by one of the following definitions:

A. Unlimited positions: A position which has no specified ending date.

B. Limited position: A position which has a specified ending date. Examples are positions funded by grants, positions created to meet a special project or seasonal need, positions created to replace an employee on extended leave, positions created to provide program continuity on an acting basis while recruitment is underway to fill a vacant position, and similar positions created with a time limitation for comparable specific purposes.

5-23 Number of Hours Worked

A. Identification of positions by category: Each position in the Career Service shall be identified by one of the following categories based on work schedule:

   1. Full time;

   2. Part time;

   3. On call.

B. Criteria of categories:

1. Full time: A full time position is one in which an employee is scheduled to work forty (40) hours per week.

2. Part time: A part time position is one in which an employee is scheduled to work less than forty (40) hours per week.

3. On call: An on call position is one in which the employee works as needed. On-call positions may have routine or variable work patterns and are generally filled to accommodate seasonal or short term activities in various city agencies. Ushers are an example. Since Election Judges are not in the Career Service, they are not considered to be on-call Career Service employees.

Section 5-30 Employee Status

Every Career Service employee shall hold at least one of the following employee status identifications:

A. At-will status, which is made up of:

1. On-call status;

2. Paid trainee or paid intern status; and

3. Employment probationary status.

B. Career status

C. Senior Command Staff status.

5-31 At-will Status

At-will employees:

A. May be separated with or without notice and with or without cause at any time; and

B. May not appeal any decision relating to his or her employment, including separation, except on the grounds of alleged discrimination or violation of the City's "Whistleblower Protection" ordinance.

5-32 On-call status

Every person who is appointed to an on-call position shall hold on-call status for the duration of the appointment.

5-33 Paid Trainee or Paid Intern Status

A. Every person who is appointed to a trainee or intern position shall hold paid trainee or paid intern status for the duration of the appointment. The Public Safety Cadet classification is considered a trainee classification under these rules.

B. The duration of paid trainee and paid intern status is set by the applicable classification specification.

C. End of paid training or paid internship period:

1. The department or agency shall report to the OHR, in writing, at the conclusion of paid trainee or paid intern status, whether the trainee or intern has successfully completed the training or internship period by acquiring the competencies, knowledge, skills and abilities necessary to satisfactorily perform the duties of the position.

2. An appointing authority may request, in writing to the OHR Executive Director, that the trainee or intern be deemed to have successfully completed the training or internship period prior to the employee's completion of the training or internship period.

3. Upon a determination by the OHR that the trainee or intern has successfully completed the training or internship period, the department or agency may promote the trainee or intern into the position the trainee or intern was being trained to perform.

5-34 Employment Probationary Status

Every person when first appointed or re-employed to a full time or part time, limited or unlimited Career Service position, that is not a trainee or intern position, shall hold employment probationary status for the probationary period established by this Rule 5.

A. An employment probationary period shall be regarded as an integral part of the examination process. It shall be utilized for closely observing the employee's work, assisting the employee to adjust to the duties and responsibilities of the position, and to separate or demote an employee as provided in this rule.

B. Duration of employment probation:

Except as provided below, the minimum period of employment probation shall be six (6) months.

1. The minimum period of employment probation for employees in Deputy Sheriff classifications shall be twelve (12) months.

2. The minimum period of employment probation for employees in the Aviation Emergency Dispatcher, Emergency Communications Operator, Police Dispatcher, and Staff Probation Officer classifications shall be nine (9) months.

C. An employee's end of probation date shall be calculated by adding the required amount of months (six, nine or twelve months) to the employee's hire date and subtracting a day.

D. Required training:

1. All Career Service employees serving employment probation are required to complete training programs during their probationary period that address the following topics:

   a. New employee orientation;

   b. Ethics and accountability;

   c. Preventing harassment and workplace violence; and

   d. Any other training required by the DRMC and applicable Executive Orders.

2. Employees appointed or re-allocated to positions with supervisory or managerial duties are required to complete new manager training that addresses the following topics:

   a. The performance review program and performance reviews; (Revised May 12, 2017; Rule Revision Memo 26D)

   b. Preventing harassment and workplace violence (for managers); and

   c. Employment laws, the Career Service Rules, and discipline.

   Employees who are serving employment probation as a result of being appointed to a position with supervisory or managerial duties are required to complete the required supervisory training during their probationary period.

3. a. Employees who completed the required new hire training within the three years prior to the effective date of appointment are not required to take that training again.

b. Employees who have completed the required new manager training or who have held a position within the Career Service with supervisory or managerial duties within the three years prior to the effective date of appointment, promotion, or the submittal of a re-allocation request are not required to take that training again.

4. Departments or agencies may conduct training to fulfill the requirements established above, with the approval of the OHR Executive Director. Departments or agencies that conduct such training shall provide the OHR with documentation evidencing the completion of the required training. Such documentation shall include the course title, the names of employees who have completed the training, and the date of completion.

E. Extension of employment probation:

1. Appointing authorities may extend an employee's employment probation for a period not to exceed an additional six (6) months after the original end of probation date. Notice of the extension shall be given to the employee and received by the OHR prior to the end of the employee's end of probation date. Employment probation for employees in the Aviation Emergency Dispatcher, Emergency Communications Operator, Police Dispatcher, and Staff Probation Officer classifications may only be extended for a period not to exceed an additional three (3) months after the original end of probation date.

2. Employees serving employment probation who have not completed training programs required by this rule as a condition of passing probation will have their probationary periods automatically extended until the training programs have been completed. City departments and agencies are expected to make sure their employees meet the training requirements of this rule. This paragraph shall not affect a department or agency's ability to end probation at any time.

F. End of employment probation notification:

1. Supervisors are encouraged to evaluate employee performance and discuss it with the employee during the employment probationary period so that employees are fully informed of their progress.

2 An employee's successful completion of an employment probationary period shall be documented by the completion of a notification form prepared by the employing department or agency in a format authorized by the OHR.

3. a. If a department or agency is going to separate an employee during employment probation, a written notice of separation or dismissal shall substitute for the notification form.

b. Such notice shall be given to the employee on or before the employee's last day of employment probation and last day as a City employee.

c. An employee who has completed the required employment probationary period and the training programs required by this rule shall attain career status unless a written notice of the extension of the employee's employment probation, or of the employee's separation or dismissal has been given to the employee and has been received at the OHR prior to the end of the employment probationary period.

G. An employee serving employment probation may be separated in accordance with Rule 16 **DISCIPLINE AND DISMISSAL**, or demoted to a position with less responsibility in accordance with this Rule 5. An employee who is appointed to another position during employment probation shall begin a new employment probationary period.

5-35 Career Status

A. Employees attain career status through:

1. Successful completion of-the employment probationary period, and the training programs required by this Rule 5; or

2. Re-instatement after lay-off.

B. An employee in career status:

1. May only be disciplined or dismissed for cause, in accordance with Rule 16 **DISCIPLINE AND DISMISSAL**;

2. Is entitled to lay-off protection specified in Rule 14 **SEPARATION OTHER THAN DISMISSAL**, except for employees in limited positions; and

3. May have continuous service credits earned prior to lay-off restored if such employee is re-instated or re-employed while still on the re-instatement list.

5-36 Senior Command Staff Status

A. Every employee in a position in a classification in the Deputy Sheriff pay schedule who is appointed to a position in the Deputy Sheriff Major or Deputy Sheriff Division Chief classifications after May 31, 2014 shall hold Senior Command Staff status for the duration of the appointment and shall not serve a probationary period. However, such employee shall retain career status attained in his or her former classification and be entitled to return to a position in that classification when the employee's Senior Command Staff status ends.

B. An employee in Senior Command Staff status retains the rights, privileges, and benefits the employee had by virtue of his or her status prior to the appointment, except that the employee:

1. May be returned to a position in his or her former classification at any time. Upon returning, the employee shall receive the same rate of pay he or she was receiving prior to his or her appointment to a position in the Deputy Sheriff Major or Deputy Sheriff Division Chief classifications (Senior Command Staff position), after taking into account the effect of any pay changes or classification changes to the employee's former position and classification that occurred during the period between the appointment and the return; and

2. May not grieve or appeal his or her removal from a Senior Command Staff position.

Employees who were appointed to Senior Command Staff positions prior to June 1, 2014 shall retain career status attained in that position and shall not be considered to have Senior Command Staff status.

Section 5-40 Medical Examinations Following a Conditional Offer of Employment

5-41 Medical Groups

All classifications in the Career Service shall be allocated to a medical group by the OHR Executive Director. The medical groups are as follows:

A. Heavy (H): Positions which demand a very high degree of physical fitness.

B. Medium (M): Positions which demand considerable labor and exertion or in which safety considerations mandate a high degree of physical fitness.

C. Sedentary (S): Positions which require little physical labor or exertion.

5-42 Adoption of Medical Standards

Medical criteria for each medical group or for individual classifications within a medical group shall be proposed by the Center for Occupational Safety and Health at Denver Health or by another designated provider (as defined in Chapter 18, Article VII of the Denver Revised Municipal Code – Treatment of Occupational Injury or Disease), if selected by the appointing authority. Approval of the proposed medical criteria shall be the responsibility of the OHR Executive Director. Medical criteria must be job-related and consistent with business necessity. Medical criteria shall be used as a guide in determining an applicant's ability to perform the essential physical functions of a position either with or without reasonable accommodations.

5-43 Medical Examinations

A. Applicants who are offered positions in a classification in group H or M are required to submit to a medical examination after receiving an offer of employment conditioned on the results of the medical examination. The examination shall be administered by one of the City's designated providers (as defined in the previous subsection). The examination shall be completed after the conditional offer of employment has been given to the applicant and before the first day of work.

B. Applicants who are offered positions in a classification in group S are not required to submit to a post-employment offer medical examination unless the position has other assigned duties that demand a high degree of physical fitness (such as operating snow removal equipment). The determination of whether a conditional offer of employment and a post-employment offer medical examination is required and shall be based on the physical requirements of the position.

C. If it is determined that the applicant is unable to perform the essential functions of the position with or without reasonable accommodations, the offer of employment shall be rescinded.

Section 5-50 Dual Incumbency

Subject to approval by the Budget and Management Office, or its designee, an employee may be appointed to occupy a position currently occupied by another employee for a period not to exceed three (3) months. If it is desired to continue such an arrangement for more than three months, it shall be done by the creation of a limited position rather than dual incumbency in a single position.

Section 5-60 Dual Employment

The following rules shall apply as to dual employment in the Career Service:

A. Since a position is by definition an aggregate of duties to be performed by one (1) person, an employee may occupy only one (1) full-time position.

B. An employee may occupy more than one (1) part-time position, more than one (1) on-call position, or a combination of part-time and on-call positions provided that the total time worked does not exceed the equivalent of a full-time position.

Section 5-70 Compliance with the Immigration Reform and Control Act of 1986

5-71 Policy

The policy of the Board is to conform to the provisions of Federal and Colorado immigration law, including but not limited to the Immigration Reform and Control Act of 1986, the Immigration Act of 1990, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and regulations based upon these laws.

5-72 New Hires

No person hired on or after May 21, 1987 shall be employed for more than three (3) working days unless such employee has submitted to the OHR the documentary evidence of identity and authorization to work required by Federal immigration law.

5-73 Penalty

In accordance with the requirements of Federal immigration law, any employee failing to comply with this section of Rule 5 **APPOINTMENTS AND STATUS** shall be terminated immediately.

RULE 7
CLASSIFICATION AND COMPENSATION

(Effective September 25, 2015; Rule Revision Memo 14D)

Purpose Statement:

The purpose of this rule is to provide a process and create a framework to ensure like pay for like work within the City's merit-based personnel system through the use of a systematic method of individual or group classification reviews, and to provide generally prevailing compensation to City employees.

Section 7-10 Definitions
(Revised January 3, 2017; Rule Revision Memo 23D)

A. Allocation: The formal process of assigning a new position to its proper classification on the basis of the duties to be performed and the responsibilities to be exercised.

B. Audit: A fact-finding investigation of the work performed by the incumbent of a given position, including work processes, materials processed, actions taken, tools used, supervision exercised, and supervision received for the purpose of analyzing the kind and level of duties and responsibilities of the position.

C. Benchmark classification: A classification within an occupational group for which external pay data can be readily collected.

D. Business title: The functional or working title of a position, which may differ from the classification title, used in a given agency for operating purposes, or by the Office of Human Resources ("OHR") for recruiting purposes. (Revised January 3, 2017; Rule Revision Memo 23D)

E. Classification: One or more positions so nearly alike in the essential character of their duties and responsibilities that the same pay grade, title and specification can be applied, and such that they can fairly and equitably be treated alike under like conditions for all other personnel purposes.

F. Classification specification: A written statement that sets forth the characteristic duties and responsibilities that distinguish a given classification from other classifications, and the minimum education, experience and licensure/certification requirements necessary for appointment to a position in that classification. Classification specifications are intended to provide a basic framework for recruitment, compensation, performance management and employee development. They also provide a means of determining the allocation of work, lines of authority, and other relationships between positions.

G. Classification title: The designation of a classification which becomes the official title of all positions allocated to that classification.

H. Classification and pay plan: A list of classification titles and attendant pay rates covering all classifications in the Career Service and all classifications not in the Career Service except Charter officers, the ranks of the classified service in the Police and Fire Departments, Deputy Sheriffs, Deputy Sheriff Majors, Deputy Sheriff Division Chiefs, and the Undersheriff.

I. Market survey: The collection, analysis and reporting of external pay data for a number of benchmark classifications.

J. Occupational groups: Groupings of classifications that are so similar in the nature of the work performed that the same pay survey adjustments can be applied.

K. Pay survey adjustment: A change in the pay structure resulting from a market survey.

L. Pay grades: Identifying numbers for pay ranges within a pay schedule.

M. Pay ranges: The range of pay in a pay grade beginning at the range minimum and extending to the range maximum of the pay grade.

N. Pay schedules: A pay schedule is a listing of the pay grades, and the corresponding pay ranges.

O. Position: The aggregate composition of duties and responsibilities performed by one employee.

P. Provisional classification: A proposed change to the classification and pay plan that results in a new classification or changed pay rate for an existing classification that has been approved by the Career Service Board ("Board") but not by the City Council. Provisional classifications may be utilized without City Council approval for up to six months after the effective date of the Board approval or until the City Council disapproves the proposed change.

Q. Re-allocation: The formal process of assigning an existing position to its proper classification on the basis of the predominant duties performed and the responsibilities exercised.

Section 7-20 Classification and Pay Plan

The OHR is responsible for developing, maintaining, and administering classifications and attendant pay plans for all positions covered by the classification and pay plan.

7-21 Changes to the Classification and Pay Plan

A. The OHR Executive Director shall recommend changes to the classification and pay plan to the Board.

B. Recommended changes to the classification and pay plan proposed by the OHR Executive Director shall be approved, modified or rejected by the Board after a public hearing as provided in Rule 2 **OFFICE OF HUMAN RESOURCES**.

C. Any changes to the classification and pay plan require submission to the City Council for approval.

7-22 Changes to Classification Specifications

Changes to classification specifications that do not involve changing classification titles and/or attendant pay rates do not require City Council approval, and may be made by the OHR Executive Director without a public hearing before the Board.

Section 7-30 Classification of Positions

7-31 Responsibility for the Establishment of Positions and Assignment of Duties

Appointing authorities may initiate the creation of new positions and have the responsibility to assign duties to such positions. Appointing authorities may also change duties that are assigned to positions under their authority regardless of whether those positions are filled or vacant. Duty assignments may be temporary or regular, incidental or essential, and may include changes in location of work and changes in equipment and tools.

7-32 Allocation of New Positions

Every position covered by the classification and pay plan shall be allocated to a classification in that plan. Such allocation shall be made by the OHR on the basis of the predominant duties of the position and in accordance with generally accepted personnel standards and procedures and as set forth in this Rule 7.

7-33 Re-Allocation Of Existing Positions

A. When the duties of an existing position are changed to the extent that the position is more similar to positions in other classifications than to positions in its current classification, the position should be re-allocated to a more appropriate classification in accordance with this Rule 7.

B. In order to maintain the classification and pay plan, the OHR may re-allocate:

   1. Vacant positions on the basis of the essential duties of the position; and

   2. Filled positions by conducting audits or maintenance studies.

7-34 Audits

A. An appointing authority may submit a request for, or the OHR may initiate, an audit of a filled position to determine if it is correctly classified, when there has been:

   1. A significant change in the type or level of duties and responsibilities;

   2. A re-organization affecting a number of employees, which may involve significant additions of new equipment, or substantial changes in methods or procedures; or

   3. A maintenance study resulting in changed classification specifications.

B. Appointing authorities are encouraged to submit audit requests to the OHR as soon as possible after the duties of a position have been permanently changed. Requests must be made using the OHR Request for Classification Consideration form.

C. When an appointing authority requests re-allocation of a position to a supervisory or managerial classification from a classification that is not a supervisory or managerial classification:

1. The appointing authority shall provide a list of the position numbers, classification titles, and names of subordinate staff; and

2. The audit request will not be accepted by the OHR until the incumbent has passed the applicable first-line supervisor test.

D. Audit requests will not be granted in the following situations:

1. For limited positions that are not budgeted or not anticipated to be budgeted past the fiscal year in which the audit was requested;

2. For on-call positions, unless re-allocation responsibility has been delegated to the appointing authority under the Progressive Classification Series Program;

3. When there is a vacant position in the incumbent's work unit which is in the classification to which the audit request seeks to re-allocate the incumbent's position;

4. For any positions currently included in a maintenance study;

5. As an alternative to promotion; or

6. As a substitute for disciplinary procedure.

E. An employee may petition an appointing authority to reconsider a decision not to request an audit of the employee's position and may send a copy of the petition to the OHR Executive Director. The OHR may choose to initiate an audit or maintenance study if warranted under this Rule 7.

F. <u>Progressive Classification Series Program</u>:

1. A progressive classification series consists of classifications where the levels of the duties are different, but the types of duties and nature of the work are the same.

2. Under the progressive classification series program, re-allocation responsibility is delegated by the OHR to an appointing authority.

3. Appointing authorities may re-allocate employees within the progressive classification series once they meet criteria established by the appointing authority and agreed to in advance by the OHR. These criteria shall be reflected in the Progressive Classification Series Re-allocation Form developed by appointing authorities and the OHR for each classification in a progressive classification series. This form will be used to process re-allocations under this program.

4. The OHR retains the responsibility of reviewing completed Progressive Classification Series Re-allocation Forms prior to processing a re-allocation to ensure compliance with the pre-established criteria.

7-35 Maintenance Studies

A. The OHR may initiate and conduct maintenance studies, covering multiple positions in one or more classifications, in order to maintain the classification and pay plan.

B. When an appointing authority creates a new position or changes the duties assigned to an existing position, those positions shall be allocated or re-allocated to the appropriate classification simultaneously with the implementation of the maintenance study whenever possible.

7-36 Effect of Re-allocation on Incumbents

A. An employee whose position is re-allocated must meet the minimum education, experience, and licensure/certification requirements of the new classification. The OHR Executive Director may substitute other appropriate factors for the minimum education and experience requirements of the position, based on the circumstances presented by a particular situation, but may not make a substitution for licensure or certification requirements.

B. An incumbent with career status who has been found eligible to remain in the re-allocated position shall acquire career status in the new classification as of the effective date of the re-allocation. If the incumbent has probationary status, the employee shall complete the remainder of such probationary period before attaining career status in the new classification.

7-37 Effective Dates

A. If it is determined, as a result of an audit or maintenance study, that changes to the classification and pay plan are necessary, the effective date of any resulting changes to the classification and pay plan shall be the beginning of the first work week following approval by the Mayor or by the City Council over the Mayor's veto. Provisional classifications resulting from changes to the classification and pay plan may be used upon approval by the Board, but use for longer than six months is contingent upon City Council approval.

B. If a position is to be re-allocated as a result of an audit or maintenance study without requiring changes to the classification and pay plan, the effective date shall be the beginning of the first work week following the classification decision by the OHR.

C. If a position is to be re-allocated under the progressive classification series program, the effective date shall be the beginning of the first work week following the date of the appointing authority's signature on the Progressive Classification Series Re-allocation Form.

Section 7-40 Requests for Administrative Review

An appointing authority may ask the OHR Executive Director for an administrative review of a classification decision within ten (10) calendar days of the date of notice of the audit or maintenance study results. The OHR Executive Director or designee shall review the decision and provide a written response to the appointing authority.

Section 7-50 Compensation Policy

The policy of the City and County of Denver is to provide generally prevailing compensation to City employees as provided by the City Charter and the Denver Revised Municipal Code ("DRMC"). This compensation policy is designed to attract, retain and motivate employees in order to support and reinforce the City's vision, values, and strategic business goals. To implement this compensation policy the Office of Human Resources ("OHR") will:

A. Perform market surveys to ensure the City's external market competitiveness;

B. Provide like pay for like work within classifications; and

C. Utilize pay for performance plans.

Section 7-60 Establishing and Maintaining Pay Schedules
(Revised May 31, 2017; Rule Revision Memo 27D)

A. The OHR shall establish the following pay schedules in order to facilitate the City's compensation policy:

1. Non-exempt salary schedules: applicable to those classifications not exempt from overtime pursuant to the provisions of the Fair Labor Standards Act (FLSA);

2. Community rate schedule: applicable to certain classifications comprised solely of on-call positions used on a seasonal basis or in the sports and entertainment field which do not have traditional year-round or seasonal schedules. These classifications are non-exempt under the FLSA;

3. Training and intern schedule: applicable to trainee or intern classifications. These are single rate classifications that do not have ranges; and

4. Exempt salary schedules: applicable to those classifications exempted from overtime under the FLSA.

B. Each occupational group shall have one or more of these pay schedules assigned to it as appropriate.

C. Classifications shall be assigned to a pay grade within the appropriate pay schedule.

Section 7-70 Pay and Benefit Survey Process

7-71 Establishing Pay for Classifications

A. The pay for a classification shall be set at generally prevailing rates of pay for comparable jobs using the market survey process described below.

B. The OHR shall perform an annual market analysis to determine what pay survey adjustments, if any, should be recommended for occupational groups and/or classifications covered by the classification and pay plan (as defined in this Rule 7).

C. If market survey data are inadequate or inappropriate for a statistical analysis, pay for a classification will be determined based on internal relationship comparisons to other City and County of Denver classifications according to practices established by the OHR (see Appendix).

7-72 Market Surveys

In order to provide generally prevailing compensation to employees, the OHR shall use market surveys which include a sample of public and private sector employers and jobs throughout the local market or other appropriate geographical areas.

A. Benchmark classifications shall be identified in each occupational group. Market data shall be used to analyze these classifications in order to determine what pay survey adjustments, if any, should be recommended.

B. The local market shall be defined as the “Denver Metropolitan Area” which includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson counties.

C. The use of other geographical area data will be determined on a case-by-case basis for a classification. When other geographic areas are selected to be used in a survey, several factors are considered such as, but not limited to, the market where such jobs are recruited for, comparable organizations, populations and cost of living factors.

D. Whenever salary and related information is furnished to the OHR on the condition that such material remains confidential, the individual pay data in such surveys shall not be disclosed.

E. The OHR shall establish written criteria for selecting surveys, which must be published and followed. Before changing the criteria for selecting surveys, the OHR must inform the Board at a public meeting (see Appendix).

7-73 Implementation of Pay Survey Recommendations

A. In accordance with Rule 2, the Career Service Board ("Board") shall hold a public hearing to determine whether to accept, reject, or modify the pay survey recommendations.

B. The Board provides their recommendations to the Mayor and City Council as required by ordinance.

C. City Council and the Mayor may accept, reject, or modify the recommendations.

D. The OHR shall implement the pay survey adjustments as approved by City Council and the Mayor and as provided in the DRMC.

7-74 Employee Benefits

A. Upon request of the Mayor, City Council, or the Board, the OHR Executive Director shall survey and recommend changes to employee benefits as necessary to attract and retain a qualified and competent workforce and to maintain the City's policy to provide generally prevailing compensation to employees.

B. The Board shall conduct at least one public hearing on any proposed changes to employee benefits prior to the OHR Executive Director making any recommendations to the Mayor and City Council.

APPENDIX 7.A.

OHR PRACTICES FOR DETERMINING INTERNAL RELATIONSHIP COMPARISONS BETWEEN CITY AND COUNTY OF DENVER JOB CLASSIFICATIONS (REFERRED TO IN RULE 7-71 C.)

These comparisons will include, but not be limited to items such as the:

1. Duties and responsibilities of the job;

2. Level of decision making;

3. Level of supervision exercised and received;

4. Level of difficulty;

5. Minimum qualifications.

This Appendix is provided for informational purposes and is not considered a part of the Rules.

APPENDIX 7.B.

CRITERIA FOR SELECTING MARKET SURVEYS
(REFERRED TO IN RULE 7-72 E.)

The following criteria shall be used to select published surveys:

1. The survey should provide written documentation of the methodology used to select the sample of the organizations surveyed; match the type of work performed; and collect, analyze, and report the data.

2. The methodology outlined should meet professionally accepted compensation standards.

3. The survey should provide written documentation showing that only organizations meeting criteria established in these rules were surveyed.

4. The survey should provide a list of the organizations surveyed.

5. The survey must provide descriptions of work in sufficient detail to ensure comparable jobs are being matched.

6. The survey must provide an effective date for all data reported.

7. The survey should provide rate structure data, actual rates of pay be quartile, median, and/or weighted average; and the number of organizations and rates the results represent.

8. The number of firms surveyed must provide a large enough sample to be considered representative of the generally prevailing wage.

The OHR is required to establish written criteria for selecting market surveys by the Career Service Rules. These criteria must be published in the Appendix to this Rule 8 and followed. Before changing this Appendix 8.B., the OHR must inform the Board at a public meeting.

RULE 9
PAY ADMINISTRATION

Purpose statement:

The purpose of this rule is to explain the establishment and administration of pay practices (except merit increases and merit payments), and hours of work.

Section 9-5 Definitions
(Revised February 21, 2017; Rule Revision Memo 25D)

A. Classification series: The arrangement in sequence of classes that are alike in the kind but not in level. For the purposes of a market adjustment within the salary range, a classification series shall include first line supervisors and lead workers.

B. Demotion: An appointment of an employee to a position in a lower classification as defined in Career Service Rule 1 **DEFINITIONS**.

C. Emergency: An emergency shall include the following events: fire, flood, catastrophe, severe weather conditions that impact public safety or essential services; other unforeseeable emergency where a station must be staffed and another employee is not available for work; or an occurrence affecting the general public which requires immediate action. A declared emergency shall mean an emergency declared by the Mayor or an appointing authority that complies with the definition of emergency stated above.

D. Essential city services: The determination of what constitutes an essential City service shall be made at the discretion of appointing authorities.

E. Market Conditions: Factors and trends in the market as determined by a compensation analysis that may affect compensation rates such as the supply and demand of workers.

F. Pay Factors: Appointing authorities who wish to hire employees at higher than the range midpoint, or increase the salary of promoted employees by more than ten percent (10.0%), or provide an equity adjustment, shall base that decision on one or more of the following pay factors:

1. Market conditions;

2. Related experience;

3. Previous work record;

4. Salary history;

5. Specialization of education;

6. Quality/quantity of education.

7. Internal equity;

8. Level of responsibility accepted.

G. Promotion: An appointment of an employee to a position in a higher classification as defined in Career Service Rule 1 **DEFINITIONS**.

H. Re-allocation: The formal process of assigning an existing position to its proper classification on the basis of the duties performed and the responsibilities exercised.

I. Promotional re-instatement: A promotion of an employee resulting from referral from a re-instatement list as further defined in Career Service Rule 1 **DEFINITIONS**.

J. Re-instatement: An appointment of a laid off employee resulting from referral from a re-instatement list as defined in Career Service Rule 1 **DEFINITIONS**.

K. Re-promotion: A promotion of an employee to a position in a higher classification as further defined in Career Service Rule 1 **DEFINITIONS**. Appointments that meet the definition of a promotional re-instatement are not re-promotions.

L. Transfer: An appointment of an employee to a position in a lateral classification as defined in Career Service Rule 1 **DEFINITIONS**.

Section 9-6 Designees

Appointing authorities, including the Office of Human Resources ("OHR") Executive Director, may delegate any authority given to them under this Rule 9 to a subordinate employee.

Section 9-10 Pay practices

A. Pay practices include, but are not limited to items such as pay when first employed, changes in pay resulting from changes in position or classification, differentials, overtime pay, standby pay, merit increases and merit payments.

B. The kind and level of pay practices for Career Service employees shall be determined by the Career Service Board ("Board") following a survey of other employers or based on the City's needs.

C. Applicability to Deputy Sheriffs: None of the provisions of this Rule 9 shall apply to employees who hold positions in classifications in the Undersheriff pay schedules.

Section 9-20 Pay When First Employed
(Revised December 21, 2012; Rule Revision Memo 66C)

A. An appointing authority may set pay for a new employee higher than the range minimum (but not to exceed the range maximum of the applicable pay range) if necessary to obtain the services of an unusually well-qualified person.

B. The appointing authority may decide to appoint an employee at a pay rate higher than the range minimum if the appointing authority determines that one or more of the pay factors defined in this Rule 9 justify such a starting salary. In any event, qualifications of the new employee should exceed the minimum qualifications stated in the classification specification, and internal equity shall be considered.

Section 9-30 Changes in Classification and Pay
(Revised October 17, 2010; Rule Revision Memo 47C)

A. A change in an employee's classification may occur through promotion, transfer, demotion, re-allocation, or promotional re-instatement. (Revised November 18, 2015; Rule Revision Memo 15D)

B. Retroactive pay changes shall not extend into the prior fiscal year, unless approved by the OHR Executive Director or designee. (Revised November 7, 2016; Rule Revision Memo 22D)

9-31 Promotion and re-promotion

A. Upon promotion an employee's pay shall be increased by at least eight percent (8.0%). In no event shall the pay upon promotion be lower than the range minimum or exceed the range maximum of the pay range of the new classification. (Revised July 31, 2015; Rule Revision Memo 12D)

B. The appointing authority may increase an employee's pay by more than ten percent (10%) upon promotion if the appointing authority determines that one or more of the pay factors defined in this Rule 9 justify such an increase. (Revised July 31, 2015; Rule Revision Memo 12D)

C. Within the community rate pay schedule the employee's pay shall be increased by five percent (5%), but not to exceed the range maximum of the pay range of the new classification. (Revised May 31, 2017; Rule Revision Memo 27D)

D. Demotion and subsequent re-promotion:

1. If an employee demotes without a loss in pay, that employee is not eligible for an increase in pay upon re-promotion if such re-promotion occurs within twelve months following the date of the demotion.

2. In all other circumstances, an employee being re-promoted will have their pay set under the provisions of paragraph 9-31 A.

9-32 Transfers

When an employee transfers, the employee shall receive the same pay as before the transfer, unless that would be more than the range maximum of the new pay range of the new classification. In that case the employee's pay shall be set at the range maximum of the pay range of the new classification.

9-33 Demotion

A. Voluntary demotion:

1. A voluntary demotion is a demotion initiated through the request or application of an employee.

2. When an employee voluntarily demotes, pay shall be set by the appointing authority and shall not be decreased by more than eight percent (8.0%), unless doing so is necessary to keep the employee's pay from exceeding the range maximum of the pay range of the new classification. Before the pay can be set at a pay rate higher than the employee's current pay rate, the OHR Executive Director's prior approval will be required. Before the pay can be set at a rate lower than the employee's current pay rate, the employee must agree to the reduction in writing. If the parties cannot agree on the amount of the reduction, the demotion will not occur. (Revised July 31, 2015; Rule Revision Memo 12D)

B. Demotion in lieu of lay-off: Upon a demotion in lieu of lay-off, the employee shall continue to receive the pay rate he or she earned before the demotion unless this exceeds the range maximum of the pay range of the new classification, in which case the employee shall receive the range maximum of the pay range of the new classification.

C. Involuntary demotion:
(Revised July 19, 2012; Rule Revision Memo 64C)

1. An involuntary demotion is a demotion initiated:

a. Through disciplinary action in accordance with Rule 16 **DISCIPLINE AND DISMISSAL**; or

b. In lieu of separation during employment probation in accordance with Rule 5 **APPOINTMENTS AND STATUS**.

2. When an employee is involuntarily demoted, pay shall be set by the appointing authority. At least an eight percent 8.0%) reduction shall be required. (Revised July 31, 2015; Rule Revision Memo 12D)

D. In no event shall the pay upon demotion be lower than the range minimum or exceed the range maximum of the pay range of the new classification.

9-35 Re-allocation

A. When a position is re-allocated to another classification, the incumbent shall receive the same pay as before the re-allocation unless that would be less than the range minimum of the pay range of the new classification. In that case the employee's pay shall be set at the range minimum of the pay range of the new classification. If the employee's pay is higher than the range maximum of the pay range of the new classification, the employee's pay shall remain at the employee's existing rate of pay until such time that either:

1. The employee changes positions; or

2. The pay range of the new classification catches up to the employee's rate of pay when the pay range is adjusted.

B. When an employee meets the requirements to progress to a higher classification in a current delegated progressive classification series and the OHR Executive Director approves the progression to the higher classification, the employee's pay shall be increased by two and one quarter percent (2.25%). In no event shall the employee receive less than the range minimum of the pay range of the new classification.

C. When a classification is changed to a different occupational group, pay grade, and/or pay range as the result of a re-allocation as described in Rule 7 **CLASSIFICATION AND COMPENSATION**, the pay for employees in that classification shall remain the same as it was before the re-allocation. In no event shall an employee receive less than the range minimum of the pay range of the new classification.
(Revised September 25, 2015; Rule Revision Memo 14D)

9-36 Re-instatement Appointment or Promotional Re-instatement Appointment

Upon re-instatement or promotional re-instatement, either after lay-off or after demotion in lieu of lay-off, an employee's pay shall be set at the rate of pay the employee received immediately prior to such lay-off or demotion in lieu of lay-off. If payment at this rate would result in a decrease in pay for a current City employee, the pay rate shall be set at the employee's present rate of pay. In no event shall the pay rate be lower than the range minimum of the pay range.

9-37 Counter offer (Revised May 20, 2008; Rule Revision Memo 28C: Re-numbered December 21, 2012; Rule Revision Memo 66C):

A. A counter offer may be made for any of the reasons listed below:

1. To retain an employee whose skills, knowledge or abilities are deemed essential to the mission of the City or a department or agency;

2. To avoid recruiting and training costs when those costs clearly exceed the costs of a counter offer;

3. When it has been determined that turnover rates in a classification exceed the calculated turnover rate for that occupational group or classification and pay has been determined to be a significant cause; or

4. When the vacancy rate within a classification reaches a level where additional loss of personnel may interfere with the City's ability to provide adequate levels of services to the public.

B. An appointing authority may make a counter offer to an employee when the following conditions have been met:

1. The base salary and employee benefits the employee will receive at the prospective employer are greater than the base salary and employee benefits the employee is currently receiving from the City;

2. The counter offer does not exceed the range maximum of the pay range the employee occupies at the time the offer is extended (Revised October 17, 2010; Rule Revision Memo 47C);

3. The prospective employer is not a department or agency of the City; and

4. The appointing authority has verified the authenticity of all job offers which constitute the basis for a counter offer.

C. The appointing authority shall submit a copy of the written offer of employment from the prospective employer with the Personnel Action Form.

9-38 Interim market adjustments
(Re-numbered December 21, 2012; Rule Revision Memo 66C)

A. The Board, following a public hearing, may make a market adjustment in a pay practice, or create a temporary pay practice, if the Board finds that all of the following conditions exist:

1. Numerous vacancies exist in the classification(s) that will be affected by the proposed pay practice;

2. Recruitment has not been effective;

3. Retention rate is low; and

4. Market driven personnel shortages in the classification(s) are causing difficulty in fulfilling an essential mission of the City.

B. An interim market adjustment shall remain in effect for up to one (1) year. Nothing in this subparagraph prevents a new market adjustment from being established for the same classification(s), provided that all of the requirements of the previous subparagraph are met.

9-39 Pay adjustment within the salary range
(Revised January 24, 2017; Rule Revision Memo 24D)

A. An appointing authority may adjust pay for an employee, within that employee's current salary range, if the purpose is to eliminate pay inequity so long as that employee's pay is being compared with the pay of another employee who is:

1. In the same classification; or

2. In the same classification series; or

3. In a classification in the same occupational group within the same career path performing comparable types of duties; or

4. Subordinate to the existing employee in that employee's chain of command.

B. A pay adjustment within the salary range requires the approval of the OHR Executive Director. The effective date of any such pay adjustment shall be the beginning of the work week following approval by the OHR Executive Director.

C. The appointing authority's request for approval shall explain the reason the pay inequity exists. This explanation should include information about how pay factors (as defined in this Rule 9) have contributed to the pay inequity.

D. The appointing authority's request for approval shall explain why employees in the same classification in the same work group are not being considered in the request. This explanation should include information about how the excluded employees are not affected by the pay factors (as defined in this Rule 9).

E. The OHR Classification and Compensation Division may review employees' pay across departments or agencies within the same classification(s), within the same classification series, or within the classification(s) with the same career path with comparable duties in order to make recommendations on pay actions to be submitted to appointing authorities for consideration of pay action.

F. Appointing authorities are encouraged to submit pay equity requests to the OHR as soon as possible after a qualifying pay event has been identified. Requests must be made using the current OHR Classification and Compensation Pay Equity Adjustment Request form.

Section 9-40 On-Call Employees
(Revised July 31, 2015; Rule Revision Memo 12D)

On-Call employees are not eligible for merit increases and merit payments. However, an appointing authority may grant on-call employees who have served a minimum of three hundred (300) hours in the current calendar year a pay increase not to exceed the average percentage merit increase established by the annual appropriation ordinance and Rule 13 **PAY FOR PERFORMANCE**. The pay increase permitted under this rule shall not exceed the range maximum of the applicable range and shall not be granted more than once in a calendar year.

Section 9-50 Pay Differentials and Pay Practices
(Re-numbered December 21, 2012; Rule Revision Memo 66C)

9-51 Shift Differential
(Revised September 14, 2008; Rule Revision Memo 31C)

A. Employee eligibility:

1. Employees in classifications in non-exempt pay schedules are eligible for shift differential, unless the employee is eligible for the health care differential as provided in this Rule 9 **PAY ADMINISTRATION**.

2. Employees in classifications in exempt pay schedules are not eligible for shift differential, unless the employee is in a classification:

   a. In which the Board has approved overtime based on community practice (unless also eligible for the health care differential as provided in this Rule 9 **PAY ADMINISTRATION**); or

   b. Which is a first-line supervisory classification in which the employee's primary duties include the direct supervision of employees who have no subordinate supervisors and are receiving shift differential for the time the employee is supervising them.

3. Employees in classifications in community rate pay schedules are not eligible for shift differential. (Revised May 31, 2017; Rule Revision Memo 27D)

4. The OHR Executive Director, upon the request of an appointing authority, may allow a department or agency to exclude otherwise eligible employees from receiving shift differential based on community practice. Requests based on other reasons require submission by the OHR Executive Director and approval by the Board.

B. The following rates shall be paid for shift differential:

1. Night rate: Twelve percent (12%) of the current hourly rate of pay.

2. Evening rate: Seven percent (7%) of the current hourly rate of pay.

C. Shift differential shall be paid for all hours worked by an eligible employee in a work day under the following conditions:

1. If at least half of the hours worked occur between 11 p.m. and 7 a.m. the employee shall receive the night rate.

2. If at least half of the hours worked occur between 3 p.m. and 11 p.m. the employee shall receive the evening rate, unless the other half of the hours worked occur between 11 p.m. and 7 a.m., in which case the employee will receive the night rate.

3. If neither subparagraphs 1 or 2 are applicable, but at least half of the hours worked occur between 3 p.m. and 7 a.m., the employee shall receive the applicable rate for the period in which a majority of the hours occur. If these hours are evenly divided between 3 p.m. and 11 p.m. and 11 p.m. and 7 a.m., the employee shall receive the night rate.

D. Shift differential shall not be paid during any period of paid or unpaid leave.

9-52 Equipment Differential

A. Eligibility:

1. Equipment differential shall be paid to employees who are temporarily assigned to operate equipment, which is at a higher level classification than the employee's current classification, and who are not receiving additional pay for a work assignment outside of job classification.

2. Employees in on-call positions including classifications in community rate pay schedules shall be entitled to equipment differential. (Revised May 31, 2017; Rule Revision Memo 27D)

B. Equipment differential shall be paid under the following conditions:

1. The equipment being operated is on the Board's approved equipment list for payment of equipment differential.

2. Assignment in the higher level classification must last for less than thirty (30) days. If all authorized limited positions for a term of nine (9) months or less are filled, the thirty-(30) day limit is waived.

C. The pay shall be ten percent (10%) of the current hourly rate of pay for each hour worked in the next higher level classification. The pay shall be fifteen percent (15%) of the current hourly rate of pay for each hour worked in the second higher level classification and above.

D. The total base pay for any pay period, excluding overtime and shift differential, shall not exceed the range maximum of the higher level classification (Revised October 17, 2010; Rule Revision Memo 47C).

9-53 Health Care Differential

A. Career Service employees who are employed by Denver Health and Hospital Authority ("DHHA") in classifications in the Healthcare occupational group are eligible for health care differentials paid to comparable classifications at DHHA. (Revised July 31, 2015; Rule Revision Memo 12D)

B. The differentials, eligibility criteria and rates shall be established by DHHA.

9-54 Heavy Equipment Mechanic Trainer Differential
(Effective June 23, 2008; Rule Revision Memo 29C)

A. A Heavy Equipment Mechanic ("HEM") who is assigned HEM trainer duties by an appointing authority shall be eligible for a differential of $2.25 per hour for all time spent performing HEM trainer duties (but not to exceed four hundred hours per calendar year).

B. The appointing authority shall select eligible HEM trainers through a formal process that shall include submission of an application, a formal interview, and demonstration and evaluation of technical skills.

C. 1. The appointing authority shall provide a training plan which shall include the criteria that will be used for selecting HEM trainers to the OHR Executive Director for approval.

2. The appointing authority shall provide the name(s) of any eligible employee(s) to the OHR prior to payment of the differential.

D. An appointing authority may terminate the assignment of training duties to an employee at any time. The appointing authority shall notify the OHR when an employee is no longer assigned training duties.

9-55 Standby Pay
(Revised July 25, 2006; Rule Revision Memo 11C)

A. Appointing authorities may schedule employees to be on standby duty only when there is a reasonable anticipation that the employee will have to respond and perform work immediately. Eligible employees shall receive an amount equal to one and one half (1 1/2) hours of work at the employee's straight time hourly rate for each eight hours the employee is on standby duty.

B. To be eligible for standby pay, the employee must be:

1. Eligible for overtime under the Fair Labor Standards Act ("FLSA") or under paragraphs A, B or D of subsection 9-93 Overtime Exceptions;

2. Scheduled to be available by pager, cellular phone, or telephone;

3. Required to respond to a call and perform work within a designated amount of time not to exceed two hours;

4. In a non-impaired condition that allows the employee to safely perform job duty assignments; and

5. Subject to disciplinary action if he or she does not respond to the call within the designated amount of time.

C. When an eligible employee on standby is required to perform work, standby pay will be suspended and the employee will be paid basic pay or overtime pay, as appropriate, for the period the employee actually performs work.

D. An employee who merely carries a cellular telephone or pager as a routine part of his or her job duties is not eligible for standby pay unless all of the conditions set forth in paragraph B of this subsection are met.

9-56 Call Back Pay

A. Overtime eligible employees required by the appointing authority to report back to the work site shall be paid a minimum amount equal to two (2) hours of work at the employee's scheduled rate of pay from the time the employee begins work.

B. Employees who work more than two hours shall be paid for the actual time worked.

9-57 Swim Instruction Differential
(Effective February 22, 2013; Rule Revision Memo 3D)

A. The Manager of Parks and Recreation will allow eligible employees to receive a Swim Instruction Differential for group or private swim lessons conducted at City-owned recreation facilities. The Department of Parks and Recreation retains the right to revoke eligibility for the differential for any business-related reason, at any time.

B. In order to be eligible to receive the Swim Instruction Differential, an employee must:

1. Be classified as a Lifeguard;

2. Have current certifications for Water Safety Instructor (WSI), First Aid (adult/infant/child) and Cardiopulmonary Resuscitation for the Professional Rescuer (CPR/PR); and

3. Be assigned to conduct the swim lesson(s) by management.

C. Amount of Differential:

1. Employees will receive their current hourly rate of pay for time spent conducting swim lessons.

2. In addition, employees will receive the following swim lesson differential;

a. Fifty percent (50%) of the employee's current hourly rate of pay for time spent teaching a group swim lesson.

b. Seventy-five percent (75%) of the employee's current hourly rate of pay for time spent teaching a private swim lesson.

(Revised February 20, 2015; Rule Revision Memo 11D)

Section 9-60 Stipends and Other Payments
(Re-numbered December 21, 2012; Rule Revision Memo 66C)

9–61 Golf Lesson Stipend
(Effective March 12, 2007; Rule Revision Memo 16C:
Revised May 11, 2011; Rule Revision Memo 52C)

A. The Manager of Parks and Recreation may allow eligible employees to receive a Golf Lesson Stipend for lessons conducted at City-owned golf facilities, subject to the following conditions:

1. The employee must have passed either level one of the Professional Golf Association (PGA) Apprenticeship training or the National Education Program 1 of the Ladies Professional Golf Association (LPGA) apprenticeship program, and either be enrolled in the PGA or LPGA apprenticeship program or have a valid PGA or LPGA membership.

2. The Department of Parks and Recreation retains the right to revoke eligibility for the stipend for any business-related reason, at any time.

3. The employee has the responsibility for the following:

   a. Selling and booking the lesson;

   b. Collecting the fees; and

   c. Conducting the lesson.

4. All lessons must be entered into and tracked by the golf course's point of sale system, or other tracking system as specified by management.

5. All lessons must be conducted at a time that does not interfere with the employee's job duties. The employee is responsible for completing their assigned schedule each week, not including time spent teaching lessons.

6. Golf Lesson Stipends will be considered as compensation and included as reportable income.

B. Amount of Stipend:

1. Exempt employees:

   a. The only compensation the employee will receive for time spent teaching golf lessons is the Golf Lesson Stipend.

   b. The City shall retain sixteen percent (16%) of the fee charged.

   c. Eighty-four percent (84%) of the fee will be paid to the employee as a Golf Lesson Stipend.

2. Non-exempt employees:

a. Non-exempt employees will receive their normal hourly rate of pay for time spent conducting lessons in addition to the Golf Lesson Stipend.

b. The City shall retain forty-five percent (45%) of the fee charged.

c. Fifty-five percent (55%) of the fee will be paid to the employee as a Golf Lesson Stipend.

3. The City portion of the fee will include the cost of golf balls.

4. Stipends will be paid on collected revenue only.

9-62 Protective Service Stipend
(Revised January 11, 2016; Rule Revision Memo 16D)

A. State law requires the Department of Human Services (DHS) to have staff available twenty-four hours a day to receive reports of abuse and neglect, conduct initial assessments of such reports that are deemed emergencies, and investigate those reports that are appropriate for child and adult protective services. In order to meet this requirement, the Manager of Human Services (Manager) may schedule eligible employees to be available to respond to emergency calls at night, weekends, mandated furlough days and holidays. Employees so scheduled will be entitled to receive a Protective Service Stipend as provided below. An employee who is scheduled to respond to emergency calls is expected to:

1. Be available by telephone;

2. Be in a non-impaired condition that allows the employee to safely perform job duty assignments; and

3. Respond to a call and perform work within time frames established by the DHS.

Employees who are scheduled to respond to emergency calls and fail to meet these expectations may be subject to disciplinary action, up to and including dismissal.

B. The Manager reserves the right to refuse to schedule an employee to respond to emergency calls. The employee's supervisor may allow the employee to use paid or unpaid leave in order to catch up on missed sleep, as appropriate.

C. To be eligible for the Protective Service Stipend, the employee must:

1. Be exempt from overtime under Federal law and the Career Service Rules (employees who are eligible for overtime may receive standby pay as provided in the Career Service Rules); and

2. Be at least at the type and level of Social Case Worker Supervisor in order to be eligible to be assigned After-hours Administrator duties.

D. After-hours emergency response duties will be assigned and paid as follows:

1. <u>After-hours Administrator</u>.

a. Supervises the After-hours Call Taker and the After-hours Responder.

b. After-hours Administrator duties will be assigned a shift at a time.

i. After hours Administrator shifts on weekend days, paid City holidays, and mandated furlough days begin at 7:00 a.m. and end at 7:00 a.m. on the following day.

ii. After-hours Administrator shifts on work days begin at 4:30 p.m. and end at 7:00 a.m. on the following day.

c. i. Employees whose After-hours Administrator shift begins on a paid City holiday or mandated furlough day will receive a $50 Protective Service Stipend for that shift.

ii. Employees whose After-hours Administrator shift begins on any other day will receive a $40 Protective Service Stipend per shift.

2. <u>After-hours Call Taker</u>.

a. Answers after-hours hotline calls and determines an appropriate response after consulting with the After-hours Administrator.

b. After-hours Call Taker duties will be assigned a shift at a time.

i. After hours Call Taker shifts on weekend days begin at 7:00 a.m. on Saturday and run between 7:00 a.m. and 3:00 p.m.; 3:00 p.m. and 11:00 p.m.; 11:00 p.m. and 7:00 a.m.; and end at 7:00 a.m. on Monday.

ii. After-hours Call Taker shifts on paid City holidays and mandated furlough days begin at 7:00 a.m. on the holiday or furlough and run between 7:00 a.m. and 7:00 p.m; 7:00 p.m. and 7:00 a.m.; and end at 7:00 a.m. on the following day.

iii. After-hours Call Taker shifts on work days begin at 8:00 p.m. and end at 7:00 a.m. on the following day.

c. i. Employees whose After-hours Call Taker shift begins on a paid City holiday or mandated furlough day will receive a $150 Protective Service Stipend for that shift.

ii. Employees whose After-hours Call Taker shift begins on any other day will receive a $130 Protective Service Stipend per shift.

3. <u>After-hours Responder</u>.

a. Responds to emergency after-hours calls at the direction of the After-hours Administrator.

b. After-hours Responder duties will be assigned a shift at a time.

i. After-hours Call Responder shifts on weekend days, paid City holidays, and mandated furlough days begin at 7:00 a.m. on the weekend day, holiday, or furlough and run between 7:00 a.m. and 7:00 p.m; 7:00 p.m. and 7:00 a.m.; and end at 7:00 a.m. on the following day.

ii. After-hours Call Responder shifts on work days begin at 4:30 p.m. and end at 7:00 a.m. on the following day.

c. i. Employees whose After-hours Call Responder shift begins on a paid City holiday or mandated furlough day will receive a $50 Protective Service Stipend for that shift. If the employee responds to one emergency call during that shift at the direction of the After-hours Call Administrator, the employee will be paid a $150 stipend. If the employee responds to two or more emergency calls during that shift at the direction of the After-hours Call Administrator, the employee will be paid a $195 stipend.

ii. Employees whose After-hours Call Responder shift begins on any other day will receive a $40 Protective Service Stipend per shift. If the employee responds to one emergency call during that shift at the direction of the After-hours Call Administrator, the employee will be paid a $115 stipend. If the employee responds to two or more emergency calls during that shift at the direction of the After-hours Call Administrator, the employee will be paid a $160 stipend.

E. The City is required by Federal law to treat exempt employees like non-exempt employees during a week in which the exempt employee takes an unpaid furlough. If an exempt employee is assigned after-hours emergency response duties during a week in which a mandated furlough is scheduled to occur, the employee shall be required to work on the mandated furlough day, and take an unpaid furlough day during another week that year in which the employee has not been assigned after-hours emergency response duties. If an exempt employee does take a furlough day during a week in which the employee has been assigned after-hours emergency response duties, the employee will be paid for all time spent performing emergency response duties in addition to the stipend provided by this rule.

9-63 Bilingual Services Stipend
(Revised December 21, 2012; Rule Revision Memo 66C)

A. An appointing authority may pay an employee bilingual services stipend if the following conditions have been met:

1. The appointing authority has determined that the employee's position requires that the employee use bilingual skills thirty-five percent (35%) or more of the time;

2. The classification specification for the employee's classification does not require bilingual skills for all incumbents of that classification; and

3. The employee demonstrates a proficiency in the second language, according to procedures established by the OHR Executive Director.

B. The effective date of the bilingual services stipend shall be the beginning of the first work week following receipt of an appointing authority's request to determine bilingual proficiency by the OHR, or following the employee's demonstration of proficiency in a second language, whichever date is later.

C. Employees who are eligible for bilingual services stipend shall receive a stipend based on the level of proficiency demonstrated by that employee:

1. Fifty dollars ($50) per pay period for basic conversational skills;

2. Seventy five dollars ($75) per pay period for proficiency in the language in both speaking and writing or reading: and

3. One hundred dollars ($100) per pay period for expert proficiency in the language which includes translation skills.

D. Employees in part time positions shall have bilingual stipend pro-rated as follows, based on the amount of hours actually worked in a pay period:

	BASIC	**MID-LEVEL**	**EXPERT**
80 hours or more	$50.00	$75.00	$100.00
60-79 hours	$37.50	$56.25	$ 75.00
40-59 hours	$25.00	$37.50	$ 50.00
20-39 hours	$12.50	$18.75	$ 25.00
Less than 20 hours	$ 5.00	$10.00	$ 15.00

E. When an employee changes positions and the language skills are not a requirement of the new position, the bilingual services stipend shall cease.

9-64 Forensic Pathology Fellow Program Director Stipend
(Revised December 21, 2012; Rule Revision Memo 67C)

A. The City and County of Denver's Office of the Medical Examiner operates a teaching fellowship program in which recent graduates of an accredited pathology program receive training in forensic pathology.

B. The Chief Medical Examiner has the authority to assume the responsibility of directing this program or to assign this responsibility to any Forensic Pathologist who meets the criteria for program director established by the University of Colorado and the Accreditation Council for Graduate Medical Education (ACGME).

C. As compensation for the additional duties required to direct this program, the Chief Medical Examiner may pay the Forensic Pathologist who is assigned and performing all of the duties of directing the Forensic Pathology Fellow Program additional pay equal to eight percent (8.0%) above his or her regular base pay. (Revised July 31, 2015; Rule Revision Memo 12D)

D. The duties of the Forensic Pathology Fellow Program Director include:

1. Ensuring that the Fellowship Program complies with University of Colorado and ACGME accreditation requirements;

2. Recruiting Forensic Pathology Fellows for the program;

3. Maintaining the program's educational curriculum; and

4. Mentoring and supervising the Forensic Pathologist Fellow(s).

9-65 Work Assignment Outside of Job Classification
(Revised May 20, 2008; Rule Revision Memo 28C)

A. An appointing authority may temporarily assign the duties of a vacant position in a higher level classification to an employee in a lower level classification for a period of one year in accordance with the criteria established in this rule. Assignments for periods longer than one year require the approval of the OHR Executive Director.

B. 1. Employees are eligible for additional pay for such assignments when they have been assigned all of the duties and responsibilities of the vacant position in the higher level classification;

2. Additional pay for work outside of an employee's job classification shall start at the beginning of the work week following the fifteenth day of the temporary assignment, and continue for the duration of the assignment.

C. The employee shall receive additional pay equal to eight percent (8.0%) above his or her regular base pay, unless the employee is receiving equipment differential. (Revised July 31, 2015; Rule Revision Memo 12D)

D. 1. The employee's job classification will not change as a result of a temporary assignment of higher level job duties and responsibilities. Employees receiving additional pay for working outside of their assigned classification shall not be eligible for re-allocation to the higher level classification.

2. If an employee receives a merit increase during the temporary assignment, the pay for the work assignment outside of job classification shall be re-calculated based on the employee's base pay including the merit increase. The re-calculated pay shall be effective on the effective date of the merit increase (Revised January 1, 2011; Rule Revision Memo 51C).

E. Upon completion of the temporary assignment, the employee's pay shall return to the employee's base pay prior to the temporary assignment, including any merit increase awarded during the temporary assignment.

F. Pay for work outside of an employee's job classification does not impact subsequent pay for promotion, demotion or any other personnel action.

9-66 Recruitment premium
(Revised July 31, 2015; Rule Revision Memo 12D)

A department or agency may pay a one-time premium of up to $10,000 to attract a highly qualified external candidate whose skills, knowledge and/or abilities are deemed essential to the mission of the City. The request must be approved by the Budget and Management office prior to extending the bonus offer. The candidate will be eligible to receive this bonus upon the completion of employment probation.

9-67 Relocation premium (Revised May 20, 2008; Rule Revision Memo 28C)

A department or agency may pay relocation costs of up to $7,500 to attract a highly qualified external candidate whose skills, knowledge and/or abilities are deemed essential to the mission of the City. The individual receiving the relocation assistance must stay employed by the city for two (2) years. If the individual voluntarily terminates employment prior to serving two (2) years, he or she must repay part of the relocation pay. The basis for repayment shall be pro-rated for each month of service. The Budget and Management office must approve relocation pay and the employee receiving such pay shall sign a form acknowledging their acceptance of the terms of this rule.

Section 9-70 Hours of Work

9-71 Standard Work Week

A. The five (5) day forty (40) hour week shall be the standard work week for employees of the Career Service.

B. Standard work hours shall be eight (8) hours per day, excluding the meal period. In certain cases, because of the character of the work, it may be necessary for an employee to be required to eat a meal while working. When the meal period is spent predominantly for the benefit of the City, the employee shall be paid for the entire meal period (Effective October 10, 2008; Rule Revision Memo 32C).

C. Appointing authorities shall be responsible for establishing daily work schedules.

D. The work week shall begin on Sunday and end on Saturday unless otherwise designated by the appointing authority.

9-72 Posting of Changes in Work Schedules
(Re-numbered October 10, 2008; Rule Revision Memo 32C)

A. If work schedules are changed, appointing authorities shall post such schedules so that affected employees are provided with adequate notice of the change in advance of the work week in which it is supposed to occur. However, appointing authorities may require an employee to arrive early or stay beyond his or her regular work schedule or return to work to provide essential City services without such notice (Revised September 21, 2010; Rule Revision Memo 49C; and June 17, 2011; Rule Revision Memo 55C).

B. Employees are permitted to request a temporary change in daily work schedules in order to accommodate personal needs. Appointing authorities have the discretion to grant this request based on the business needs of the department or agency.

9-73 Interruption of Work and Pay during City-wide Emergency
(Effective June 8, 2007; Rule Revision Memo 20C: Re-numbered October 10, 2008; Rule Revision Memo 32C)

A. An employee who is excused from work for the day or any part of the day when the work program is interrupted (e.g., because of weather) shall be considered to have worked the number of hours included in his or her regular daily schedule. An on-call employee who is called to work and not assigned because of an interruption or change in the work program shall be considered to have worked two (2) hours on that day.

B. Work interruptions during a City-wide emergency declared by the Mayor:

In addition to pay for the interrupted work hours, employees who work during the hours of a City-wide emergency declared by the Mayor are eligible for compensation for working during hours attributed to the emergency condition as follows:

1. Non-exempt employees shall also receive pay for the actual time they work during the City-wide emergency. For purposes of determining if an employee is entitled to overtime, the work hours interrupted by the City-wide emergency shall be counted as time worked in addition to time actually worked and other amounts, such as paid holidays, periods of paid leave, or any discharge of compensatory time, as provided by the overtime provisions of this rule.

2. a. An employee exempt from overtime shall be paid at the straight time hourly rate for each hour worked that was related to the emergency. Interrupted work hours during a City-wide emergency count as time worked and exempt employees eligible for overtime in accordance with 9-93 Overtime Exceptions will be compensated for hours beyond forty (40).

b. City-wide emergency pay may be paid in either cash or compensatory time off, at the discretion of the appointing authority. Compensatory time may be taken at any time mutually convenient to the employee and the appointing authority. All accrued compensatory time shall be used by March 31st of each calendar year or paid in cash by the final pay period in April of that year (Revised January 1, 2010; Rule Revision Memo 42C).

3. Employees who were on other leave such as paid time off, vacation, compensatory time, sick, or unpaid leave must use that leave unless called back to work. When called back to work, unused leave hours are returned to the banks and work hours are counted (Revised January 1, 2010; Rule Revision Memo 42C).

4. Employees who telecommute must have prior written approval to telecommute from their appointing authority or designee. The written approval shall include the employee's assignment while telecommuting. An employee must demonstrate that he or she accomplished the assignment in accordance with the written approval.

Section 9-80 Special Work Schedules

A. Deviations from the standard workweek, eight (8) hour work-day or designation of special work schedules may be made so long as they are in accordance with the provisions of this section. The appointing authority must provide written notification to the OHR Executive Director of any change to the standard workweek or the designation of special work schedules for employees.

B. Establishment:

1. When the work program of a department or agency is such that the interests of the City as well as the efficiency of the organization can better be served by a special work schedule, the appointing authority may establish one for specified units, individual employees, or the entire agency.

2. Employees affected by the proposed schedule should be consulted concerning their preferences prior to the establishment of the special work schedule, and their wishes should be recognized wherever possible. The final determination shall be within the discretion of the appointing authority.

3. When an appointing authority determines that the special work schedule has not served the best interests of the City, the appointing authority may discontinue the special work schedule and shall provide written notification to the OHR Executive Director.

C. Ten hour schedule:

Under a ten hour schedule, employees are scheduled to work ten (10) hours per day, four (4) days per work week. Days off shall be scheduled consecutively wherever possible, provided, however, that one of the three (3) days off may be scheduled on any day during the work week in order to prevent staff shortages on any workday.

D. Nine/eighty schedule:

Under a nine/eighty schedule, employees are scheduled to work nine (9) hours per day, four (4) days per work week, and four (4) hours on one day of the work week. The start and end date of the work week must be changed so that the work week does not contain more than forty (40) hours of scheduled work. This is accomplished by having the work week begin in the middle of the day on which the four (4) hour shift is scheduled, and end in the middle of that day a week later. This day is the flex day, upon which the employee will work eight (8) hours every other week, and will have off the rest of the time. Days off shall be scheduled consecutively wherever possible, provided, however, that the flex day may be scheduled on any day during the work week in order to prevent staff shortages on any workday.

E. Alternate work schedules:

The appointing authority may establish an alternate work schedule when neither the standard work week nor any of the special work schedules set forth in this section permit the department or agency to provide necessary services.

F. Telecommuting:

1. Telecommuting is the practice of working at home or from a site other than a department or agency's central workplace. It is a work alternative which appointing authorities may offer to or require of employees.

2. Telecommuting is not an employee benefit but an alternative method of meeting the City's needs. Telecommuting is a privilege and an appointing authority has the right to refuse to make telecommuting available to an employee and to terminate a telecommuting arrangement at any time.

3. Employees may express a desire not to telecommute and appointing authorities should consider employees' wishes along with the needs of the City in making a final determination.

4. Permission to telecommute shall be conditioned on compliance with the telecommuting guidelines established by the OHR Executive Director (see Appendix).

Section 9-90 Overtime

9-91 Policy
(Revised November 18, 2015; Rule Revision Memo 15D)

A. In accordance with the FLSA, all work performed in excess of forty (40) hours per week by non-exempt employees shall be designated overtime work for the purposes of compensation, subject to the following exceptions:

1. On-call employees working for seasonal recreational establishments that do not operate for more than seven months in any calendar year shall be exempt from overtime pay and shall be paid the straight time hourly rate for all hours worked in a work week, including all hours worked in excess of forty (40) hours per week.

2. On-call employees whose rates of pay are set by the community rate schedule established by ordinance shall be paid overtime according to that schedule. If the community rate schedule makes no provisions for overtime, such employees shall be paid overtime in accordance with section 9-100.

B. If a paid holiday, a period of paid leave, or discharge of compensatory time occurs during a work week, such time shall be counted as time worked when determining whether an employee has worked overtime. Time spent taking courses outside of the normal work day shall not be counted as time worked, even if the employee receives paid training leave to take the courses, unless the City has required the employee to take the course.

C. Unpaid leave shall not count as time worked.

D. The hours worked as an election judge by an employee shall not be counted as time worked for the purposes of determining overtime eligibility. If an employee wishes to work as an election judge during a regularly scheduled shift, the employee must request leave from the appointing authority.

9-92 Criteria for Authorizing Overtime Work

A. Overtime work shall be authorized to provide essential City services when such services cannot otherwise be provided by regular or special work schedules. Except in cases of emergency, overtime work shall be authorized and assigned in advance by an employee's supervisor or other designated individual. Working unauthorized overtime may be grounds for discipline, up to and including dismissal.

B. When an employee has been assigned work outside of his or her normal work schedule, such overtime shall be subject to the same reporting requirements as regular work hours. Failure to report for such work may be cause for disciplinary action, up to and including dismissal.

9-93 Overtime Exceptions

Employees in overtime exempt classes as defined by the FLSA shall not receive overtime pay, except in the following situations:

A. Based on community practice, the OHR Executive Director may recommend an exception to the overtime exclusion for a designated classification or classifications to the Board for approval.

B. Career Service employees who work for the DHHA in exempt classifications in the Health Technical and Related Support, Health Professional, and Doctors occupational groups, when comparable classifications in the DHHA personnel system have been granted an exception to the overtime exclusion by the DHHA.

C. Upon the request of an appointing authority, the OHR Executive Director may grant an exception to overtime exclusion for a specified period of time when the employee will provide services for the City during declared emergencies. (Revised July 31, 2015; Rule Revision Memo 12D)

D. Based on community practice, overtime shall be paid only under the circumstances outlined below to incumbents in the FLSA overtime exempt, first level supervisory classes approved by the Board:

1. Scheduled overtime occurring in a holiday week;

2. Overtime related to after-hour emergency response duties;

3. Publicly scheduled events requiring infrastructure support; and

4. Snow removal activities.

Section 9-100 Payment for Overtime
(Revised June 17, 2011; Rule Revision Memo 55C)

A. Non-exempt employees: Non-exempt employees who work overtime shall receive compensation at the rate of one and one-half (1 ½) times the regular rate of pay applicable to the position.

1. The regular rate of pay shall be computed as follows:

a. Multiply the hourly rate by the employee's actual hours of work in the work week to determine the weekly salary equivalent.

b. Total the weekly salary equivalent plus all payments for differentials, standby, and any other compensation required by FLSA to be included in the regular rate of pay for the work week, and divide by the number of hours the employee actually worked during that week.

2. Compensatory time:

a. Overtime compensation may be paid either in cash or in compensatory time off, at the discretion of the appointing authority. The appointing authority shall inform employees of the department's or agency's overtime compensation policy. Compensatory time off shall be accrued at the rate of one and one-half (1-1/2) times the overtime hours worked. An employee who has accumulated eighty (80) hours of compensatory time and is required to work overtime shall only be paid for such overtime in cash. All accrued compensatory time shall be used by March 31st or paid out in cash by the final pay period of April of that year.

b. Payment for accrued compensatory time on separation: An eligible non-exempt employee who has accrued compensatory time in accordance with this section shall receive payment for the unused portion of such accrual when the employee is separated from the Career Service. The rate of compensation for such payment shall be the larger of the following:

1. The average regular rate received by such employee during the last three years of the employee's employment; or

2. The final regular rate received by such employee.

B. Exempt employees eligible to receive overtime: The overtime rate shall be:

1. a. At the rate established for non-exempt employees by this rule if eligible under paragraph 9-93 A.

b. At the rate established by the DHHA for comparable positions if eligible under paragraph 9-93 B.

c. At the straight time hourly rate of pay applicable to that position, if eligible under paragraph 9-93 C, where the hourly rate is computed by dividing the annual salary by 52 and then dividing by the regular hours of the position; and

d. At the rate of one and one-half (1 ½) times the hourly rate of pay applicable to that position if eligible under paragraph 9-93 D, where the hourly rate is computed by dividing the annual salary by 52 and then dividing by the regular hours of the position.

2. How paid: Overtime compensation for eligible exempt employees shall be paid in cash. Exempt employees eligible for overtime shall not accrue or use compensatory time in lieu of pay, except for Holiday Compensatory Time as defined in Rule 10 **PAID LEAVE**.

Section 9-110 Record Keeping
(Revised April 1, 2008; Rule Revision Memo 26C)

A. Responsibility for maintaining time and compensation records may be vested in the Department of Finance, the OHR, or the agencies, as may be agreed among them from time to time.

B. The content of these records shall be governed by guidelines established by the OHR (see Appendix).

C. These records shall be retained for a minimum of six (6) calendar years, in a location where they would be available for inspection within seventy-two (72) hours from the date when requested by the Wages and Hours Administrator or designees.

APPENDIX 9.A.

TELECOMMUTING GUIDELINES
(REFERRED TO IN RULE 9-80 F)

A. The position for which telecommuting is proposed shall be suitable for such an assignment, with the ability to provide high quality service to the public while telecommuting being the most significant determining factor.

B. There shall not be any disruption of service or decline in the quality of services provided by the department or agency to the public as a result of telecommuting.

C. No employee may telecommute unless their most recent performance rating is "Successful" or higher.

D. If an employee subsequently receives a performance rating of "Unacceptable" or "Below expectations," the employee's authorization to telecommute shall cease. (Revised May 12, 2017; Rule Revision Memo 26D)

E. The employee shall agree not to engage in employment activities other than for the agency or department during telecommuting hours.

F. The employee must designate a primary workspace at home that is maintained in safe condition, free from hazards. As an extension of the City's work site, the same insurance and workers' compensation coverage applies.

G. When the employee uses his or her own equipment, the employee is responsible for maintenance and repair of that equipment.

H. The employee will take all necessary precautions to secure department or agency information and equipment in his or her home and to prevent unauthorized access to any department or agency system or information.

I. Employees must receive prior written approval to telecommute from their appointing authority.

J. An employee's status, benefits, compensation, and work responsibilities shall not change due to telecommuting.

K. Representatives from the City's Office of Technology Services, the OHR, and Workers' Compensation section, a designated City supervisor or the individual appointed by the employee's appointing authority for such purpose may inspect an employee's home for a business purpose related to this program upon giving reasonable notice to the employee.

M. The employee must at all times be accessible to the workplace via cellular phone, e-mail, or other means of direct communication and be able to report to work when notified or to respond immediately to communications from other staff, supervisors, managers or clients.

N. An employee who is granted telecommuting privileges must demonstrate that his or her productivity has been equal to or greater than his or her productivity before telecommuting was authorized.

O. A telecommuting employee's home address and telephone number shall remain confidential and will not be released by the agency or department.

P. The amount of time the employee is expected to work per day or pay period will not change as a result of telecommuting.

Q. Training will be available from the OHR for all employees, supervisors and managers interested in telecommuting.

R. Any abuse of the telecommuting privileges will be investigated and may result in corrective action, up to and including dismissal.

S. Equipment provided by the City to the employee shall be immediately returned when telecommuting is stopped or the employee separates from employment with the City.

T. Employees may not grieve or appeal a decision to allow or not allow telecommuting unless there is alleged discrimination.

APPENDIX 9.B.
GUIDELINES REGARDING TIME AND COMPENSATION RECORDS
(REFERRED TO IN RULE 9-110)

The following information shall be kept on time and compensation records for all employees, to the extent applicable:

A. Name in full (same as shown on social security card);

B. Identification number;

C. Home address, including the zip code;

D. Date of birth, if under 19;

E. Sex;

F. Classification;

G. Time of day and day of the week on which the employees work week begins. If the employee is part of a work force all of whose workers have a work week beginning at the same time on the same day of the work week, a single notation of the time of the day and beginning day of the work week for the whole work force of the agency or unit will suffice. If, however, any employees or group of employees has a work week beginning or ending at a different time, a separate notation shall then be kept for that employee or group of employees;

H. Hourly rate of pay for part-time, on-call, and non-exempt employees;

I. Payroll period (i.e. bi-weekly);

J. Amount and nature of each payment, such as tool and mileage allowances, excluded from the overtime rate of pay for non-exempt employees;

K. Hours worked each work day and total hours worked each work week by non-exempt employees (for purposes of this clause, a "work day" shall be any consecutive 24 hours);

L. Total daily or weekly straight-time earnings (including salaries, differentials, and standby);

M. Total of daily and weekly-overtime payments;

N. Total additions to or deductions from wages paid during each pay period; additionally, a record of the dates, amounts, and nature of the items which make up the total additions and deductions shall be maintained in individual employee accounts;

O. Total wages paid each pay period;

P. Date of payment and the pay period covered by the payment; and

Q. Basis on which wages are paid in sufficient detail to permit calculation for each pay period of the employee’s total remuneration for employment, including fringe benefits.

RULE 10
PAID LEAVE
(Revised May 9, 2016; Rule Revision Memo 19D)

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering the City's paid leave programs. For rules regarding leave for extended illnesses or injuries see Rule 12 **LEAVE FOR EXTENDED ILLNESSES OR INJURIES**.

Section 10-10 General

10-11 Definitions

A. Leave: Any absence during regularly scheduled work hours. The following types of paid leave are covered in this rule:

1. Paid time off ("PTO");
2. Sick and vacation;
3. Bereavement
4. Holiday;
5. Compensatory;
6. Administrative;
7. Military;
8. Election;
9. Court;
10. Investigatory;
11. Training;
12. Occasional time off.

B. Domestic Partner: An unmarried adult, unrelated by blood (closer than would prohibit marriage in Colorado pursuant to the Colorado Revised Statutes); with whom an unmarried employee has an exclusive committed relationship, maintains a mutual residence and shares basic living expenses.

C. Immediate family: Spouse, child, parent, grandparent, grandchild, sibling, son-in-law, daughter-in-law, mother-in-law, father-in-law, brother-in-law, sister-in-law, domestic partner, and the parent, child, or sibling of the domestic partner, as well as minor children for whom the employee or the employee's domestic partner provide day-to-day care and financial support.

10-12 Designees

Appointing authorities, including the Office of Human Resources ("OHR") Executive Director, may delegate any authority given to them under this rule to a subordinate employee.

10-13 Applicability to Deputy Sheriff Classifications

None of the provisions of this Rule 10 (except election leave, donated leave and investigatory leave) shall apply to Career Service employees who hold positions in classifications in the Sheriff pay schedules (Deputy Sheriff, Deputy Sheriff Sergeant, Deputy Sheriff Captain, Deputy Sheriff Major, and Deputy Sheriff Division Chief).

10-14 References to the Denver Revised Municipal Code ("DRMC")

This Rule 10 incorporates parts of the DRMC solely for informational purposes as a convenience to readers of this rule. Excerpts from the DRMC will be clearly identified as such and are not intended to be made a part of this rule. DRMC excerpts include a reference to the applicable section and are labeled "**Source: DRMC §** ___." Should the applicable provisions of the DRMC change, the reference to the that provision in this Rule 10 may be changed without going through the rule change process described in Rule 2 **OFFICE OF HUMAN RESOURCES**. In case of a conflict between the DRMC and the provisions of this rule, the DRMC will prevail.

Section 10-20 Paid Time Off ("PTO")

10-21 Eligibility

All eligible Career Service employees hired or re-employed by the City after December 31, 2009 shall receive PTO with the exception of:

A. Part-time employees who are regularly scheduled to work less than twenty (20) hours per week; and

B. Employees occupying on-call positions.

Source: D.R.M.C. §18-123

10-22 PTO Allowance

A. The amount of PTO earned by eligible full-time employees shall be calculated as follows:

Years of consecutive service					
	0 < 0.5	**0.5 < 5**	**5 < 10**	**10 < 15**	**> 15**
PTO hours earned per month	10	12	15	18	19

B. A proportionate amount shall be allowed eligible employees working part-time.

Source: D.R.M.C. §18-125

10-23 Partial Leave Accruals

Full-time employees, eligible to earn PTO:

A. Who begin employment with the City after the first day of a month; or

B. Whose leave accruals stopped because of an extended absence from work and return to work after the first day of a month; or

C. Who separate from employment with the City before the last day of a month

Shall earn PTO in that particular month according to the following pro-ration schedule:

Hrs. worked (including pd. lv) in the month	**Years of service**				
	≤ 0.5	**0.5 < 5**	**5 < 10**	**10 < 15**	**≥15**
0-39	0	0	0	0	0
40-79	2.5	3	3.75	4.5	4.75
80-119	5	6	7.5	9	9.5
120-139	7.5	9	11.25	13.5	14.25
>140	10	12	15	18	19

PTO hours earned

10-24 Situations Where Approval of PTO Use is not Required

A. An employee may use PTO without requesting the approval of the employee's appointing authority when the employee is incapacitated by sickness or injury; for necessary care and attendance during sickness of a member of the employee's immediate family, and for qualifying conditions under the Family and Medical Leave Act ("FMLA"). Such use shall be subject to reporting and investigation requirements set forth in this Rule 10.

B. Absences from work because of authorized medical examinations or treatment related to an occupational injury or occupational disease arising out of and within the course and scope of employment with the City for which the City has admitted liability or has agreed to permit medical treatment while investigating the claim shall be treated as time worked. The employee shall make a reasonable effort to schedule the examination or treatment so as not to unduly disrupt the operations of the department or agency.

10-25 All Other PTO Uses

A. All other uses of PTO require the approval of the employee's appointing authority.

B. Appointing authorities shall approve such requests to use PTO on the basis of the work requirements of the agency after conferring with employees and recognizing their wishes where possible. Preference in the scheduling of pre-approved PTO shall be given to employees in order of their total length of continuous employment in the Career Service; provided, however, that an employee who has been re-instated or re-employed following a lay-off shall be given credit for the period of continuous employment in the Career Service prior to the lay-off.

10-26 Maximum Accumulation and Pay-out of PTO

A. PTO earned by an employee shall be deposited in his or her PTO bank. PTO may not be accumulated in the PTO bank in excess of four hundred (400) hours.

Source: D.R.M.C. §18-124 and 127(a)

B. Exceeding the PTO Accumulation Limit:

Ordinarily an employee at the PTO leave accumulation limit of four hundred (400) hours cannot accumulate any additional PTO. However, if the appointing authority is unable to allow an employee who has accumulated the maximum hours of PTO to use PTO because of workload, the appointing authority shall request that the OHR Executive Director allow the employee to exceed the maximum amount. The employee must use the excess over four hundred (400) hours in the employee's PTO bank within one year of the approval date.

C. Employees who elected to voluntarily convert from sick and vacation leave to PTO leave on February 1, 2010 were required to convert their sick and vacation leave balances into a special leave bank. PTO used by an employee shall be debited from the employee's PTO bank first unless it has been exhausted or if the employee requests that the special leave bank be used first. This special leave bank cannot:

1. Exceed 400 hours; or

2. Be replenished.

Source: D.R.M.C. §18-124

D. Upon separation, a PTO recipient shall be paid at his or her regular rate of pay for the unused portion of his or her accumulated PTO bank and special bank if applicable.

Source: D.R.M.C. §18-127(b)

Section 10-30 Sick and Vacation Leave

10-31 Eligibility

All eligible Career Service employees who:

A. Were receiving paid sick and vacation leave on December 31, 2009;

B. Remain continuously employed by the city; and

C. Have not voluntarily elected to receive PTO benefits:

Shall be entitled to continue to receive paid sick and vacation leave so long as the officer or employee does not become:

A. A part-time employee who is regularly scheduled to work less than twenty (20) hours per week; or

B. An employee occupying an on-call position.

Source: D.R.M.C. §18-131

10-32 Sick and Vacation Leave Allowance

A. Eligible full-time employees shall accrue eight (8) hours of sick leave every month.

B. The amount of vacation leave earned by eligible full-time employees shall be calculated as follows:

Years of consecutive service				
	0 < 5	**5 < 10**	**10 < 15**	**>15**
Vacation hrs. earned per month	8	10	12	14

C. Employees working part-time shall accrue a proportionate amount.

Source: D.R.M.C. §18-132

10-33 Partial Leave Accruals

Full-time employees, eligible to earn sick and vacation leave:

A. Who begin employment with the City after the first day of a month; or

B. Whose leave accruals stopped because of an extended absence from work and return to work after the first day of a month; or

C. Who separate from employment with the City before the last day of a month

Shall earn sick and vacation leave in that particular month according to the following pro-ration schedule:

Hrs. worked (including pd. lv) in the month earned	**Vacation hours earned Years of service**				**Sick hrs.**
	0 < 5	**5 < 10**	**10 < 15**	**>15**	**N/A**
0-39	0	0	0	0	0
40-79	2	2.5	3	3.5	2
80-119	4	5	6	7	4
120-139	6	7.5	9	10.5	6
≥140	8	10	12	14	8

10-34 Using Sick and Vacation Leave

A. Sick leave:

1. Sick leave may be used when an employee is incapacitated by sickness or injury; for medical examinations, or treatment; for necessary care and attendance during sickness, or for death, of a member of the employee's immediate family, for qualifying conditions under the FMLA and as otherwise provided in these rules.

2. Absences from work because of authorized medical examinations or treatment related to an occupational injury or occupational disease arising out of and within the course and scope of employment with the City for which the City has admitted liability or has agreed to permit medical treatment while investigating the claim shall be treated as time worked. The employee shall make a reasonable effort to schedule the examination or treatment so as not to unduly disrupt the operations of the department or agency.

B. Vacation leave:

Vacation leave shall be taken at a time convenient to the department or agency. The department or agency will confer with employees and recognize their wishes where possible. Preference in the scheduling of vacation time shall be given to employees in order of their total length of continuous employment in the Career Service; provided, however, that an employee who has been re-instated or re-employed following a lay-off shall be given credit for the period of continuous employment in the Career Service prior to the lay-off.

Source: D.R.M.C. §18-132(b)(2)

10-35 Limits on Sick and Vacation Leave Accumulation

A. Sick leave may be accumulated to a limit of nine hundred sixty (960) working hours. When the accumulation exceeds eight hundred eighty (880) working hours, an employee may request that accumulated sick leave in excess of the eight hundred eighty (880) working hours be converted to vacation leave. Such conversions are in addition to the monthly amount of vacation leave allowed by this section. Employees may not convert sick leave to vacation leave if such a conversion would result in the employee's accumulated vacation leave exceeding the limits allowed by this Rule 10.

Source: D.R.M.C. §18-132(a)(2)

B. 1. Employees with up to ten (10) years of service may accumulate up to two hundred eighty-eight (288) hours of vacation leave. Employees with ten (10) or more years of service may accumulate up to three hundred thirty-six (336) hours of vacation leave.

2. Exceeding the Vacation Accumulation Limit:

Ordinarily an employee at the vacation leave accumulation limit cannot accumulate any additional vacation leave. However, if the appointing authority is unable to allow an employee who has accumulated the maximum hours of vacation leave to use vacation leave because of workload, the appointing authority shall request that the OHR Executive Director allow the employee to exceed the maximum amount. The employee must use the excess over the vacation leave accumulation limit within one year of the approval date.

10-36 Sick and Vacation Leave Pay Upon Separation

A. Sick leave:

1. The following table applies to the pay-out of sick leave upon separation for any reason other than death or retirement:

Full years Of service	**Payout formula**	
<5	No pay out	
5	Sick leave balance minus	(5 X 40 hrs.) or 200 hrs.
6	Sick leave balance minus	(6 X 40 hrs.) or 240 hrs.
7	Sick leave balance minus	(7 X 40 hrs.) or 280 hrs.
8	Sick leave balance minus	(8 X 40hrs.) or 320 hrs.
9	Sick leave balance minus	(9 X 40hrs.) or 360 hrs.
>10	Sick leave balance minus	(10 X 40hrs.) or 400 hrs.

2. Upon separation due to retirement or death, an employee shall be paid at his or her regular rate of pay for one-half (1/2) of all accumulated sick leave credits existing on the effective date of separation or death, or in accordance with the method described above, whichever is higher, but not to exceed five hundred sixty (560) working hours.

B. Vacation leave:

Employees shall be paid at their regular rate of pay for the unused portion of their accumulated vacation leave upon separation from employment.

Source: D.R.M.C. §18-134

Section 10-40 Administration of Paid Time Off and Sick and Vacation Ordinances

10-41 Effect of Appointment to a Career Service Position

When an employee is appointed to a Career Service position from any other City department or agency which is governed by the PTO ordinance or the sick and vacation ordinance, the employee's paid leave credits shall be transferred to the new position, so long as there is no break in service.

Source: D.R.M.C. §18-126 & §18-133

10-42 Length of Service

In computing length of service for the purpose of determining an employee's PTO or vacation leave accrual rate, service in a paid position in any City department or agency other than the Classified Service of Police and Fire, the Denver Water Board, on-call positions, and contract positions, shall be counted as service, provided such service was performed continuously, immediately prior to the employee's employment or re-employment appointment to the Career Service.

10-43 Using Paid Leave

A. The amount of PTO or sick and vacation leave used shall be the amount of time an employee is absent from his or her scheduled shift(s).

B. PTO or sick and vacation leave shall not be used before it is accrued and posted to the employee's account.

C. Employees may take PTO, sick leave, and vacation leave in increments of at least fifteen (15) minutes.

10-44 Reporting and Investigation of Leave Used for Sickness or Injury

A. If an employee is absent for reasons that entitles the employee to use PTO or sick leave without appointing authority approval, the employee or a member of the employee's household shall notify the employee's supervisor as soon as possible but at least within two (2) hours after the employee's usual reporting time. Appointing authorities may establish reporting procedures which differ from the standard for an entire agency, for specific units, or for individual employees in order to meet special program needs or workloads.

B. If an employee fails to notify the employee's supervisor or agency head, no PTO or sick leave shall be authorized, except in unusual circumstances, to be determined by the appointing authority.

C. Appointing authorities may investigate the alleged illness of an employee using PTO or sick leave without appointing authority approval. False or fraudulent use of PTO or sick leave shall be cause for disciplinary action and may result in dismissal.

D. An employee who is using PTO or sick leave for more than three (3) days because of his or her own illness or that of a member of his or her immediate family may be required to furnish a statement signed by attending physician, or other proof of illness satisfactory to the appointing authority. An appointing authority may require this statement or proof for an absence chargeable to PTO or sick leave without appointing authority approval, of any duration. If an appointing authority, supervisor, or employee has reason to believe that the absence may be a qualifying event under the FMLA, he or she should contact human resources.

10-45 Donating Leave

A. A Career Service employee may donate sick leave to another Career Service employee provided that the employee donating sick leave:

1. Has been earning sick leave from the City continuously for the last five years; and

2. Retains a sick leave balance of at least two hundred forty (240) hours after the donation.

B. A Career Service employee may donate PTO to another Career Service employee provided that the employee donating PTO retains a PTO balance of at least eighty (80) hours after the donation.

C. A Career Service employee may donate PTO or sick leave to a non-Career Service City employee provided that the recipient employee's department or agency and any applicable collective bargaining agreement allow employees to receive donations of leave from Career Service employees and provided that the applicable donor requirements have been met.

D. A Career Service employee may donate PTO or sick leave to, or receive donated sick leave from, an employee covered by the Sheriff pay schedules to the extent permitted by the applicable collective bargaining agreement and provided that the donor and recipient requirements applicable to the non-Sheriff employee have been met.

E. Recipient requirements:

1. Before an employee can receive donated leave, the employee (or the employee's representative) must provide notice to the Department of Finance that the employee anticipates a need for donated leave. Such notice shall estimate how much donated leave the employee expects to use in the current calendar year. Should the employee need more donated leave beyond the original estimate, the employee shall provide notice of this to the Department of Finance before the employee can receive additional donations.

2. In order to use donated leave, an employee must:

    a. Have exhausted his or her accumulated compensatory time, sick leave and vacation leave or PTO, be absent from work and;

        i. Be receiving salary continuation leave, or temporary disability benefits under the provisions of the Workers' Compensation Act. In either of these situations, the employee may only use donated leave to make up the difference between the employee's base salary, and the total of other paid leave received and the temporary disability benefits the employee is receiving;

        ii. Be receiving FMLA leave;

        iii. Be receiving ADA leave; or

        iv. Have received written notice of a contemplation of disqualification meeting. The employee may use donated leave until disqualification occurs or until the end of the period in which a decision on disqualification must be issued, whichever occurs first.

3. Donated leave can be used to cover absences that occur up to fifteen (15) calendar days before the leave was posted to a recipient's account so long as the other conditions of this section have been met.

4. A Career Service employee may receive donated leave from a non-Career Service City employee provided that the donor employee's department or agency allows employees to donate leave to Career Service employees and that the recipient requirements listed above have been met.

5. Employees who are eligible to receive donated leave may receive either donated PTO or donated sick leave regardless of whether the employee is enrolled in the PTO or sick and vacation leave plan.

F. Employees cannot use more than six hundred (600) hours of donated leave in a calendar year. Employees cannot receive donated leave to the extent that the donated leave will increase the employee's PTO or sick leave bank over the applicable maximum accumulation limit.

G. 1. The amount of donated leave to be credited to the recipient's account shall be computed as follows:

a. Multiply the number of hours of leave being donated by the hourly rate of pay of the donor employee;

b. Divide the result by the hourly rate of pay of the recipient; and

c. Round the result down to the closest full hour.

2. The computations made in paragraph G.1. shall be reported to the Department of Finance in accordance with procedures to be established by that office.

H. Recipients of donated leave are not entitled to receive pay upon separation for unused donated leave. Unused donated leave may not be donated to another employee or returned to the donor.

10-46 Effect of Separation on Leave Accrual

Employees shall not earn PTO or sick and vacation leave after the employee's last day as a City employee. Rule 14 **SEPARATION OTHER THAN DISMISSAL** and Rule 16 **CODE OF CONDUCT AND DISCIPLINE** provide this date for dismissals and other types of separations.

10-47 Re-instated Employees

Employees who were laid off while receiving paid sick and vacation leave benefits, and are re-instated under the Career Service Rules after December 31, 2009, will be enrolled in the PTO plan unless they elect in writing to continue in the paid sick and vacation plan. Such election must be made within thirty (30) days of the effective date of their re-instatement.

Source: D.R.M.C. §18-123 (c)

10-48 Effect of Re-instatement and Re-employment on PTO and Sick Leave Balance

An employee who is re-instated after a lay-off shall have sick leave that he or she was not paid for at the time of separation restored as follows:

A. Employees who are enrolled in the PTO plan upon re-instatement may be able to convert sick leave that was lost at the time of lay-off to the special PTO bank. The amount that may be converted is based on the employee's accumulated sick leave at the time of separation. Up to one-half of this amount may be converted to the special PTO bank;

1. So long as the amount converted does not exceed four hundred (400) hours; and

2. After the sick leave the employee was paid for at the time of separation is deducted from this amount.

B. Employees who elect to receive sick and vacation leave after re-instatement shall have all sick leave that he or she was not paid for at the time of separation restored to the employee's sick leave bank.

C. An employee who is re-employed while his or her name is on a re-instatement list shall also be entitled to restoration of eligible sick leave under the terms of this subsection.

Section 10-50 Bereavement Leave

A. Employees receiving PTO:

Employees who receive PTO benefits shall be granted up to forty (40) hours of paid bereavement leave because of the death of a member of the employee's immediate family. This forty (40) hours of bereavement leave shall not count against the employee's PTO bank.

Source: D.R.M.C. §18-128

B. Employees receiving sick leave:

Employees receiving sick leave shall be entitled to use up to forty-eight (48) hours of sick leave because of the death of a member of an employee's immediate family.

C. Additional Bereavement Leave:

An appointing authority may grant additional paid or unpaid leave for bereavement.

Section 10-60 Paid Holiday Leave

10-61 Eligibility

A. All eligible Career Service employees shall receive paid holiday leave benefits as provided in these rules, with the exception of:

1. Part-time employees who are regularly scheduled to work less than twenty (20) hours per week; and

2. Employees occupying on-call positions.

Source: D.R.M.C. §18-141

B. Unless otherwise provided in these rules, an eligible employee must be at work or on an authorized, paid leave on the scheduled workdays immediately preceding and immediately following the day on which the holiday is observed in order to receive paid holiday leave.

C. Religious or other holidays not observed by the City may be granted in accordance with the rules governing paid and unpaid leave.

10-62 Designation of holidays

"Holidays" for the purposes of this rule shall mean eight (8) hours in the following days:

A. New Year's Day (January 1);

B. Martin Luther King Day (third Monday in January);

C. Washington's Birthday (observed on the third Monday in February);

D. Cesar Chavez Day (last Monday in March);

E. Memorial Day (last Monday in May);

F. Independence Day (July 4);

G. Labor Day (first Monday in September);

H. Veterans' Day (November 11);

I. Thanksgiving Day (fourth Thursday in November);

J. Christmas Day (December 25);

K. Personal holiday (one (1) personal holiday on date agreed upon by employee and the city to be used within the calendar year).

Source: D.R.M.C. §18-142

10-63 Observation of Holiday

A. Subject to the following provisions, all offices, agencies, commissions and departments of the city are hereby authorized and directed to grant to employees, with pay, the previously designated holidays.

1. If any of the holidays shall fall upon a Sunday, then the Monday following shall be considered as the holiday. If any of the holidays shall fall upon a Saturday, then the preceding Friday shall be considered as the holiday.

2. An employee may be required to work on a holiday in order to maintain essential services to the public.

Source: D.R.M.C. §18-143

B. When a holiday falls on an employee's regular day off, it shall be observed as follows:

1. If the holiday falls on the first day off, it shall be observed on the preceding workday.

2. If the holiday falls on the second or third regular day off, it shall be observed on the next workday.

C. Appointing authorities who require an employee to work on an observed holiday may schedule the employee's paid holiday leave to be taken on another day during that holiday week as long as the employee is provided with adequate notice of this change in advance of the holiday week.

10-64 Amount of Paid Holiday Leave Received

A. An eligible full-time employee shall receive eight (8) hours of paid holiday leave in a week in which a holiday occurs.

B. An eligible part-time employee regularly scheduled to work at least twenty (20) hours per week shall receive paid holiday leave as follows:

1. An employee who is regularly scheduled to work from twenty (20) to twenty-nine (29) hours per week shall receive four (4) hours of paid holiday leave.

2. An employee who is regularly scheduled to work from thirty (30) to thirty-nine (39) hours per week shall receive six (6) hours of paid holiday leave.

10-65 Holiday Pay for Employees on Special Work Schedules

If the holiday falls on an employee's regularly scheduled work day and the work day is scheduled to be more than eight hours long, one of the following choices shall be selected by the employee, subject to approval by the appointing authority, to make up for the difference between the length of the work day missed and the eight hours of paid holiday leave allowed:

A. Hours may be deducted from the employee's administrative leave granted for exemplary performance, earned compensatory time, earned paid time off, or earned vacation leave;

B. The employee may work additional hours within the work week; or

C. The employee may take the hours as unpaid leave.

10-66 Compensation for Hours Worked in a Holiday Week

A. In a week in which a holiday occurs, full-time employees receive eight hours of holiday leave and are expected to work (or use leave) for the remaining thirty-two (32) hours. Part-time employees are expected to work (or use leave) during the time left after the employee's paid holiday leave is deducted from the hours they are normally expected to work in a week.

B. In addition, employees in classifications in exempt pay schedules shall receive straight time holiday compensatory time for the hours the employee actually works:

1. a. On the day the employee is scheduled to observe the holiday that week, or

b. On any of his or her scheduled days off in a week when a holiday occurs; and

The employee is not entitled, under Rule 9 **PAY ADMINISTRATION**, to receive overtime for working on the holiday or regularly scheduled day off in that holiday week.

2. In no event shall an employee receive more hours of holiday compensatory time than the employee would have been entitled to receive as paid holiday leave in a holiday week.

3. Employees shall only receive holiday compensatory time to the extent that the combination of hours worked and paid leave used (including paid holiday leave) during a holiday week exceeds forty (40) hours.

4. At the discretion of the appointing authority, straight time pay may be substituted for the holiday compensatory time. Holiday compensatory time may be taken at any time mutually convenient to the employee and the appointing authority. However, all accrued holiday compensatory time shall be used by March 31st of each calendar year or paid out in cash by the final pay period of April of that year.

Section 10-70 Other Paid Leave

10-71 Compensatory Time

Compensatory time earned under the provisions of Rule 9 **PAY ADMINISTRATION** may be taken at any time mutually convenient to the employee and the appointing authority. However, all accrued compensatory time shall be used by March 31st of each calendar year or paid out in cash by the final pay period of April of that year.

10-72 Administrative Leave

A. Appointing authorities shall grant paid administrative leave for the following purposes:

1. To present grievances or appeals to an official of the City or to represent an employee presenting a grievance or an appeal. However, if flexibility exists as to the exact date and time, the leave shall be granted at the convenience of the appointing authority;

2. To participate in the Career Service Mediation Program. Administrative leave shall be granted to employees who participate in mediation either as a party or as the mediator; or

3. To represent another City employee at meetings with that employee's supervisor or manager, as set forth in Rule 16 **CODE OF CONDUCT AND DISCIPLINE**. The representative shall be allowed to take up to a maximum of four (4) hours of administrative leave per pay period so long as the use of such leave does not adversely affect the representative's department or agency and has been approved in advance by the employee's supervisor.

B. Appointing authorities may grant paid administrative leave for the following purposes:

1. To compete for positions in the Career Service, including all related interviews and examinations;

2. To reward exemplary performance, such as Employee of the Quarter, Employee of the Year, or if the appointing authority wishes to recognize an employee's outstanding contribution to the agency. The appointing authority may grant, and an employee may use up to twenty (20) hours of administrative leave per calendar year for exemplary performance; or

3. When the appointing authority deems there is a business necessity, for a maximum of ten (10) calendar days per calendar year. The appointing authority may request an extension of up to twenty (20) calendar days from the OHR Executive Director. The OHR Executive Director may approve the request for an extension for good cause shown.

Granting or failing to grant administrative leave under this paragraph B shall not be subject to grievance or appeal.

10-73 Paid Military Leave

A. All probationary and career status employees in the Career Service shall be eligible for up to fifteen (15) days, but not to exceed one hundred twenty (120) hours of paid military leave each calendar year for the time the employee is engaged in military training or service.

B. Notification Requirement: Employees engaged in military service or training requiring military leave shall provide notice in advance to their appointing authority, when possible. If the employee is unable to provide advance notice because of military necessity, the employee may give notice after starting duty.

C. Employees who continue in military service beyond the time for which paid military leave is allowed shall be placed on unpaid military leave, which is covered by Rule 11 **UNPAID LEAVE**.

10-74 Election Leave

Employees who are eligible to vote in an election are entitled to use up to two (2) hours of paid election leave for the purpose of voting during the time the polls are open, if an employee's work hours on the day of an election are such that there are less than three (3) hours between the time of opening and the time of closing of the polls during which the employee is not required to be on the job. Employees must request and receive approval for the leave prior to the election day. The appointing authority may specify the hours during which the employee may be absent, except that the employee shall be allowed to take the election leave at the beginning or end of the work shift if requested.

Source: C.R.S. §1-7-102

10-75 Court Leave

A. An employee shall be granted paid court leave during time the employee is regularly scheduled to work, if the employee is:

   1. Required to serve as a juror in a court of law;

   2. Subpoenaed by the City and County of Denver to testify in a court of law;

   3. Subpoenaed to testify in a court of law or administrative proceeding concerning matters arising out of the course of his or her employment; or

   4. Requested to serve as a witness in a court of law or administrative proceeding by his or her appointing authority or other authorized person to represent the City's interest in the legal proceedings.

B. Court leave is intended only to apply to those time periods when the employee is needed for court service and for reasonable travel time between court and work.

C. In order to receive court leave, an employee who is called for jury duty or to serve as a witness shall present the original summons or subpoena from the court to his or her supervisor and, at the conclusion of such duty, a signed statement from the Clerk of the Court or other evidence showing the actual time of attendance at court.

D. Fees received for jury service in a Federal, State, or Municipal court shall be in addition to, and irrespective of, an employee's regular salary.

10-76 Investigatory Leave

An appointing authority may place an employee on paid investigatory leave pending an investigation of a possible rule violation or failure to meet standards of performance as provided in Rule 16 **CODE OF CONDUCT AND DISCIPLINE**. Investigatory leave may be for no more than forty-five (45) calendar days, unless an extension of time has been approved by the OHR Executive Director.

10-77 Training Leave

A. Appointing authorities may grant paid training leave. Any training program for which such leave is granted must be job-related, which includes career development training that will prepare the employee for advancement with the City.

B. Appointing authorities may grant training leave for the purpose of attending institutes, seminars, or educational courses related to an employee's work for extended periods of time, at the appointing authority's discretion.

C. Appointing authorities shall allow paid trainees and paid interns to arrange their work schedule if they need to attend classes during normal working hours. Paid trainees and paid interns are not entitled to training leave while attending classes for the degree or certificate program they are required to complete during their training or internship period. (Revised November 18, 2015; Rule Revision Memo 15D)

D. Use of training leave by employees shall be arranged whenever possible during regularly scheduled work hours. Appointing authorities who require attendance at training activities during off-duty hours that are designed to increase the competencies, knowledge, skills and abilities of employees for the position which they presently occupy shall temporarily change the affected employee's standard work hours to include the training schedule. Employees who are required to attend such training during off-duty hours shall be granted paid training leave for the time spent in training.

E. For the purposes of this subsection, on-line training courses shall be treated the same as classroom training sessions.

F. Employees must present proof of attendance at any training for which they are authorized to receive training leave.

10-78 Occasional Time Off

Exempt employees may be allowed paid occasional time off to attend to personal affairs, at the discretion of the appointing authority.

RULE 11
UNPAID LEAVE

(Revised May 9, 2016; Rule Revision Memo 19D)

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering unpaid leave. For rules regarding extended illness or injury leave please see Rule 12 **LEAVE FOR EXTENDED ILLNESSES OR INJURIES**.

Section 11-10 Leave Defined

Leave: Any absence during regularly scheduled work hours. The following types of unpaid leave are covered in this rule:

A. Authorized;

B. Unauthorized;

C. Leave for victims of violence;

D. Budget-required furlough;

E. Military (unpaid).

Section 11-15 Designees

Appointing authorities, including the Office of Human Resources ("OHR") Executive Director, may delegate any authority given to them under this rule to a subordinate employee.

Section 11-20 General Provisions

11-21 Authorized Unpaid Leave

Appointing authorities may permit the use of unpaid leave by employees who either do not have paid leave available or who have requested permission to use unpaid leave when it is in the interest of the City to do so.

11-22 Unauthorized Unpaid Leave

A. Absences from work shall be treated as unauthorized, unpaid leave:

1. When an employee has not requested permission to use a type of leave for which permission is required; or

2. When a leave request has been denied; or

3. When an employee has not complied with reporting procedures; or

4. Which are not otherwise authorized under these rules.

B. Employees on unauthorized, unpaid leave may be subject to discipline, up to and including dismissal.

11-23 Exempt and Non-exempt Employees

A. An exempt employee on unpaid leave shall have his or her pay reduced on an hourly basis for the duration of the absence when the absence is less than a day and is due to sickness or personal reasons, and:

1. The employee did not request leave; or

2. A request for leave was denied; or

3. The employee has no available leave; or

4. The employee requested, and was granted unpaid leave.

B. Non-exempt employees on unpaid leave shall receive no pay for the duration of the absence.

11-24 Maintenance of Benefits During Extended Absences

This section applies to the maintenance of benefits during extended absences except as otherwise provided in these rules.

A. First Thirty Days of Unpaid Leave:

The first thirty (30) consecutive calendar days of authorized, voluntary unpaid leave in a calendar year, shall have no effect on the following:

1. City contributions to health, dental, and life insurance; or

2. Accrual of paid time off (PTO), sick and vacation leave, and holiday eligibility.

B. After Thirty Days but Before One Hundred and Eighty-one Days:

After the first thirty (30) consecutive calendar days of authorized, voluntary unpaid leave in a calendar year:

1. City contributions to health, dental, and life insurance shall be discontinued, except for employees on Family and Medical Leave Act ("FMLA") leave; and

2. Employees will no longer be able to earn PTO, sick and vacation leave, or paid holidays.

C. After One Hundred and Eighty Days:

After the first one hundred and eighty (180) consecutive calendar days of authorized, voluntary unpaid leave, City contributions to health, dental, and life insurance shall be discontinued for all employees.

D. 1. An employee may pay the cost of continuing his or her health, dental, and life insurance, as well as any supplemental insurance coverage(s), such as vision and supplemental life insurance, during extended absences from work by:

a. Depositing the amount due with the OHR every month; or

b. Taking at least one day of paid leave from which the amount due shall be deducted.

2. An employee's failure to pay the cost of continuing insurance coverage shall result in the discontinuance of such insurance.

11-25 Other Provisions Regarding Extended Unpaid Leave

A. A period of unpaid leave shall not constitute a break in service.

B. A period of unpaid leave lasting longer than one hundred and eighty (180) consecutive calendar days and occurring during an employee's probationary period shall not be counted as part of that period. The employee to whom such leave has been granted will resume his or her probationary period upon returning from the period of unpaid leave.

C. At the expiration of a period of unpaid leave, the employee shall return to the position and classification he or she held before going on leave. Failure to report promptly at the expiration of a period of unpaid leave shall be considered to be a resignation.

11-26 Leave for Victims of Violence

Employees may use up to three days of unpaid leave to address issues arising from violence the employee has suffered (as defined in Executive Order 112), including but not limited to, obtaining a restraining order, obtaining medical care or counseling, locating safe housing, or preparing for or attending legal proceedings. The employee may elect to use available paid leave, instead of unpaid leave, to cover the absence. Appointing authorities may authorize the use of additional leave, or temporarily adjust an employee's work schedule to allow a victim of violence to obtain necessary medical care, housing, counseling, legal, or other related assistance.

11-27 Budget Required Furlough

If the Mayor of the City and County of Denver decides or allows appointing authorities to furlough employees due to budgetary reasons, the following Career Service Rule applies:

A. This Rule is intended to comply with the Fair Labor Standards Act regulation 29 C.F.R. § 541.710, which permits furloughs for budgetary reasons without affecting the exemption status of an overtime exempt employee except in the workweek in which the furlough occurs and for which the employee's pay is accordingly reduced.

B. Furloughs of overtime exempt employees may be taken in work day or workweek increments. During the workweek in which an overtime exempt employee takes one or more furlough days, the furlough hours taken and the hours worked plus any leave taken by the exempt employee should not total more than forty (40) hours. A work day is eight (8) hours for the purposes of this rule.

C. Furloughs of non-exempt employees need not be taken in work day or work week increments but cannot be taken in less than two (2) hour increments.

D. The Mayor may exempt certain employees from a mandatory furlough in order to maintain essential City services or for other necessary business reasons.

E. During the period of time in which the Mayor has declared mandatory furloughs, employees may take additional voluntary furlough days with the prior approval of the employee's appointing authority. Except as otherwise provided, the same rules apply to voluntary furloughs that apply to mandatary furloughs.

F. Maintenance of benefits:

An employee on a furlough is entitled to;

a. Have the City continue paying its share of the employee's health, dental, and life insurance premiums.

b. Earn PTO, or sick and vacation leave, and

c. Receive paid holiday leave for holidays observed during a furlough. During the first thirty consecutive calendar days of a furlough, furlough days will be treated as days worked for the purposes of determining whether the employee worked on the scheduled work days immediately preceding and immediately following the day on which the holiday is observed,

G. Nothing herein precludes the Mayor from designating specific furlough days or otherwise determining how to implement mandatory furloughs.

Section 11-30 Unpaid Military Leave

A. Employees who continue in military service beyond the initial one hundred twenty (120) hours for which paid military leave is allowed under Rule 10 **PAID LEAVE** shall be placed on unpaid military leave.

B. This rule is intended to comply with and be interpreted consistently with the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). To the extent an issue is not addressed in this rule, or to the extent this rule is inconsistent with the USERRA, the USERRA and its corresponding regulations shall govern.

C. Requests for unpaid military leave may be made verbally or in writing, and shall be made in advance, when possible. If an employee is unable to provide advance notice due to military necessity, the employee may give notice after starting duty.

D. Employees who are called to active military duty with written orders for services exceeding one hundred and seventy nine (179) days because of war or national emergency may be eligible for a military pay differential.

11-31 Granting Unpaid Military Leave

Unpaid military leave shall be subject to the following provisions:

A. Duration:

Unpaid military leave shall be granted for the duration of active military service not to exceed five (5) years plus ninety (90) days from the date of discharge, subject to exceptions set forth in USERRA and its corresponding regulations.

B. Maintenance of Benefits:

1. First Thirty Days of Military Leave:

The first thirty (30) consecutive days of military leave (paid and unpaid) shall have no effect on the following:

a. City contributions to health, dental, and life insurance; and

b. Accrual of PTO or sick and vacation leave, and holiday eligibility.

2. After Thirty Days of Military Leave:

a. 1. Employees on military leave (paid and unpaid) for thirty-one (31) days or longer, are eligible for health benefit coverage from the military. In addition, an employee on military leave for thirty-one (31) days or longer may continue his or her individual and/or family coverage under the City's group health plan for the duration of military leave. Employees opting for continuing coverage under the City's group health plan are responsible for paying 100% of the premium costs.

2. During military leave, the employee may continue supplemental insurance coverage(s), such as dental, vision, and supplemental life insurance, for the duration of military leave. Employees opting for continuing supplemental insurance coverage are responsible for paying 100% of the premium costs.

b. Paid time off (“PTO”), sick and vacation leave shall not be earned during military leave that lasts over thirty (30) consecutive calendar days, and employees on such extended leave will not be eligible for paid holiday leave.

C. Employees may use any available paid leave (except sick leave) for some or all of their unpaid military leave.

D. Break in service:

Unpaid military leave shall not constitute a break in service.

E. Completion of probationary period:

A probationary employee who is on unpaid military leave for thirty (30) days or longer shall be considered to have attained career status if the employee returns to work after the employee's end of probation date.

11-32 Return from Unpaid Military Leave

Employees returning from unpaid military leave after an absence of ninety (90) days or less shall return to their former position. Employees returning after ninety-one (91) days or longer shall return to their former position or a job of equal status and pay, subject to the following provisions:

A. Due date for notice of return:

Upon completing military service, an employee on military leave (whether paid or unpaid) must notify his or her appointing authority of the employee's intent to return to work. The amount of notice required depends on the amount of time served.

1. Employees who served longer than one hundred eighty (180) days shall give notice within ninety (90) days after completing service.

2. Employees who served thirty-one (31) to one hundred eighty (180) days shall give notice within fourteen (14) days after completing service.

3. Employees who served less than thirty-one (31) days shall give notice within three (3) days after completing service.

B. Certificate of satisfactory completion of military service:

A return from unpaid military leave shall be conditional upon submission of a certificate confirming release from active duty under honorable conditions.

C. Effect of hospitalization for service connected medical condition:

In the event that the employee was hospitalized after military discharge for medical conditions which occurred during the military service, the employee's unpaid military leave shall be extended up to two (2) years. Application for return from unpaid military leave must be made within ninety (90) days after the employee's medical provider releases him or her to return to work. Extensions beyond two (2) years may be granted.

D. Qualifications for return from military service:

The employee must be physically and mentally qualified and possess the necessary skills, knowledge and/or training to perform the essential functions of the position to which the employee is returning with or without reasonable accommodations. The City will provide appropriate training to returning employees.

E. Effect of service connected disability:

If the employee is not qualified to perform the essential functions of the position with or without reasonable accommodations by reason of disability sustained during active military service, the appointing authority may transfer the employee to any other available position, the duties of which the employee is qualified to perform and which will provide like seniority, status and pay, or the nearest approximation thereof, as the employee achieved in the position from which he or she was granted military leave.

F. Effect of failure to give notice for return:

Failure to give notice for return from unpaid military leave within the time limits stated may be considered a resignation.

11-33 Military Pay Differential

A. Career Service employees who are called to active military duty in time of war or national emergency are eligible for a military pay differential as provided by the Denver Revised Municipal Code.

B. A written request for military pay differential shall be made by an eligible employee to the employee's department or agency as soon as possible after the employee's return to City employment using the application form provided by the OHR. Requests for military pay differential may also be made while the employee is on military leave.

C. The employee shall provide copies of the following documents:

1. Written military orders for reporting and/or discharge;

2. Leave and earnings statements from the military;

3. All military pay vouchers, including vouchers for temporary duty and travel; and

4. Any other documentation deemed necessary to process the request by the OHR or the Department of Finance.

D. Any overpayment of funds to the employee shall be reimbursed to the City in accordance with the City's Fiscal Accountability Rules.

RULE 12
LEAVE FOR EXTENDED ILLNESSES OR INJURIES
(Revised May 9, 2016; Rule Revision Memo 19D)

Purpose statement:

The purpose of this rule is to provide guidelines and policies for administering extended time off caused by illness or injury.

Section 12-10 Types of Leave Covered by this Rule

A. Family and Medical Leave Act ("FMLA") leave;

B. Salary continuation leave and Workers' Compensation leave;

C. American with Disabilities Act ("ADA") leave in connection with the ADA Interactive Process.

Section 12-15 Designees

Appointing authorities, including the Office of Human Resources ("OHR") Executive Director, may delegate any authority given to them under this rule to a subordinate employee.

Section 12-20 FMLA Policy

It is the policy of the Career Service Board to provide leave under the FMLA to eligible employees. The purpose of FMLA leave is to provide up to twelve weeks of job-protected leave in a twelve-month period to eligible employees for specified immediate family and medical reasons. This rule is intended to comply with and be interpreted consistent with the FMLA and its corresponding regulations. To the extent an issue is not addressed herein, or if there is a conflict with a Career Service Rule, the FMLA and its corresponding regulations shall govern.

12-21 When Leave under the FMLA May be Used

FMLA leave shall only be available:

A. For the birth and care of a newborn child of the employee (including a newborn child born into a domestic partnership);

B. For placement with the employee or the employee's domestic partner (as defined in Rule 10 **PAID LEAVE**) of a child for adoption, foster care or legal guardianship;

C. To care for an employee's parent, spouse or domestic partner, or child with a serious health condition;

D. To take leave when the employee is unable to perform the functions of the employee's job because of a "serious health condition" as defined in the FMLA and its corresponding regulations; or

E. For any other reason authorized by the FMLA.

12-22 Eligibility for FMLA leave

An employee may be eligible for FMLA leave if the employee has:

A. Been employed by the City for at least twelve (12) months in the last seven (7) years; and

B. Worked at least twelve hundred and fifty (1,250) hours in the twelve (12) months immediately preceding the beginning of the FMLA leave.

12-23 Requesting FMLA leave

A. An employee may expressly request FMLA leave, or may merely state that he or she needs leave for a reason which the appointing authority knows is a qualifying reason for FMLA leave. In either instance, the appointing authority shall notify the employee that the leave may qualify as FMLA leave and request and provide information in accordance with this rule.

B. In any situation where the need for FMLA leave is foreseeable, an employee shall provide thirty (30) days notice or such notice as is practicable.

C. In any situation where the need for FMLA leave is not foreseeable, the employee shall provide such notice as is practicable. Such notice may be provided by the employee or the employee's spokesperson if the employee is unable to do so personally. The employee or the employee's spokesperson will provide more information as required by the appointing authority when it can be readily accomplished as a practical matter.

D. An employee requesting FMLA leave must provide to the appointing authority all information necessary to determine if such leave is appropriate, including:

1. The reasons for the leave so as to allow the appointing authority to determine if the conditions identified in subsection 12-21 of this Rule have been met.

2. The anticipated start of the leave.

3. The anticipated duration of the leave.

4. Whether or not the employee has a spouse or domestic partner who is also an employee of the City and County of Denver.

5. A health care provider certification on a form provided by the appointing authority consistent with the FMLA.

Information provided to the appointing authority regarding an employee's FMLA leave shall be maintained in a confidential file separate from the employee's personnel file.

E. A request for FMLA leave which does not satisfy the conditions identified in subsection 12-21 of this Rule may be denied or delayed.

F. A denial of a request for FMLA leave shall not preclude granting PTO or sick leave if the conditions identified in these rules are met.

12-24 Use of FMLA leave

A. No more than twelve (12) workweeks of FMLA leave may be used in any twelve (12) month period. The twelve (12) month period shall begin when FMLA leave was first used by an employee.

B. FMLA leave shall be granted consecutively, intermittently or on a reduced leave schedule, as provided for under the FMLA. Provided, however, if an employee requests FMLA leave intermittently or on a reduced leave schedule after the birth or placement of a child for adoption, foster care or legal guardianship, such leave shall be granted only if it is consistent with the reasonable operational necessity of the agency, as determined by the appointing authority.

C. It is the appointing authority's responsibility to designate qualifying leave as FMLA leave and the appointing authority shall notify the employee of such designation and provide other required information about FMLA leave. An employee cannot refuse to allow the appointing authority to designate qualifying leave as FMLA leave.

D. FMLA leave is unpaid leave, unless an employee elects to substitute available paid leave for unpaid FMLA leave, subject to the limitations in this Rule 12 on the use of paid leave while on salary continuation leave or Workers' Compensation leave.

E. In the case where both spouses or domestic partners are employees, the amount of FMLA leave available shall be determined as follows:

1. When the leave is because of birth, adoption, foster care or legal guardianship of a child, the FMLA leave available for bonding shall be the combined total of twelve (12) weeks of FMLA leave during any twelve (12) month period as defined in the FMLA and its corresponding regulations.

2. When the leave is because of the "serious health condition" of a parent, the FMLA leave available shall be the combined total of twelve (12) weeks during any twelve (12) month period as defined in the FMLA and its corresponding regulations.

3. When the leave is because of a serious health condition of either or both employees or a child, twelve (12) weeks of FMLA leave may be used by each employee in any twelve (12) month period.

12-25 Secondary employment during FMLA Leave

Appointing authorities may deny secondary employment during FMLA leave.

12-26 Investigation of Use of FMLA Leave

Appointing authorities may investigate the use of FMLA leave consistent with the FMLA and its corresponding regulations, including by ~~a~~ requiring a second opinion and third opinion, if appropriate, and by considering information that is inconsistent with an employee's FMLA request. Misuse of FMLA leave may be cause for disciplinary action up to and including dismissal. An appointing authority may not discipline an employee for appropriate use of FMLA leave.

12-27 Re-assignment

If an employee needs intermittent leave or leave on an established reduced leave schedule that is foreseeable based on the planned medical treatment for the employee or the employee's parent, spouse, domestic partner, or child, or if the appointing authority agrees to permit intermittent or reduced schedule leave for the birth of a child or for placement of a child for adoption, foster care or legal guardianship, the appointing authority may require the employee to transfer temporarily, during the period the intermittent or reduced leave schedule is required, to an available alternative position for which the employee is qualified and for which the modified schedule is less disruptive to the business and/or operational needs of the department or agency than the employee's regular schedule.

12-28 Maintenance of Benefits

A. During any FMLA leave, the City must maintain the employee's health insurance coverage under any group health plan on the same conditions as coverage would have been provided if the employee had been continuously working during the entire leave period.

B. It shall be the responsibility of an employee on unpaid FMLA leave to provide that share of payment(s) necessary to maintain health insurance coverage.

12-29 Return from FMLA Leave

A. An employee returning from FMLA leave due to his or her own serious health condition shall provide a certification from the employee's health care provider that the employee is able to resume work. An employee further may be required to report periodically on the employee's status and intent to return to work.

B. An employee returning from FMLA leave shall be returned to the same position the employee held when leave began or to an equivalent position which is defined by the FMLA regulations as a position that is virtually identical to the employee's former position in terms of pay, benefits and working conditions.

C. An employee need not be re-instated if the employee would not otherwise have been employed at the time re-instatement is requested.

D. If the employee is unable to return to work at the conclusion of FMLA leave, the appointing authority shall initiate the interactive process as provided in this Rule 12, within twenty (20) days of the expiration of the employee's FMLA leave, unless the employee is also on salary continuation leave or Workers' Compensation leave.

Section 12-30 Salary Continuation Leave and Workers' Compensation Leave

12-31 Definitions (for the purposes of this Section 12-30)

A. Disability: The physical inability of an eligible employee to perform the duties of his or her position, or any other position with the City.

B. Eligible employee: Any Career Service employee except:

1. Employees occupying on-call positions; and

2. Employees who hold positions in classifications in the Sheriff pay schedules (Deputy Sheriff, Deputy Sheriff Sergeant, Deputy Sheriff Captain, Deputy Sheriff Major, and Deputy Sheriff Division Chief).

12-32 Salary Continuation Leave

A. 1. The City provides paid disability leave (hereinafter "salary continuation leave") at the rate of eighty percent (80%) of an employee's gross salary for up to ninety (90) consecutive calendar days from the date of injury.

2. An eligible employee is entitled to salary continuation leave if the employee has a disability as a result of an occupational injury or occupational disease arising out of and in the course and scope of employment with the City.

B. An employee receiving salary continuation leave shall not be permitted to use other available paid leave.

C. Salary continuation leave will end on the employee's last day as a City employee or if the employee is no longer eligible for temporary benefits under the Workers' Compensation Act of Colorado, as amended, Title 8, Articles 40-47, C.R.S. ("the Act").

12-33 Workers' Compensation Leave

A. An employee who remains unable to return to work in his or her job without accommodation, or to modified duty after salary continuation leave has been exhausted, and is receiving temporary disability benefits under the provisions of the Act, will be permitted to use Workers' Compensation leave for absences from work resulting from the employee's occupational injury or occupational disease arising out of the course and scope of employment with the City, until it is determined that the employee is no longer eligible to receive temporary disability benefits pursuant to the Act.

B. Workers' Compensation leave is unpaid leave, except to the extent an employee elects to use available paid leave. An employee may use any available paid leave to make up the difference between eighty percent (80%) of the employee's gross salary and the temporary disability benefits paid under the provisions of the Act.

12-34 Applicability of the FMLA

A. The department or agency shall designate an employee's salary continuation leave and/or Workers' Compensation leave as FMLA leave if the requirements of the applicable Career Service and Federal statutes and regulations are met.

B. If an employee's salary continuation leave and/or Workers' Compensation leave is also designated as FMLA leave, the salary continuation leave and/or Workers' Compensation leave shall run concurrently with the FMLA leave.

12-35 Maintenance of Benefits

An employee who is absent from work on salary continuation leave or Workers' Compensation leave is:

A. Eligible to have the City continue paying its share of the employee's health, dental, and life insurance premiums during the period of salary continuation and/or Workers' Compensation leave, so long as the employee continues to pay his or her share of the insurance premiums.

B. Eligible to earn paid leave as provided in these rules;

12-36 Termination of Workers' Compensation Leave Eligibility

A. Employees who are no longer eligible for temporary benefits under the Act are not eligible to continue receiving Workers' Compensation leave.

B. If the employee's permanent restrictions prohibit the employee from returning to work full-time and/or full-duty after having reached Maximum Medical Improvement ("MMI"), the City shall initiate the interactive process as provided in this Rule 12, within twenty (20) days of the expiration of the employee's eligibility for salary continuation leave or Workers' Compensation leave, unless the employee is also on FMLA leave.

C. Employees who are still receiving temporary benefits under the Act may lose their eligibility for Workers' Compensation leave before reaching MMI if it is determined that they will be unable to return to work in any capacity. Such determination shall be made by the ADA Coordinator, after consulting with representatives from the City Attorney's Office and the City's Workers' Compensation Unit. Once this determination is made, the City shall initiate the interactive process as provided in this Rule 12, within twenty (20) days of the expiration of the employee's eligibility for salary continuation leave or Workers' Compensation leave, unless the employee is also on FMLA leave.

Section 12-40 The ADA Interactive Process

12-41 Policy

A. It is the policy of the City to provide equal employment opportunity to qualified individuals with disabilities. This rule is intended to comply with and be interpreted consistently with the Americans with Disabilities Act of 1990 ("ADA"), as amended. In case of a conflict between this rule and the ADA (and its corresponding regulations), the ADA will control. Additional information about the ADA may be found on the Equal Employment Opportunity Commission's website, www.eeoc.gov.

B. No appointing authority, official, supervisor or employee shall discriminate against a qualified individual on the basis of disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, or any terms, conditions, or privileges of employment.

12-42 ADA Definitions

A. ADA Coordinator: Person or persons designated by the OHR Executive Director to act on behalf of the OHR in the Interactive Process (IAP).

B. Vacant position: An empty position that a department or agency is authorized to fill and intends to fill.

12-43 Interactive Process (IAP)

A department or agency shall provide a reasonable accommodation to the known physical or mental limitations of an otherwise qualified individual with a disability who is an applicant or employee, unless it can be demonstrated that the accommodation would impose an undue hardship on the operation of the department or agency, or pose a direct threat to any person. These determinations with regard to employees shall be made through the IAP. The process for accommodating applicants can be found in Rule 3 **RECRUITMENT AND SELECTION.**

A. The City shall initiate an IAP when:

1. An employee provides notice that the employee needs a reasonable accommodation to perform the essential functions of the employee's position; or

2. The employee's department or agency has actual or constructive notice that an employee may have a disability for which the employee needs reasonable accommodation.

B. The IAP shall be a flexible, informal process that involves the department or agency, the employee and the ADA Coordinator, and requires the good faith participation of all parties. The ADA Coordinator may terminate the IAP if the employee fails to cooperate in the process.

C. The purpose of the IAP shall be to determine if:

1. The employee has a disability within the meaning of the ADA;

2. If so, whether the employee needs a reasonable accommodation to perform the essential duties of his or her job, or another job; and

3. If so, whether the employee can be reasonably accommodated.

D. In order to make this determination, the ADA Coordinator may request and review medical records and other documentation in the possession, custody, or control of the employee's health care providers. The ADA Coordinator may also obtain an independent medical evaluation for the purpose of gathering information needed to make this determination. Such examinations and evaluations shall be reasonable and paid for by the department or agency where the employee is presently employed.

E. If the employee is determined to have a disability as defined in the ADA, the ADA Coordinator, department or agency, and the employee shall endeavor to identify any reasonable accommodations the employee may need to be able to perform the essential functions of his or her position. The preferred option always shall be a reasonable accommodation that allows the employee to remain in his or her existing job.

F. If the employee is determined not to have a disability as defined in the ADA, or it is determined that the employee cannot be reasonably accommodated, the ADA Coordinator will end the IAP and disqualification proceedings may be initiated by the employee's department or agency if the employee remains unable to perform the essential functions of his or her position.

12-44 Re-assignment:

A. 1. If the ADA Coordinator determines that an employee with a disability cannot be reasonably accommodated in his or her current position; the employee expresses an interest in remaining employed with the City; and the employee's restrictions allow the employee to be reasonably accommodated in other positions, the ADA Coordinator shall explore re-assignment to a vacant position as a possible reasonable accommodation.

2. This determination shall be communicated in writing to the employee as soon as possible after it has been made.

3. The ADA Coordinator shall look for positions that are vacant and become vacant during the three (3) months immediately following this written communication.

4. The ADA Coordinator shall terminate the IAP before the end of the three-month period if the employee withdraws his or her request for re-assignment, or if the employee accepts an IAP re-assignment.

B. Re-assignment is not available:

1. To a position that constitutes a promotion. If the employee originally took a demotion as an ADA re-assignment, the ADA Coordinator may consider positions above the employee's current pay grade if the employee is eligible for re-promotion (as defined in Rule 5 **APPOINTMENTS AND STATUS**) to that position and is able to perform the essential functions of that position with or without accommodations. This does not preclude an employee from applying for promotions within the Career Service;

2. To job applicants who are not currently City employees.

C. 1. The ADA Coordinator's priority is to identify vacant positions that are equivalent to the employee's current position in terms of pay and benefits, first in the employee's department or agency, and then in other departments or agencies.

2. If no equivalent positions exist, the ADA Coordinator's next priority is to identify vacant positions of lower pay and benefits, first in the employee's department or agency, and then in other departments or agencies.

3. If no vacant positions become available during the three-month re-assignment period, the ADA Coordinator shall terminate the IAP and disqualification proceedings may be initiated by the employee's department or agency.

D. 1. The ADA Coordinator shall analyze the employee's specific experience, skills and background, and the specific job duties of the vacant position. The employee does not need to be the best-qualified individual for the position in order to be re-assigned to it.

2. The ADA Coordinator shall provide the employee with information about all vacancies for which the employee:

a. Meets the minimum education, experience and licensing or certification requirements; and

b. Is able to perform the essential functions with or without accommodations.

3. The employee may express his or her preference regarding the selection of a re-assignment position. However, the ADA Coordinator is free to choose the re-assignment position to be offered to the employee.

E. An employee with a disability may decline a re-assignment appointment that is a demotion and request that the ADA Coordinator continue looking for vacant positions within the three-month time period. However, if an employee declines an offer of a transfer to a comparable position in terms of salary and benefits, the ADA Coordinator shall terminate the IAP and disqualification proceedings may be initiated by the employee's department or agency.

F. A department or agency to which an employee with a disability is being re-assigned is required to cooperate with the re-assignment process coordinated by the ADA Coordinator and accept the re-assignment of that employee through the IAP. However, the department or agency may file a request to the OHR Executive Director to review the re-assignment placement within five (5) calendar days of the re-assignment notice if the department or agency reasonably believes that the employee will not be able to perform the essential functions of the position with or without reasonable accommodation.

G. If an employee is re-assigned to either an equivalent or demotion position, the employee shall continue to receive the pay rate he or she earned in the former position unless this exceeds the range maximum of the pay range of the new classification, in which case the employee shall receive the range maximum of the pay range of the new classification.

H. 1. The department or agency shall take all necessary steps to train the re-assigned employee in the duties of the position re-assigned, as it would do with any new employee.

2. Re-assigned employees shall be provided any reasonable accommodation necessary for the employees to perform the essential functions of the new position.

I. 1. If an employee with a disability is re-assigned to a vacant position and the department or agency subsequently determines that the employee with a disability is unable to perform the essential functions of the position, with or without reasonable accommodation, the IAP will be resumed from the beginning.

2. The IAP need not be resumed if the employee has performance problems in the position that are unrelated to his or her disability, or if the employee is dismissed as a corrective measure for misconduct.

12-45 Re-assignment of Classified Service Employees

A. A Classified Service employee (police officer or fire fighter) with a disability is eligible to seek re-assignment to a vacant Career Service position as a form of reasonable accommodation if he or she cannot be reasonably accommodated in his or her Classified Service position. Should a Classified Service employee with a disability be re-assigned to a vacant Career Service position as a form of reasonable accommodation, the employee will no longer be a Classified Service employee, but instead will be a new Career Service employee.

B. Under this circumstance, the employee will be entitled to the pension given to Career Service employees after the appropriate number of years of service for vesting within the Career Service system. The employee is not entitled to retroactive vesting for this pension for his or her years of service as a Classified Service employee. This rule does not prohibit the employee from purchasing service credits subject to procedures established by the Denver Employees Retirement Plan.

C. The employee's sick and vacation days that he or she accrued as a Classified Service employee will not be carried over to the new Career Service position; however, the employee will be given monetary payment for such leave upon separating from the Classified Service, in accordance with the Police or Fire Department's rules and regulations and collective bargaining agreement then in effect. The employee shall accrue paid time off as a new Career Service employee.

12-46 ADA Leave

A. ADA leave shall be provided:

1. During the IAP if an employee is unable to perform the essential functions of his or her existing job;

2. During any period of leave that is provided to the employee as a reasonable accommodation as a result of the IAP.

B. ADA leave is unpaid leave, unless an employee elects to substitute available paid leave for unpaid ADA leave.

12-47 Retaliation and Coercion

A. It is a violation of this rule to discriminate against any individual because that individual has opposed any act or practice prohibited by this rule or because that individual filed a grievance or appeal, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing to enforce any provision contained in this rule.

B. It is a violation of this rule to coerce, intimidate, threaten, harass or interfere with any individual in the exercise or enjoyment of, or because that individual aided or encouraged any other individual in the exercise of, any right granted or protected by this rule (including, but not limited to, making a request for a reasonable accommodation).

12-48 Confidentiality and Record Keeping

Any medical information obtained about an employee during the IAP shall be collected and maintained on separate forms and in separate files and be treated as confidential, except that:

A. Supervisors, managers, human resources personnel and other City employees involved in the IAP may obtain access to such information on a need to know basis.

B. Supervisors, managers, human resources personnel and other appropriate City employees may be informed regarding necessary restrictions on the work or duties of an employee and necessary accommodations.

C. First-aid and safety personnel may be informed if the disability requires emergency treatment.

D. Information may be given to the state workers' compensation offices, and state second injury funds, in accordance with the state workers' compensation laws.

RULE 13
PAY FOR PERFORMANCE
(Revised May 12, 2017; Rule Revision Memo 26D)

Purpose statement:

The purpose of this rule is to explain the performance review program and how the individual performance of eligible Career Service employees is evaluated, reported and rewarded with merit increases and merit payments.

Section 13-10 Definitions:

A. Eligible Employee: All Career Service employees are eligible for merit increases and merit payments as provided in this Rule, except:

1. On-call employees;

2. Employees holding positions in the Training pay schedule, which only has one pay rate;

3. Employees who hold positions in classifications contained in the Undersheriff pay schedules; and

4. Employees hired in the Career Service after September 30th of the previous year.

B. Merit Increase: Periodic increase to an employee's base rate of pay as determined by an employee's performance rating and location in the applicable pay range.

C. Merit Payment: Lump sum payment is a percentage of an employee's current annual base salary. A merit payment will not increase an employee's base rate of pay.

D. Performance Improvement Plan ("PIP"): A document which may be used at any time during an employee's evaluation period to supplement the employee's individual goals that may include, but is not limited to, levels of performance that must be achieved to obtain a successful rating, current performance deficiencies, support that may be provided by the department or agency, actions the employee must take to address the performance deficiencies, and a timeline for completion of the actions.

Section 13-20 Goal Setting and Performance Reviews

13-21 Purpose

The purposes of goal setting and performance reviews are to outline job expectations, establish performance outcomes and measures, encourage and support professional development, provide ongoing performance feedback, and evaluate performance in a timely manner.

13-22 Written Goal Setting

An eligible employee's supervisor shall work with the employee to identify the goals for the performance outcomes and measures against which the employee's performance is evaluated every year. This shall be done annually for current employees, as well as upon appointment to a new position, or the assignment of substantially different duties to an employee. These goals shall be provided to the employee in writing.

13-23 Performance Reviews

A. All eligible employees shall have their performance for the previous calendar year formally evaluated and rated in a written performance review. This evaluation shall occur once every year according to the schedule attached as Appendix A.

1. Eligible employees who have been absent from their position for less than a calendar year shall have their performance evaluated based on the time they were present at work.

2. Eligible employees who have been on a leave of absence from their position for all of the preceding calendar year shall have their pay adjusted to reflect what they would have received with a "Successful" merit increase set at the mid-point of the applicable range for the quartile containing the employee's pay rate.

B. Whenever an eligible employee changes supervisors, the employee's former supervisor should evaluate the employee's performance in relation to the employee's goals. Each goal should be rated individually, and no overall rating is required. If the change in supervisors is the result of the employee's former supervisor terminating employment with the City, the next level manager is responsible for evaluating the employee's performance. These ratings shall cover the period from the beginning of the year until the effective date of the change in supervisors.

1. The employee's current supervisor, as well as the employee, will receive the interim evaluation electronically.

2. At the end of the evaluation year, the employee's current supervisor shall prepare a performance review for the entire calendar year. This performance rating should take into account the information provided by the previous supervisor, and the employee's current performance in proportion to the time spent in each assignment.

Section 13-30 Performance Review Process

13-31 Performance Ratings

A. An eligible employee's overall performance shall be evaluated in an employee's review as one of the following:

Rating	Rating Name	Definition
5	Exceptional	Consistently delivers outcomes rarely achieved by others. Always exceeds standards. This rating is a special commendation for the employee who offers truly outstanding overall performance.
4	Exceeds Expectations	Consistently exceeds expected job requirements and frequently surpasses established goals. Delivers outcomes that are superior the majority of the time. This rating recognizes overall performance that consistently exceeds standards.
3	Successful	Consistently achieves expected job requirements and established goals. Employee is a solid contributor to the success of the department and the City and County of Denver by completing expected outcomes.
2	Below Expectations	Meets many, but not all established goals and job requirements. Outcomes are generally less than expected, with improvement required in one or more specific area affecting their performance or behavior.
1	Unacceptable	Work does not meet job expectations in most, if not all, areas. This is considered a rating where significant improvements are immediately required in overall performance.

B. "Unacceptable" Rating Procedure:

1. If an eligible employee's annual performance evaluation rating is expected to be "Unacceptable," the department or agency shall advise the employee of the expected rating a reasonable time in advance, but not less than seven (7) calendar days prior to the date of the meeting scheduled to discuss the employee's performance review, and shall allow representation at this meeting in accordance with the provisions of Rule 16 **CODE OF CONDUCT AND DISCIPLINE**.

2. The employee shall be provided with a PIP no later than ten (10) calendar days after the date of the meeting regarding the employee's "Unacceptable" rating.

13-32 Merit Increases and Merit Payments

A. The funding for merit increases and merit payments is provided in the annual appropriation ordinance. The pay increase associated with a particular performance rating shall be reviewed annually and adjusted as necessary to reflect prevailing practices in the community. The award of merit increases and merit payments is contingent upon this annual appropriation being approved by City Council and the Mayor. In case of a conflict between ordinance and these rules, the ordinance will prevail.

B. 1. Departments and agencies are responsible for determining the percentage increase associated with each employee rating within each quartile. The percent increase for all eligible employees shall average 3.3% for merit increases and merit payments delivered in 2017.

2. When there is a change to an employee's pay rate on the same effective date as the merit increase, the merit increase will be applied before any other pay rate change(s).

C. Merit Table:

1. Eligibility for merit increases and merit payments is based on an eligible employee's overall annual performance rating as measured by a performance review and the quartile in which the employee's salary is found in accordance with the following table:

Performance Rating Category	Merit Increases for Salaries in the 1st Quartile	Merit Increases for Salaries in the 2nd Quartile	Merit Increases for Salaries in the 3rd Quartile	Merit Increases for Salaries in the 4th Quartile	Salaries at or Above Pay Range Maximum
5. Outstanding (Exceptional for 2017 ratings)	3.7-4.5%	4.3-5.1%	3.7-4.5%	3.1-3.9%	2.5% - 3.3% Lump Sum Merit Payment
4: Exceeds Expectations	3.1-3.9%	3.7-4.5%	3.1-3.9%	2.5-3.3%	1.9% - 2.7% Lump Sum Merit Payment
3: Successful	2.5-3.3%	3.1-3.9%	2.5-3.3%	1.9-2.7%	0.0%
2: Below Expectations	0.0%	0.0%	0.0%	0.0%	0.0%
1: Failing (Unacceptable for 2017 ratings)	0.0%	0.0%	0.0%	0.0%	0.0%

2. No eligible employee shall receive a merit increase that exceeds the range maximum of the pay grade assigned to the employee's job classification. If the application of this sub-paragraph results in an employee receiving a merit increase that is less than the percentage increase awarded to the employee, the employee shall receive the difference between the merit increase awarded and the merit increase received in the form of an additional merit payment.

D. In the case of a declared fiscal emergency by the Mayor, and upon the request of the Mayor, there will be no merit increases or merit payments awarded for increments of at least one year. During the declared fiscal emergency appointing authorities, managers and supervisors shall complete performance reviews for eligible employees, but no merit increases or merit payments will be awarded during this time.

13-33 Pro-ration for New Hires

Employees hired after January 1st and on or before September 30th will have their merit increase pro-rated to the employee's start date.

13-34 Effective Date of Merit Increase

A. Merit increases and merit payments will be calculated from an employee's annual base salary as of the Saturday before the first Sunday of the calendar year and be effective on the first Sunday of the calendar year for eligible employees who were employed in the Career Service on December 31st of the previous year.

B. An employee's merit increase shall not be included as part of another pay change (such as a promotional increase), and must be applied as a separate merit increase.

13-35 Performance Review Schedule

Departments and agencies shall submit proposed merit increases and merit payments to the Office of Human Resources ("OHR") as provided in the schedule attached as Appendix A.

13-36 Review of Performance with Employee

Each employee's written performance review shall be reviewed with the employee as provided in the schedule attached as Appendix A.

13-37 Official Records

The annual performance review and any supporting documentation shall be made a permanent part of the employee's official personnel record.

13-38 Discipline

The written performance review and/or PIP(s) may be used as a basis for disciplinary action under Rule 16 **CODE OF CONDUCT AND DISCIPLINE**, up to and including dismissal, if an employee's performance fails to comport with the standards set forth in any of these documents.

13-39 Grievances and Appeals Relating to Performance Reviews

A. An eligible employee may grieve any performance rating pursuant to Rule 18 **DISPUTE RESOLUTION**.

B. An eligible employee may appeal a grievance of an "Unacceptable" rating in accordance with Rule 19 **APPEALS**. Appeals of grievances of other ratings are not permitted.

C. An eligible employee may not grieve or appeal any other aspect of the performance review program.

APPENDIX 13.A

2016 PERFORMANCE REVIEW SCHEDULE

DUE DATE	TASK
December 16, 2016	Deadline for performance evaluations for the 2016 calendar year to be completed by supervisors and managers.
January 13, 2016	Deadline for appointing authorities to submit merit increase and merit payment recommendations to the OHR. All eligible employees must be accounted for in these recommendations. The percent increase for all eligible employees in a department or agency should average 3.3% for merit increases and merit payments delivered in 2017.
February 24, 2017	Merit increases and merit payments appear on employee paychecks.
March 10, 2017	Merit increases and merit payments are paid retroactively for the period from January 1st until March 10th.

This Appendix is provided for informational purposes and is not considered a part of the Rules.

RULE 14
SEPARATION OTHER THAN DISMISSAL

(Revised September 16, 2016; Rule Revision Memo 20D)

Purpose Statement:

The purpose of this rule is to define the circumstances and processes by which an employee in the Career Service may be separated from employment other than by dismissal.

Section 14-10 Types of Separation Other Than Dismissal

A. The separation of an employee from the Career Service other than by dismissal shall be designated one of the following:

1. Resignation;

2. Retirement;

3. Death;

4. Disqualification;

5. Separation of employees holding at-will, trainee or intern probationary, or employment probationary status;

6. Lay-off.

B. 1. Written notices required under this Rule 14 shall be served on the employee either in person or by courier with a certificate or proof of delivery; by first class U.S. mail or other commercial delivery service, with a certificate of mailing to the employee's last known address; or by e-mail if the employee requests service by e-mail in writing.

2. If documents are delivered by email, the party sending the email shall retain both an electronic and a hard copy of the email including the sender, date, subject, and the address to which the email was sent.

C. The personnel action shall show the type of separation and the employee's last day as a City employee. The effective date of the separation shall be the day after the employee's last day as a City employee.

D. Employees who separate from employment with the City shall receive payment for all compensatory time, paid time off, and vacation and sick leave, for which they are eligible according to the provisions of Rule 9 **PAY ADMINISTRATION** and Rule 10 **PAID LEAVE**.

E. A separation of an employee under this Rule 14 is considered to be a separation without fault. An employee who has been separated under this Rule 14 may be considered for re-employment without examination as provided in Rule 3 **RECRUITMENT AND SELECTION.**

Section 14-15 Designees

Appointing authorities, including the Office of Human Resources ("OHR") Executive Director, may delegate any authority given to them under this Rule 14 to a subordinate employee except the authority to sign and submit lay-off plans to the OHR.

Section 14-20 Resignation

A. Resignation is the voluntary separation by an employee from the Career Service.

B. Notice to supervisor: It is the responsibility of an employee who plans to resign in good standing from the Career Service to provide written notice to his or her immediate supervisor at least ten (10) calendar days in advance of the employee's last day as a City employee. The appointing authority may waive this requirement for good and sufficient reasons.

C. Job abandonment: An employee's failure to report for his or her assigned shift and notify his or her immediate supervisor of the absence prior to the start of his or her shift for three (3) consecutive work days may be called "job abandonment" and treated like a resignation. The required signature of the employee on the resignation shall be waived. Instead, the appointing authority shall file a statement indicating how the conditions of this paragraph have been met.

D. Appointing authorities are responsible for approving or disapproving employee requests to use paid or unpaid leave (unless otherwise provided in these rules) between the time notice of resignation is given and the employee's last day as a City employee.

Section 14-21 Retirement

Any employee in the Career Service may designate his or her resignation as a retirement when he or she meets the eligibility requirements of the Denver Employees Retirement Plan.

Section 14-25 Death

In the case of a separation caused by the death of an employee, the employee's last day as a City employee shall be the date of death.

Section 14-30 Disqualification

Disqualification is an involuntary, no-fault separation of an employee, based on a legal, physical, or mental impairment or incapacity of the employee, occurring or discovered after appointment, which prevents performance of the essential functions of the position with or without accommodation.

14-31 Grounds for Disqualification

An employee may be disqualified if any of the following conditions occur:

A. Physical or mental impairment or incapacity:

1. When an employee is unable to perform the essential functions of the position because of mental or physical impairment or incapacity, with or without reasonable accommodation.

2. Before an employee can be disqualified because of a physical or mental impairment or incapacity, the employee's department or agency must have initiated the interactive process under the Americans with Disabilities Act of 1990 (ADA), as amended (described in Rule 5 **APPOINTMENTS AND STATUS**), and the ADA Coordinator must have concluded the process and referred the employee's case back to the department or agency without making an accommodation because no reasonable accommodation was available or an offered reasonable accommodation was refused by the employee.

B. Licensure, certification and other legal requirements:

1. When laws require a license, certification, or other authorization by a federal, state or local governmental entity to perform the essential functions of a position and the employee does not have the required authorization.

2. An employee shall be relieved immediately of any duties requiring a license, certification, or other legal authorization if the employee lacks such license, certification, or other legal authorization. If the license, certification, or other legal authorization is required to perform the essential functions of the position, the employee shall be immediately placed on unpaid leave, unless the employee elects to substitute available paid leave for the unpaid leave. The employee's pay or classification shall not otherwise be affected prior to the completion of the disqualification proceedings.

14-32 Procedure

A. The appointing authority shall follow procedures similar to contemplation of discipline meetings before taking any action on the disqualification.

B. The final notice of disqualification shall contain the same statement of the reason for the disqualification as contained in the contemplation of disqualification letter. Substantial amendments or additions are permitted only by repeating the contemplation of disqualification notice and meeting procedure. The final notice shall also contain a notice that the employee may appeal the disqualification.

C. The appointing authority shall give the employee written notice of disqualification on or before the employee's last day as a City employee.

Section 14-40 Separation of Employees Holding At-will, Trainee or Intern Probationary, or Employment Probationary Status

A. An employee holding at-will, trainee or intern probationary, or employment probationary status may be separated at any time in accordance with Rule 5 **APPOINTMENTS AND STATUS**. Such separation may only be appealed on the grounds of alleged discrimination or when the employee has alleged a violation of the City's "Whistleblower Protection" ordinance, in accordance with Rule 19 **APPEALS**.

B. The employee shall be given written notice of separation on or before the employee's last day as a City employee.

C. Employees holding on-call, trainee or intern probationary, or employment probationary status may also be dismissed as provided in Rule 16 **CODE OF CONDUCT AND DISCIPLINE**.

Section 14-50 Lay-off

14-51 Definition
(Revised February 21, 2017; Rule Revision Memo 25D)

A layoff is the abolishment of a filled position as further defined in Career Service Rule 1 **DEFINITIONS**.

14-52 Order of Lay-off

A. Lay-off unit: Lay-offs shall be determined by lay-off unit. (Revised February 21, 2017; Rule Revision Memo 25D)

B. Consolidation of Appropriation Accounts:

1. The Career Service Board ("Board") may consolidate appropriation accounts or appropriation sub-accounts within a department into one lay-off unit if it can be shown that there is a high correlation between the activities of one unit of the department and others proposed to be consolidated.

2. The Board may reverse the consolidation of appropriation accounts or appropriation sub-accounts making up one lay-off unit, or break a lay-off unit consisting of one appropriation account into sub-accounts or combinations of sub-accounts, based on business functions demonstrated by the department or upon a showing that circumstances giving rise to the consolidation are no longer applicable.

3. A request for such consolidation or de-consolidation of appropriation accounts may be initiated by appointing authorities, employees, or the OHR Executive Director and shall be determined by the Board only after interested parties have been given an opportunity to be heard at a public hearing in accordance with Rule 2 **OFFICE OF HUMAN RESOURCES**.

4. Changes to lay-off units must be approved a minimum of forty-five (45) days prior to the effective date of the lay-off.

C. Appointing authority designates positions: The appointing authority shall determine the number of positions by class which are to be abolished within the lay-off unit.

D. Relation of positions to incumbents in lay-off: When lay-off is involved, there is no relation between the positions which are abolished and the incumbents of those positions. The order of lay-off is according to this Rule 14.

E. Establishment of lay-off groups: After separating all at-will status employees and abolishing all vacant positions in the class, the appointing authority shall divide the employees in the class where positions are being abolished into the following groups:

Group A - Employees whose total length of service is up to five years;–

Group B - Employees whose total length of service is five years and up to ten years;

Group C - Employees whose total length of service is ten years and up to fifteen years;

Group D - Employees whose total length of service is fifteen (15) years or more.

These lay-off groups are for the purpose of determining proficiency adjustments as covered in paragraph 14-54 C. Effect of Proficiency.

F. Effect of special qualification on lay-off group: When an employee possesses a significant and unique skill which cannot readily be learned by another employee and which is essential for the performance of the duties of the position, the OHR Executive Director, after thorough review and investigation, may determine that the possession of such a skill shall justify excusing the employee from the operation of this lay-off rule. If two or more employees are determined to possess this skill, the other provisions of this subsection 14-52 Order of Lay-off shall apply to determine which employee(s) will be affected by the lay-off.

14-53 Length of Service

A. General rule: For lay-off purposes, length of service shall mean the total number of years, months, and days of continuous service in any class under career service. This computation shall include time on leave, including unpaid leave, but shall not include service in any on-call or limited position.

B. Additional length of service credits from military service: Pursuant to the Colorado Constitution, Article XII, Section 15 (See Appendix A), military service shall be added to the length of service for lay-off purposes under the following conditions:

1. General provision on military service credits eligibility: The amount of military service credited shall be the total number of years, months, and days served in the following situations, other than for training purposes:

a. Service in any branch of the armed forces of the United States during any period of any declared war or any undeclared war or other armed hostilities against an armed foreign enemy; or

b. Service on active duty in any such branch in any campaign or expedition for which a campaign badge is authorized.

2. Other provisions regarding military service credits:

a. For employees who have completed twenty (20) or more years of active military service, no military service shall be counted in determining length of service for lay-off purposes.

b. For employees who have completed less than twenty (20) years of active military service, eligible military service credits shall not exceed ten (10) years.

c. Employees who were granted leave of absence without pay for the purpose of serving on active military duty as defined in paragraph 14-53 B Additional length of service credits from military service shall not be credited with military service time, but shall have the leave of absence without pay included in determining their length of service.

d. To be eligible for military service credits, employees must have been separated from such service under honorable conditions.

e. Employees whose spouse died while serving or as a result of a service-connected cause are also eligible for military service credits as defined and limited above.

3. Proof of eligibility for military service credits: Proof of eligibility for military service credits shall be established in accordance with the provisions of Article XII, Section 15 (2) of the Colorado Constitution.

C. Former Merit System employees: Employees transitioned from the merit system to Career Service under the Human Services Department transition charter amendment effective January 1, 1999 shall be given credit for continuous service as follows:

1. At the time of the lay-off, employees who are assigned to the Department of Human Services and have been continuously assigned to said department since January 1, 1999 shall have their length of service calculated from the date the employee was employed with the merit system.

2. After January 1, 1999, employees who voluntarily transfer to another department in the city shall have their length of service calculated from the date of continuous service with the City and County of Denver, provided that employees who involuntarily transfer to another department shall have their length of service calculated pursuant to the previous subparagraph.

D. Election Commission transition: Election Commission employees who are appointed to Career Service Election Division positions pursuant to the charter amendment effective July 16, 2007 shall be given credit for continuous service as follows:

1. At the time of the lay-off, employees who hold positions in the Election Division and have been continuously employed in this agency since July 16, 2007 shall have their length of service calculated from the date the employee's continuous service in a full or part-time position with the City began.

2. After July 16, 2007, Election Division employees who voluntarily accept an appointment to a position in another department in the City shall have their length of service calculated from the date of continuous service with the Career Service, provided that employees who are involuntarily moved to another department shall have their length of service calculated pursuant to the previous subparagraph.

E. Office of Telecommunications transition: Employees of the Office of Telecommunications as of July 31, 2011, who are subsequently appointed to Career Service positions in Technology Services shall be given credit for continuous service as follows:

1. At the time of the lay-off, such employees who hold positions in Technology Services and have been continuously employed in this office since August 1, 2011 shall have their length of service calculated from the date the employee's continuous service in a full or part-time position with the City began.

2. After August 1, 2011, such employees of Technology Services who voluntarily accept an appointment to a position outside of Technology Services shall have their length of service calculated from the date of continuous service with the Career Service, provided that employees who are involuntarily moved to another department shall have their length of service calculated pursuant to the previous subparagraph.

14-54 Sequence of Lay-offs

A. General: Employees in unlimited positions in Group A shall be laid off before employees in Group B, employees in Group B before employees in Group C, etc.

B. Effect of military service credits: Employees eligible for military service credits, who have the same or greater length of service, shall be placed higher in rank order than employees who are not eligible for military service credits.

C. Effect of Proficiency:

1. Employees eligible for military service credits shall have their rank order determined solely on the basis of seniority.

2. Within lay-off groups, the appointing authority may choose to rank employees on their knowledge, skills, abilities, expertise and/or documented performance ("proficiency") and place employees with greater proficiency above employees with longer length of service who are not eligible for military service credits. In no event may a more proficient employee be placed higher than an employee with longer length of service who is eligible for military service credits. The OHR must review and approve the criteria and procedures used to determine proficiency as part of its responsibility to audit and approve the lay-off plan as set forth in paragraph 14-56 B.

3. Within lay-off groups, the appointing authority may place the less proficient employee below employees with the lesser length of service. In no event, however, shall an employee eligible for military service credits be placed lower than an employee with lesser length of service.

14-55 Actions in Lieu of Lay-off

A. Reassignment or transfer appointment: An employee selected to be laid off shall be given a transfer appointment to any vacancy for which qualified within the lay-off unit, subject to paragraphs 14-55 C, D and E.

B. Demotional Appointment

1. General: An employee selected to be laid off shall be entitled to a demotional appointment to an existing position in the same lay-off unit in a class below the employee's present class which is the highest ranking class meeting each of the following conditions:

a. The employee possesses the knowledge, skills, ability, and expertise to perform the essential duties of the position;

b. The class is in the same class series as the employee's present class, or the employee previously held a position in such class; and

c. The employee's total length of service as defined in subsection 14-53 Length of Service must be greater than that of at least one (1) of the incumbents in the class; or there must be a vacancy in the class.

2. Effect on incumbent of position to which demotional appointment is made: When it has been determined that a demotional appointment to a filled position in the lay-off unit which meets the criteria in subparagraph 14-55 B.1 General, should take place, the person in the class of such position who has the shortest length of service as defined in subsection 14-53 Length of Service shall be the employee who is laid off. The employee in the lower class shall be entitled to actions in lieu of lay-off pursuant to this subsection 14-55.

C. Effect of special qualifications: If a vacancy in a position in a pay grade with the same job rate, or if the position in the class to which such employee is to be given a demotional appointment, is one which requires a special skill as defined In paragraph 14-52 F Effect of special qualification on lay-off group, The OHR Executive Director, after thorough review and investigation, may designate the possession of such skill as a qualification for a demotional appointment to that position.

D. Effect of position type: If the person designated to be laid off holds a full-time unlimited position, and the position which meets the provisions of paragraphs 14-55 A or B.1 is a part-time, on call, or limited position, the employee shall be offered a choice of the part-time, on call, or limited position, or the highest available full-time unlimited position meeting the qualifications of paragraph 14-55 B.1, for which qualified.

E. Reassignment to limited position: If there are limited positions in the same class in the lay-off unit, an employee selected to be laid-off shall be given the choice of being reassigned to a limited position in lieu of lay-off, even though it is necessary to separate another employee from that position. This offer shall be made regardless of the length of service of the employee in the limited position. This reassignment shall not result in removal of the employee from the re-instatement list or lists as defined in Rule 3 **RECRUITMENT AND SELECTION**.

F. Voluntary action in lieu of lay-off: Employees who demote to a position other than the one described in paragraph 14-55 B or who resign during a period of agency lay-offs, and these actions occur prior to the actual lay-off date, may retain their re-instatement rights pursuant to the following procedure:

1. All demotions and separations during periods of lay-off will be examined to determine the causes of the transaction. Appointing authorities are asked to aid this process by entering an appropriate statement in the Remarks Section of the Personnel Action when a voluntary demotion or separation is the direct result of current lay-off proceedings.

2. If the OHR determines that the demotion or separation is in lieu of lay-off, it will place the employee's name on the appropriate re-instatement list.

3. Such actions in lieu of lay-off shall be considered to be voluntary actions and pay shall be set in accordance with the provisions of Rule 9 **PAY ADMINISTRATION** governing voluntary demotions.

14-56 Notice of Lay-Off

A. Lay-off planning: Lay-off planning, including actions in lieu of lay-off, is the responsibility of the appointing authority. However, the OHR is available for procedural assistance and consultation as soon as the appointing authority has decided the number of positions by class to be abolished.

B. Audit and approval of lay-off plan: Before an official notice of lay-off is given in accordance with this Rule 14, a written lay-off plan for the lay-off unit signed by the appointing authority shall be submitted to the OHR and shall have been audited and approved in writing by the OHR Executive Director for conformance to Section 14-50 Lay-Off of these rules, including all sub-sections thereof. In the case of a lay-off in the OHR, the lay-off plan shall be signed by the manager responsible for the lay-off unit affected by the lay-off.

C. Thirty-day notices: The appointing authority shall give final written notice of lay-off to an affected employee a minimum of thirty (30) calendar days before the employee's last day as a City employee. A copy of each such notice shall be sent to the OHR. The period of time shall be computed in accordance with Rule 19 **APPEALS**.

14-57 Re-instatement
(Revised January 3, 2017; Rule Revision Memo 23D)

A. Employees or former employees shall be placed on a re-instatement list for the classification from which they have:

1. Been laid off;

2. Transferred in lieu of lay-off when the employee has been moved from an unlimited position to a limited or on-call position, or from a full-time position to a part-time position;

3. Demoted in lieu of lay-off;

4. Voluntarily resigned in lieu of lay-off; or

5. Voluntarily demoted in lieu of lay-off.

B. Eligible employees or former employees will be listed for one year unless removed for cause.

C. Eligible employees or former employees shall be listed by seniority, or by proficiency (to the extent it was used as a basis for the employee's lay-off) so that the employee with the longest length of service is higher on the list.

D. Re-instatement lists shall only be used within the Lay-off Unit that the employee or former employee was in when the lay-off took place.

E. Referral from the re-instatement list is mandatory and exclusive. No other referral shall be made while any eligible employees or former employees remain on this list. Referral shall consist of the highest ranking eligible employee or former employee, or if there are ties, all those at the highest ranking.

F. If a re-instatement list exists for a classification in which the department or agency has a job with a special qualification which has been approved by the OHR Executive Director, referral shall consist of the highest ranking eligible employee or former employee who has the special qualification, or if there are ties, all those with the required special qualification at the highest ranking. If none of the eligible employees or former employees have the required special qualification, a referral shall be made in accordance with the rules applicable when there is no re-instatement list.

G. Any re-instatement list may be abolished at any time by the OHR Executive Director if the classification specification is abolished or revised.

H. Restoration of the balance of sick leave hours upon re-instatement shall be in accordance with Rule 10 **PAID LEAVE**.

14-58 Appeal

An employee who is laid off or who is demoted in lieu of lay-off may appeal the action in accordance with Rule 19 **APPEALS**.

Section 14-60 Change in Type of Separation

When additional facts are revealed that substantially alter the basis for the original decision as to type of separation, the type of separation may be changed. The OHR Executive Director, upon receipt of a written request together with documentation of the reasons for the change, will approve or disapprove the requested change in writing. Only the appointing authority who authorized the personnel action separating the employee, or his or her successor shall be authorized to request a change in the type of separation. A copy of the OHR Executive Director's written approval shall be attached to the personnel action which shall show the type of change and the reason for the change.

APPENDIX 14.A.

CONSTITUTION OF COLORADO
ARTICLE XII, SECTION 15. VETERANS' PREFERENCE

(1) (b) Five points shall be added to the comparative analysis score of each candidate who is separated under honorable conditions and who, other than for training purposes, (i) served in any branch of the armed forces of the United States during any period of any declared war or any undeclared war or other armed hostilities against an armed foreign enemy, or (ii) served on active duty in any such branch in any campaign or expedition for which a campaign badge is authorized.

(c) Ten points shall be added to the comparative analysis score of any candidate who has so served, other than for training purposes, and who, because of disability incurred in the line of duty, is receiving monetary compensation or disability retired benefits by reason of public laws administered by the department of defense or the veteran's administration, or any successor thereto.

(d) Five points shall be added to the comparative analysis score of any candidate who is the surviving spouse of any person who was or would have been entitled to additional points under paragraph (b) or (c) of this subsection (1) or of any person who died during such service or as a result of service-connected cause while on active duty in any such branch, other than for training purposes.

(e) No more than a total of ten points shall be added to the comparative analysis score of any such candidate pursuant to this subsection (1).

(2) The certificate of the department of defense or of the veteran's administration, or any successor thereto, shall be conclusive proof of service under honorable conditions or of disability or death incurred in the line of duty during such service.

(3) (a) When a reduction in the work force of the state or any such political subdivision thereof becomes necessary because of lack of work or curtailment of funds, employees not eligible for preference under subsection (1) of this section shall be separated before those so entitled who have the same or more service in the employment of the state or such political subdivision, counting both military service for which such preference is given and such employment with the state or such political subdivision, as the case may be, from which the employee is to be separated.

(b) In the case of such a person eligible for preference who has completed twenty or more years of active military service, no military service shall be counted in determining length of service in respect to such retention rights. In the case of such a person who has completed less than twenty years of such military service, no more than ten years of service under subsection (1) (b) (i) and (ii) shall be counted in determining such length of service for such retention rights.

* * * * * * * * * * *

(7) This section shall be in full force and effect on and after July 1, 1971, and shall grant veterans' preference to all persons who have served in the armed forces of the United States in any declared or undeclared war, conflict, engagement, expedition, or campaign for which a campaign badge has been authorized, and who meet the requirements of service or disability, or both, as provided in this section. This section shall apply to all public employment examinations, except promotional examination, conducted on or after such date, and it shall in all respects be self-executing.

RULE 16
CODE OF CONDUCT
AND DISCIPLINE

(Revised February 12, 2016; Rule Revision Memo 18D)

Purpose statement:

The purpose of this rule is to provide Career Service employees clear expectations for their conduct in an effort to maintain the public trust; to promote both public and workplace safety; and to establish a progressive discipline process that is governed by the principles of due process, personal accountability, reasonableness and sound business practice. This rule contains information on the following topics:

A. Delegation of authority

B. Compliance with Code of Ethics and Executive Orders

C. Harassment and discrimination

D. Employee responsibility to report charges, convictions, and nolo contendere pleas

E. Use of City facilities

F. Political activities

G. Employee organization and representation

H. Recording devices in the workplace

I. Grounds for discipline

J. Investigatory leave

K. Disciplinary process

Section 16-10 Service of Written Notice and Computation of Time

A. Written notices required to be served on an employee under this Rule 16 shall be served on the employee either in person with a certificate of hand delivery; by first class U.S. mail, with a certificate of mailing to the employee's last known address; or by e-mail if the employee requests service by e-mail in writing.

B. The computation of any time period stated in days in these rules shall be as follows:

1. The time period begins on the day after the event that triggers the time period.

2. The time period shall include all calendar days including weekends and holidays.

3. The time period ends at the close of business on the final day of the time period.

4. If the final day of the time period falls on a weekend day, a holiday, or other day when the department or agency in question is not open for business, the time period shall end on the next working day.

Section 16-15 Delegation of Authority

Appointing authorities may delegate in writing any authority given to them under this Rule 16 to a designee within his or her department or agency.

Section 16-20 Code of Conduct

16-21 Compliance with Code of Ethics and Executive Orders

A. All employees shall comply with the City Charter, the Denver Revised Municipal Code, and other applicable legal authority, including but not limited to:

1. The Denver Code of Ethics, which regulates:

a. Employment and supervision of family members;

b. Gifts to City employees;

c. Conflicts of interest while employed;

d. Outside employment or business activity; and

e. Use of public office for private gain.

2. Any provisions in the Denver Charter regarding ethical conduct of employees;

3. Any stricter or additional Code of Ethics promulgated by an employee's department or agency as authorized by the Denver Code of Ethics; and

4. Any Executive Orders governing employee conduct including, but not limited to:

   a. Executive Order No. 16 – Use of Electronic and Communication Devices and Services
   Sets terms of employee use of computers, cell phones, Internet and e-mail

   b. Executive Order No. 55 – Department Information Centers
   Regulates employee use of bulletin boards.

   c. Executive Order No. 94 – City and County of Denver Alcohol and Drug Policy
   Covers testing, training and discipline regarding employee drug and alcohol use.

   d. Executive Order No. 112 – Violence in the Workplace
   Defines improper behavior, establishes management responsibility, and discipline.

16-22 Harassment and Discrimination

A. Career Service employees have a right to work in an environment free of discrimination and harassment because of the employee's race, color, creed, religion, national origin, sex, gender identity, sexual orientation, marital status, military status, age, disability, political affiliation, or any status protected by federal, state, or local laws.

B. Types of Harassment

Harassment because of race, color, creed, religion, national origin, sex, gender identity, sexual orientation, marital status, military status, age, disability, or political affiliation, or any status protected by federal, state, or local laws, includes but is not limited to:

1. Verbal conduct such as epithets, derogatory comments, slurs, unwanted sexual advances, invitations, or comments;

2. Visual conduct such as derogatory posters, photographs, cartoons, drawings, or gestures;

3. Physical conduct such as assault, unwanted touching, blocking normal movement, or interfering with work directed at an employee because of the employee's sex, race, or other protected basis; and

4. Threats or demands to submit to sexual requests in order to keep a job or avoid some other loss, and offers of job benefits in return for sexual favors.

16-23 Retaliation Prohibited

Retaliation against employees for reporting or threatening to report harassment or discrimination or assisting the City in the investigation of any complaint is strictly prohibited. Retaliation can include, but is not limited to, such acts as refusing to recommend an employee for a benefit for which he or she qualifies, spreading rumors about the employee, encouraging hostility from co-workers, and escalating the harassment. Any employee engaging in retaliation may be subject to corrective action, up to and including dismissal.

16-24 Employee Responsibility to Report Charges, Convictions, and Nolo Contendere Pleas

The employee or the employee's representative shall report criminal charges and convictions, and nolo contendere pleas (no contest pleas) to the employee's appointing authority as soon as possible as required by this section, but no later than three (3) calendar days after the occurrence.

A. Offenses that must be reported:

1. All employees who are charged with, have entered a plea of guilty or nolo contendere on, or are convicted of any felony, misdemeanor, or any other offense which involves violence against persons, destruction of property, dishonesty, theft, or the sale or possession of illegal drugs, must report such charges, pleas, or convictions to their appointing authority.

2. In addition to the requirement set forth in subsection 1, any employee who operates a motor vehicle as part of his or her job assignment must report any citation for traffic violations, whether received on or off the job (this does not apply to parking violations).

3. Additional reporting requirements may be established by a department or agency consistent with business necessity. Such additional requirements must first be approved by the Office of Human Resources ("OHR") and approved for legality by the City Attorney's Office.

B. A conviction is the adjudication of a criminal charge through:

1. A guilty plea;

2. The acceptance of a plea bargain;

3. A finding of guilty by a judge or jury;

4. The acceptance of a deferred sentence or deferred judgment; or

5. A plea where a defendant enters a guilty plea without actually admitting guilt (Alford plea).

C. Contemplating or Imposing Discipline on an Employee Convicted of or Charged with a Crime

After notification that an employee has been charged with or convicted of a crime, the appointing authority shall follow the guidelines described below:

1. If an employee has been charged with a crime, before imposing discipline, the department or agency must determine whether there is a preponderance of evidence demonstrating that the employee engaged in the conduct which forms the factual basis for the crime with which the employee is charged. The department or agency must also consider: the nature and type of the conduct which supports the charge; the nature of the position the employee holds in the City and the relationship of the position to the facts underlying the charge; and the impact of the facts on the employee's ability to perform the position.

2. If an employee has been convicted of a crime, before imposing discipline, the department or agency must consider: the nature and type of crime for which the person has been convicted; the facts underlying the crime; the nature of the position the employee holds in the City and the relationship of the position to the crime; the impact of the facts on the employee's ability to perform the position; and any evidence of rehabilitation.

D. Record-keeping:

Records of criminal charges or convictions resulting from an employee's reporting shall not be included in the employee's personnel file unless and until disciplinary action has been taken pursuant to this Rule 16.

16-25 Use of City Facilities

Employees may not solicit or distribute any non-job-related material of any kind during working time on City property except for designated City programs.

16-26 Political Activities

A. Employees are prohibited from engaging in political activities during working hours. Employees also are prohibited from using City facilities and/or resources in connection with campaigns or other political activities.

B. City facilities and/or resources may not be used to solicit:

1. Monetary political contributions; or

2. Any other contribution of services or resources for political purposes from any officer or employee.

C. Employees shall not engage in the following activities at any time:

1. Taking any action or making any promise or threat of action to any employee because of the employee's giving or the withholding of a political contribution or service; or

2. Engaging in solicitation or politically motivated behavior that is harassing or discriminatory.

16-27 Employee Organizations and Representation

A. Career Service employees shall have the right to join or refrain from joining any organization of employees. No employee or applicant may be discriminated against, harassed or retaliated against because such person belongs, or does not belong, to a union or other employee organization.

B. Employees shall not:

1. Coerce or attempt to coerce any other employee to join or refrain from joining a union or other employee organization; or

2. Accept or offer gratuities, prizes, or other valuable items for influencing any employee to join or refrain from joining, or to vote for or against, a union or employee organization.

C. Employees in supervisory or management positions shall not make any effort to obtain members or votes for a union or any employee association.

D. The representative of an employee, including officers and business agents of unions or other associations to which an employee belongs, shall be given the same rights to speak on behalf of the employee as would be given the employee at the following meetings:

1. Contemplation of discipline meetings required under this Rule 16;

2. Contemplation of disqualification meetings required under Rule 14 **SEPARATION OTHER THAN DISMISSAL**; and

3. Meetings to discuss an "Unacceptable" rating required under Rule 13 **PAY FOR PERFORMANCE**. (Revised May 12, 2017; Rule Revision Memo 26D)

This right to representation does not extend to meetings related to the normal business activities of the department or agency, such as staff meetings.

E. The complainant and the accused may each have a representative present while being interviewed during an investigation conducted pursuant to Rule 18 **DISPUTE RESOLUTION**. However, the representative may not answer interview questions on behalf of the interviewee unless requested to do so by the interviewer.

F. Counseling Employees During Working Hours

A representative of an employee organization may visit an employee during working hours if the representative obtains the permission of the employee's immediate supervisor and such visitation does not interfere with the work of the agency.

G. Designation of Representative

1. Employees shall identify, in writing, to the person who signed the contemplation of discipline letter and the agency human resources representative, agents to represent them in a contemplation of discipline meeting, a contemplation of disqualification meeting, a meeting to discuss an "Unacceptable" rating, or in presenting a grievance or appeal. (Revised May 12, 2017; Rule Revision Memo 26D)

2. No employee may be compelled to act as the representative of another employee.

3. If the representative is also a City employee, he or she shall be allowed, with the prior approval of his or her supervisor, to take up to a maximum of four (4) hours of approved administrative leave per pay period and use any accrued paid time off, vacation leave or compensatory time, or to take leave without pay to represent employees. Any such leave shall not adversely impact the agency or department and must be approved in advance.

16-28 Recording Devices in the Workplace

Employees shall not record audio or video during work hours, when on City premises, when speaking to a City employee by phone, or when on City business without the prior permission of the employee's appointing authority.

16-29 Grounds for Discipline

The following may be cause for the discipline or dismissal of a Career Service employee:

A. Neglect of duty or carelessness in performance of duties and responsibilities.

B. Theft, destruction, or neglect in the use of City property; or property or materials of any other person or entity.

C. Unauthorized operation or use of any vehicles, machines, or equipment of the City, or of any entity having a contract with the City, including, but not limited to, the unauthorized use of the internet, e-mail, or telephones.

D. Any act of dishonesty, which may include, but is not limited to, lying, or improperly altering or falsifying records, examination answers, or work hours.

E. Accepting, soliciting, or making a bribe, or using official position or authority for personal profit or advantage, including kickbacks.

F. Failing to comply with the lawful orders of an authorized supervisor or failing to do assigned work which the employee is capable of performing.

G. 1. Failing to meet established standards of performance including either qualitative or quantitative standards. When citing this subsection, a department or agency must describe the specific standard(s) the employee has failed to meet, such as standards in the employee's individual goals or in a Performance Improvement Plan (PIP). (Revised May 12, 2017; Rule Revision Memo 26D)

2. Any employee who receives an "Unacceptable" performance rating and fails to correct his or her performance in the subsequent PIP (or PIPs), is considered to have been given an adequate opportunity to correct his or her behavior and may be dismissed without his or her appointing authority first being required to resort to progressive discipline. (Revised May 12, 2017; Rule Revision Memo 26D)

H. Intimidation or retaliation against an individual who has been identified as a witness, party, or representative of any party to any hearing or investigation relating to any disciplinary procedure, or any violation of a city, state, or federal rule, regulation or law, or against an employee who has used the dispute resolution process in good faith.

I. Failure to maintain satisfactory working relationships with co-workers and other individuals the employee interacts with as part of his or her job.

J. Being charged with or convicted of a crime, or entering a plea of guilty or nolo contendere to a crime. Before imposing discipline under this subsection, the department or agency shall follow the guidelines contained in subsection 16-24.

K. Failure to report charges of, pleas to, or convictions of crimes as required by this Rule 16.

L. Discrimination or harassment as defined in this Rule 16. This includes making derogatory statements based on race, color, creed, religion, national origin, sex, gender identity, sexual orientation, marital status, military status, age, disability, or political affiliation, or any status protected by federal, state, or local laws. This prohibited conduct need not rise to the level of a violation of any relevant state or federal law before an employee may be disciplined and the imposition of such discipline does not constitute an admission that the City violated any law.

M. Unauthorized absence from work; or abuse of paid time off, sick leave, or other types of leave; or violation of any rules relating to any forms of leave.

N. Unauthorized deviation from scheduled shift including reporting to work after the scheduled start time of the shift, leaving work before the end time of the shift, or working unauthorized overtime.

O. Failure to use safety devices or failure to observe safety regulations.

P. Engaging in a strike, sabotage, or work slowdown.

Q. Divulging confidential or otherwise sensitive information to unauthorized individuals.

R. Conduct which violates the Career Service Rules, the City Charter, the Denver Revised Municipal Code, Executive Orders, written departmental or agency regulations, policies or rules, or any other applicable legal authority. When citing this subsection, a department or agency must cite the specific regulation, policy or rule the employee has violated.

S. Refusal to cooperate, including refusing to provide requested information and materials relevant to the investigation.

T. Conduct which is or could foreseeably:

1. Be prejudicial to the good order and effectiveness of the department or agency;

2. Bring disrepute on or compromises the integrity of the City; or

3. Be unbecoming of a City employee.

Section 16-30 Investigatory Leave with Pay

A. An appointing authority may place an employee on investigatory leave with pay for up to forty-five (45) days pending an investigation of a possible rule violation or failure to meet standards of performance when it is determined by the appointing authority that it is in the best interest of the City. It may include the period of time required to complete the investigation, to conduct a contemplation of discipline meeting, and to render a decision regarding discipline.

B. If the investigation has not been completed within the forty-five (45) calendar day time period, the appointing authority may request from the OHR Executive Director an extension of time appropriate to complete the investigation and render a decision. The OHR Executive Director may approve a request for an extension for good cause shown. Additional extensions may be granted at the discretion of the OHR Executive Director. The appointing authority shall notify the employee of any extension that is granted by the OHR Executive Director.

C. The appointing authority may require the employee to remain at home and/or be available by telephone; to participate in the investigatory process and/or to perform work during their normal work hours; or to return to work prior to the end of the period of investigatory leave. Normal work hours may be changed when an employee on investigatory leave needs to be available at a time the employee is not normally scheduled to work. If an employee is unable to meet these requirements, or chooses to attend to personal business during his or her normal hours of work, the appointing authority's regular procedures regarding the use of leave shall apply.

Section 16-40 Disciplinary Process

16-41 Purpose of discipline

The purpose of discipline is to correct inappropriate behavior or performance, if possible. The type and severity of discipline depends on the gravity of the offense. The degree of discipline shall be reasonably related to the seriousness of the offense and take into consideration the employee's past record. The appointing authority shall impose the type and amount of discipline he or she believes is needed to correct the situation and achieve the desired behavior or performance.

16-42 Progressive Discipline

A. 1. Whenever practicable, discipline shall be progressive. However, any measure of discipline may be used in any given situation as appropriate.

2. Failure to correct behavior or committing additional violations after progressive discipline has been taken may subject the employee to further discipline, up to and including dismissal from employment.

3. An employee may be dismissed without prior discipline if the facts of that employee's case warrant dismissal.

B. In order of increasing severity, the disciplinary actions which an appointing authority may take against an employee for violation of the Career Service Rules, the City Charter, or the Denver Revised Municipal Code, Executive orders, or any other applicable legal authority include:

1. Written reprimand.

2. Suspension without pay, or involuntary temporary reduction of pay.

3. Involuntary demotion pursuant to Rule 9 **PAY ADMINISTRATION**.

4. Dismissal.

C. Nothing in this rule should be interpreted to preclude an appointing authority from counseling and coaching employees about performance and discipline issues. Appointing authorities are encouraged to document the date and subject of the conversation in the supervisor's file.

16-43 Form for Written Reprimand

A. Written reprimands shall contain the following:

1. The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules, with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance; and

2 A notice that the employee may file a grievance on the written reprimand and may also seek mediation in accordance with Rule 18 **DISPUTE RESOLUTION**.

B. A written reprimand shall be sent to the OHR for inclusion in the employee's personnel file.

16-44 Guidelines for Involuntary Temporary Reduction of Pay

When an involuntary temporary reduction in pay is imposed on an employee, the employee's pay shall not be reduced:

A. More than fifteen percent (15%); or

B. Below the range minimum of the employee's pay range; or

C. For less than one (1) pay period; or

D. For more than thirteen (13) pay periods; or

E. Below the minimum wage.

Any merit increase or merit payment shall be based on the employee's normal rate of pay, not the employee's temporarily reduced rate of pay.

16-45 Procedure for Dismissal

A. The appointing authority shall give an employee written notice of dismissal on or before the employee's last day as a City employee.

B. Dismissed employees are not eligible for future employment in the Career Service for a minimum of five years following such dismissal. The OHR Executive Director shall establish procedures governing how dismissed employees may be placed on eligible lists after the five years have elapsed.

C. Current address: It is the responsibility of each Career Service employee to ensure that official personnel records of the City reflect the employee' s current mailing address, current residence address and telephone number at all times.

D. 1. An employee holding on call, paid trainee, paid intern, or employment probationary status may be dismissed at any time. Such action may only be appealed on the grounds of alleged discrimination, or when the employee has alleged a violation of the "Whistleblower Protection" ordinance, in accordance with Rule 19 **APPEALS**.

2. The notice of dismissal for an on call, paid trainee, paid intern, or employment probationary status employee shall identify the violations or failures to meet performance standards with sufficient detail so as to enable the employee to understand the basis for the dismissal. The notice of dismissal shall also contain a statement that the employee may appeal the dismissal only on the grounds of alleged discrimination or an alleged violation of the "Whistleblower Protection" ordinance.

3. The appointing authority is not required to hold a contemplation of discipline meeting before dismissing an employee holding on call, paid trainee, paid intern, or employment probationary status.

16-46 Contemplation of Discipline

A. Before an employee with career status is suspended, given an involuntary temporary reduction in pay, involuntarily demoted, or dismissed, the appointing authority shall hold a contemplation of discipline meeting. A contemplation of discipline meeting is not required for written reprimands.

B. The purposes of the contemplation of discipline meeting are to allow an employee to:

1. Correct any errors in the department or agency's information or facts upon which it contemplates taking disciplinary action; and

2. Tell his or her side of the story and present any mitigating information as to why the disciplinary action should not be taken.

C. Since a contemplation of discipline meeting is not an administrative hearing, witness testimony is not allowed.

D. Employees must be served with written notice seven (7) calendar days before the contemplation of discipline meeting. The seven (7) calendar day notice period starts on the day after the date shown on the certificate of hand delivery or mailing, or on the e-mail.

E. The written notice of the contemplation of discipline meeting shall contain the following information:

1. That disciplinary action is contemplated;

2. The specific conduct or omission committed by the employee which the department or agency believes is in violation of the Career Service Rules with sufficient specificity and detail so as to enable the employee to correct his or her behavior and to enhance future performance;

3. The purpose of the contemplation of discipline meeting as described in this Rule 16;

4. The date, time, and location of the contemplation of discipline meeting; and

5. That the employee is entitled to have a representative of his or her own choosing present at the meeting.

F. The department or agency may approve or deny requests to re-schedule contemplation of discipline meetings.

16-47 Notices of Discipline

A. In addition to the information that must be part of written reprimands, written notices of suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal shall also:

1. Contain a reference to the opportunity afforded the employee to tell his or her side of the story in accordance with this Rule 16 and that the information presented at the contemplation of discipline meeting was considered by the department or agency in reaching a determination.

2. Contain a notice that the employee may appeal the suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal pursuant to Rule 19 **APPEALS**.

B. The specific conduct or omissions listed on the written notice of discipline shall be the same as those listed in the contemplation of discipline letter, except for any charges or violations which were subsequently dropped.

C. A notice of suspension, involuntary temporary reduction of pay, involuntary demotion, and dismissal shall be sent to the OHR for inclusion in the employee' s personnel file, along with a completed personnel action form.

D. Failure of a supervisor or appointing authority to comply strictly with the provisions of this section shall not constitute a basis for reversing a disciplinary action on appeal unless the employee shows that his or her rights were substantially violated by the lack of compliance.

16-48 Disciplinary Action Following Contemplation of Discipline Meeting

A. Personnel decisions relating to progressive discipline may take into account prior disciplinary action, including documented coaching and counseling.

B. A written notice of the disciplinary decision and the reasons for the disciplinary action based on the contemplation of discipline meeting and other pertinent information obtained by the appointing authority shall be served on the employee within twenty-one (21) calendar days after the meeting. The notice shall be considered served on the date shown on the certificate of hand delivery or mailing, or on the e-mail.

C. If an appointing authority presents to the OHR Executive Director documented extenuating circumstances requiring additional time, the OHR Executive Director may extend the date for taking disciplinary action for an additional seven (7) calendar days. A request for an extension of time must be sent to the OHR Executive Director before the expiration of the time for taking disciplinary action. If disciplinary action is not taken within the initial time period and a request for extension of time is not timely submitted to the OHR Executive Director, the agency must repeat the steps contained in section 16-40 before disciplinary action may be taken.

D. 1. An employee may file a grievance of a written reprimand in accordance with Rule 18 **DISPUTE RESOLUTION**. An employee may not appeal a written reprimand to the Career Service Hearings Office.

2. An employee may directly appeal a suspension, involuntary temporary reduction of pay, involuntary demotion, or dismissal in accordance with Rule 19 **APPEALS**.

RULE 18
DISPUTE RESOLUTION
(Revised February 12, 2016; Rule Revision Memo 18D

Purpose Statement:

The purpose of this rule is to provide a process to resolve workplace issues at the lowest possible level (the level at which they occur). The City expects employees and supervisors to use the dispute resolution process in good faith. Retaliation against those who participate in the dispute resolution process in good faith is prohibited.

Section 18-10 Open Door Policy

A. Under the City's open door policy, employees are encouraged to informally and directly discuss work-related issues with their direct supervisors.

B. If this does not resolve the concern, the employee is encouraged to bring the issue to the attention of the employee's manager/director, appointing authority, or a human resource (HR) representative.

C. The utilization of the open door policy does not suspend the timelines for filing a grievance.

D. The City will not tolerate retaliation against employees who utilize the open door policy in good faith.

Section 18-20 Mediation

Mediation is a formal, voluntary process in which a neutral, trained mediator assists parties to a workplace dispute to reach a mutually acceptable agreement.

A. Requesting Mediation:

1. An employee, HR representative, supervisor or manager may request formal mediation by contacting the Career Service Mediation Program ("Mediation Program"). The Mediation Program will submit the request to a Mediation Provider, who will notify the other parties.

2. Parties are encouraged, but not required to participate in mediation. If all parties agree to mediation, the Mediation Provider will assign a Mediator, who will schedule a mediation session on a date and time, and at a location agreeable to the parties.

3. All parties involved in a mediation must be informed of any representatives attending the proceedings at least seventy-two (72) hours before the beginning of the mediation.

B. Protection of Grievance Rights:

1. If a mediation request is submitted within fourteen (14) calendar days of an action or inaction giving rise to a grievance, the time to file a grievance is suspended. Should the grievant wish to continue with the grievance process, the grievance must be filed within seven (7) calendar days following the date of the termination of the mediation process.

2. If a mediation request is submitted after the filing of a timely grievance, the time to respond to the grievance is suspended. Should the grievant wish to continue with the grievance process, the agency must respond to the grievance within seven (7) calendar days following the termination of the mediation process.

C. Conclusion of the Mediation Process

1. Conclusion of the mediation process occurs when:

   a. The mediation request is withdrawn;

   b. The mediation request is declined;

   c. The Mediator determines that future efforts at mediation would be futile; or

   d. Mediation occurs, and results in an agreement between the parties to the mediation.

2. Conclusion of the mediation process is effective on the date of mailing, e-mailing or hand delivery of a written notice of termination by the Mediator to the parties in the mediation process and to the Mediation Program.

D. Communications during Mediation not Admissible in Legal Proceedings

All proceedings held pursuant to or taken in conjunction with mediation are considered confidential. This confidentiality shall be specifically acknowledged and agreed to by each party to mediation prior to the commencement of mediation. No testimony concerning discussions had at or during the mediation shall be admissible in any Career Service hearing. The nature and scope of the confidentiality of discussions, documents and other materials presented at the mediation in furtherance thereof shall be governed by the terms of the Colorado Dispute Resolution Act, C.R.S. 13-22-307, Sections 1 through 4 inclusive, as it may be amended.

Section 18-30 Grievance Procedure

A. Defined:

A grievance is an allegation made by a Career Service employee regarding discrimination, harassment, retaliation, or violence in the workplace, or relating to actions/inactions taken by the employee's supervisor/manager that violate the employee's rights under the Rules, the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies. Notwithstanding the above definition, the following shall not be grieved:

1. Issues for direct appeal (see Rule 19 **APPEALS**);

2. Any aspect of the performance review program other than an employee's performance rating; (Revised May 12, 2017; Rule Revision Memo 26D)

3. Bonus or incentive payments, or the lack thereof, or the criteria used by an agency or department to make or not make such payments, or any other aspect of the bonus or incentive program;

4. The mediation process;

5. A contemplation of discipline or disqualification notice or meeting; or

6. The assignment to or removal from an acting role, working out of class assignment, or Senior Command Staff status (as defined in Rule 5 **APPOINTMENTS AND STATUS**).

B. Filing of Grievance:

In order to file a grievance an employee must:

1. Prepare and complete all sections of the current OHR grievance form.

2. Deliver the grievance to the appointing authority or an HR representative of the employee's department or agency within twenty-one (21) calendar days after notification of the action or inaction which gives rise to the grievance. If the grievance is mailed or e-mailed, it must be received within the twenty-one (21) calendar days.

3. Employees must use their own personal time when preparing grievances unless they are granted permission by their supervisors to use paid work time.

C. Responding to Grievance:

The department or agency shall consider the grievance and within twenty-one (21) calendar days following receipt of the grievance provide the employee a dated, written notice of a decision. The written decision shall contain a certificate of delivery which indicates the date the decision was sent or delivered to the employee.

D. Computation of Time:

The period of time shall be computed as follows (all time periods are calendar days):

1. The date of notification of the action or inaction shall be the date the employee knew or should have known of the action or inaction.

2. The period of time for filing the grievance starts on the day following the date of notice of the action or inaction.

3. The date for responding to a grievance starts on the day following receipt of the grievance.

4. If the final date for filing or responding to a grievance falls on a day the OHR is not open for business, the final date shall be the next working day.

5. The grievance filing or response period ends at 5:00 p.m. on the final date.

E. Failure to Implement Remedy Granted in a Grievance Response:

If a remedy is granted in the grievance response, and the department or agency fails to implement it, the employee must notify the department or agency designee in writing of their intent to file an appeal within seven (7) calendar days following the date the employee knew or should have known of the department or agency's failure to implement the remedy. If the department/agency designee fails to implement the remedy within fourteen (14) calendar days, the employee may appeal to the Hearing Officer in accordance with the provisions of Rule 19 **APPEALS**.

18-31 Grievances of Alleged Discrimination, Harassment, Retaliation, or Violence in the Workplace

Allegations of discrimination, harassment, retaliation, or violence in the workplace, when the underlying action is not subject to a direct appeal, shall be handled through the grievance procedure, except as modified below.

A. Deadlines: The deadlines for filing a grievance and responding to such a grievance shall not apply when the grievance alleges discrimination, harassment, retaliation, or violence in the workplace.

B. 1. Employees who experience harassment, retaliation, or violence in the workplace, in violation of these rules, are urged to:

a. Make it clear that such behavior is offensive to them and request that such behavior be discontinued; and

b. File a grievance with the employee's appointing authority or HR representative.

2. Employees who experience discrimination, harassment, retaliation or violence in the workplace, in violation of these rules, by someone in the employee's chain of command, are urged to:

   a. Address the matter with a supervisor or manager in the employee's chain of command; or

   b. File a grievance with the employee's appointing authority or HR representative.

Section 18-40 Investigations

A. The agency (or the entity or individual designated by the agency) will conduct a timely investigation, as appropriate, concerning any allegations of harassment, discrimination, or violence in the workplace, in violation of these rules.

B. Employees subject to an investigation under this Rule 18 regarding misconduct shall be provided with a Garrity Advisement when there is potential criminal wrongdoing. The Garrity Advisement will be administered by the investigator. A Garrity Advisement advises an employee:

   1. The purpose of the questioning is to obtain information which will be used to determine whether disciplinary action is warranted;

   2. The purpose of the questioning is not to initiate criminal proceedings;

   3. In the event the employee discloses information which indicates he or she may be guilty of criminal conduct, neither the self-incriminating statements, nor the fruits thereof, will be used against him or her in any criminal proceeding;

   4. The employee must answer each question or face dismissal; and

   5. The employee has the right to resign immediately instead of being questioned.

C. Evidence gathered through the investigation can only be used in a civil proceeding, even if the Garrity Advisement was not administered.

D. The determination of the investigation regarding the alleged harassment, discrimination, or violence in the workplace, will be communicated to the complaining employee as soon as practicable.

E. The agency will take action, as deemed appropriate, based on the outcome of the investigation.

RULE 19
APPEALS
(Effective January 1, 2006; Rule Revision Memo 3C)

Purpose Statement:

The purpose of this rule is to describe the authority of and procedure for appeals before the Career Service Hearing Office ("Hearing Office") and the Career Service Board ("Board").

Section 19-10 Actions Subject to Appeal
(Revised October 2, 2007; Rule Revision Memo 22C)

A. An employee who holds career status may appeal the following:

1. Direct Appeals: An employee or former employee must file an appeal directly with the Hearing Office in order to challenge the following action(s) of an appointing authority:

   a. Dismissal;

   b. Suspension or temporary reduction in pay;

   c. Involuntary demotion with an attendant loss of pay. However, the removal of an employee from Senior Command Staff status (as defined in Rule 5 **APPOINTMENTS AND STATUS**) is not considered an involuntary demotion and is not appealable; (Effective June 1, 2014; Rule Revision Memo 8D);

   d. Disqualification;

   e. Lay-off; or

   f. A retaliatory adverse employment action, as defined by the City's "Whistleblower Protection" ordinance (attached as an appendix).

   It is not necessary that a complaint be filed or an investigation be conducted prior to the filing of a direct appeal where it is alleged that the action being appealed involved discrimination, harassment or retaliation, or violation of the City's "Whistleblower Protection" ordinance.

2. Grievances: An employee may file an appeal following a formal grievance only as described below:

   a. Only the following grievances can be appealed;

      i. A grievance which alleges a violation of the Career Service Rules ("Rules"), the City Charter, ordinances relating to the Career Service, executive orders, or written agency policies which negatively impacted the employee's pay, benefits or status, and has not been resolved to the satisfaction of the employee;

      ii. A grievance of a performance review with an overall rating of "Unacceptable." Grievances of any other rating may not be appealed. The only basis for reversal of an "Unacceptable" rating shall be an express finding that the rating was arbitrary, capricious or without rational basis or foundation. (Revised May 12, 2017; Rule Revision Memo 26D)

      iii. A grievance of alleged discrimination, harassment, retaliation, or violence in the workplace that is not subject to a direct appeal, may be appealed if:

         - A formal grievance was filed in accordance with Rule 18 **DISPUTE RESOLUTION**, and

         - The action taken by the department or agency as a result of the investigation (if any) did not result in stopping or otherwise addressing the alleged discrimination, harassment, retaliation, or violence in the workplace.

      iv. A grievance in which the agency/department has failed to implement the remedy granted and the grievant has notified the agency of the intent to file an appeal in accordance with Rule 18 **DISPUTE RESOLUTION**; or

      v. A grievance in which the agency/department failed to respond according to Rule 18 **DISPUTE RESOLUTION**.

   b. The grievance must be in conformance with and processed pursuant to the requirements of Rule 18 **DISPUTE RESOLUTION**.

   c. Notwithstanding the above provisions, written reprimands may not be appealed.

(Revised February 12, 2016; Rule Revision Memo 18D)

B. 1. Career Service employees who do not hold career status or former employees who did not hold career status may only file direct appeals when they have alleged that an employment decision subject to direct appeal is discriminatory or when they allege a violation of the "Whistleblower Protection" ordinance.

2. Career Service employees who do not hold career status may appeal the disposition of a complaint alleging discrimination.

Section 19-20 Filing of Appeal

A. Time Limitation:
(Revised October 2, 2007; Rule Revision Memo 22C)

1. a. Appeals claiming violation of the City's "Whistleblower Protection" ordinance shall be filed with the Hearing Office within thirty (30) calendar days of the alleged retaliatory adverse employment action.

b. All other appeals shall be filed with the Hearing Office within fifteen (15) calendar days after the date of notice of the action being appealed.

2. The computation of the period of time for filing an appeal shall be as follows (all time periods are calendar days):

a. The date of notice of the action shall be the date on the certificate of hand-delivery if hand-delivered to the appellant or the date on the certificate of mailing of the notice if sent by U.S. mail or interoffice mail.

b. The period of time for filing the appeal starts on the day following the date of:

i. The alleged retaliatory adverse employment action in the case of an appeal brought under the "Whistleblower Protection" ordinance; or

ii. The notice of the action or date of inaction in all other cases.

c. If the final date of the appeal period falls on a day the Hearing Office is not open for business, the final date for appeal shall be the next working day (Revised November 22, 2013; Rule Revision Memo 6D).

d. The appeal period ends at 5:00 p.m. (close of business) on the final date for appeal.

B. Form of Appeal:

1. Every appeal shall be on the form prescribed by the Hearing Office and shall include the name and address of the employee filing the appeal, the action which is the subject of the appeal, the reason for the appeal, and a statement of the remedy sought.

2. For any appeal filed pursuant to 19-10 A.2.a.iii, the employee must identify the alleged discrimination, harassment or retaliation that has not been stopped or otherwise addressed. An appeal may be dismissed if the employee fails to comply.

3. For any appeal filed pursuant to 19-10 A.2.a.i., the employee must identify the alleged violation of the Rules, the City Charter, ordinances relating to the Career Service, executive orders or written agency policies, and how the employee's pay, benefits or status were impacted. An appeal shall be dismissed if the appellant fails to comply.

4. For any appeal filed pursuant to 19-10 A.2.a.ii, the employee must identify why the employee asserts the "Unacceptable" rating was arbitrary, capricious and without rational basis or foundation. An appeal shall be dismissed if the employee fails to comply. (Revised May 12, 2017; Rule Revision Memo 26D)

Section 19-25 Alternative Dispute Resolution Available

A. A party may request mediation pursuant to Rule 18 **DISPUTE RESOLUTION** anytime during the appeal process. Requesting mediation shall not suspend the time limitation for filing an appeal. Scheduling the matter for mediation will not affect the appeal process or the appeal hearing date, except by agreement of the parties. If the parties mutually determine that an extension of time or a stay of the appeal is necessary to facilitate mediation, the parties shall file a motion for such relief with the Hearing Office.

B. All mediation proceedings are considered confidential. This confidentiality shall be specifically acknowledged and agreed to by each party to mediation prior to the commencement of mediation. No testimony concerning discussions had at or during the mediation shall be admissible in any Career Service hearing. The nature and scope of the confidentiality of discussions, documents and other materials presented at the mediation shall be governed by the terms of the Colorado Dispute Resolution Act, C.R.S. 13-22-307, Sections 1 through 4 inclusive, as it may be amended.

Section 19-30 Hearing Officers

A. Powers and Duties:

The Hearing Officers shall have authority to hear and decide all appeals permitted by this Rule 19; and shall perform the functions necessary to implement and maintain a fair and efficient process for appeals.

B. Hours of Operation:

The Hearing Officers shall keep the Hearing Office open for business from 8:00 a.m. to 5:00 p.m., Monday through Friday of each week, holidays excepted, unless good cause warrants a temporary or permanent change.

Section 19-35 Service defined

Pleadings, motions, statements, petitions, notices, and any other documents required to be served on a party under this Rule 19 shall be served either in person with a certificate of hand delivery, or by first class U.S. mail, with a certificate of mailing to the party's last known address.

Section 19-40 Pre-hearing Procedure

19-41 Representation of Parties

A. All parties wishing to be represented shall promptly file a designation of representative signed by the representative.

B. Parties may:

1. Represent themselves;

2. Be represented by an attorney; or

3. Be represented by a non-attorney as authorized by law and the Hearing Officer.

19-42 Hearings

A. Date for hearing:

After an appeal is filed, the Hearing Officer shall either:

1. Set a hearing date that is no more than sixty (60) calendar days after the date of filing of the appeal, unless a stipulated motion to waive the time limit is granted for good cause shown; or

2. Issue an order to show cause to determine if the Hearing Officer has jurisdiction over the appeal. If the Hearing Officer subsequently determines that jurisdiction exists, the hearing date shall be set no more than sixty (60) calendar days after the date the parties receive notice of the decision.

B. Length of hearing:

A hearing on an appeal shall be limited to one day, unless a request for a longer hearing is granted for good cause shown.

C. Continuances and Stays:

The Hearing Officer may grant a continuance or stay for good cause shown.

19-43 Motions

A. All pre-hearing motions shall be in writing and copies shall be served on all parties to the appeal, or their representatives, if any. Such service shall be made on the same date the motion is filed with the Hearing Office. Motions must be supported by a showing of good cause.

B. Rulings by the Hearing Officer on motions regarding jurisdiction may be appealed immediately to the Board subject to the provisions of this Rule 19 governing interlocutory petitions to the Board. The appeal before the Hearing Office shall be stayed pending resolution of the interlocutory petition.

19-44 Pre-hearing Statements

A. Within twenty (20) calendar days after the date an appeal is filed, the parties shall file their pre-hearing statements listing witnesses (including a summary of their proposed testimony), exhibits relevant to the issues being appealed, and offered stipulations. The parties may file an amended pre-hearing statement within ten (10) calendar days of the hearing date listing final witnesses (including a summary of their proposed testimony), final exhibits relevant to the issues being appealed, and offered stipulations. Copies of any pre-hearing statements filed with the Hearing Office shall be served on all parties to the appeal, or their representatives, if any.

B. Failure to file pre-hearing statement:

1. An employee's failure to file a pre-hearing statement may be grounds for dismissal of their appeal as abandoned unless good cause is shown for that failure.

2. A department or agency's failure to file a pre-hearing statement may subject the department or agency to evidentiary sanctions unless good cause is shown for that failure.

C. Evidence that was not disclosed by a party in any of their pre-hearing statements shall not be introduced at hearing absent a showing of good cause.

19-45 Discovery and Subpoenas

A. The parties are encouraged to engage in informal discovery as soon as an appeal is filed. The parties may move for formal discovery by submission of the proposed requests to the Hearing Officer when informal discovery has failed. Discovery shall be narrowly limited to the issues on appeal, and shall not exceed ten (10) requests for production of documents, and five (5) interrogatories absent good cause for an exception to these limitations. The party producing discovery may condition their production on the payment of reasonable copying costs. The Hearing Officer may waive or reduce the payment of such costs for good cause shown.

B. Subpoenas for the production of documents from non-parties to the appeal (including other City department or agencies that are not parties) which are relevant to the appeal may be issued by the Hearing Officer, upon the motion of either party, supported by good cause. Such motions must be filed no less than twenty (20) calendar days prior to the hearing date. The Hearing Officer shall require that the costs of production be paid by the party requesting the documents.

C. Subpoenas to compel the attendance of witnesses at hearings whose testimony is relevant to the appeal, may be issued by the Hearing Officer upon the motion of either party, supported by good cause. Such subpoenas shall be served no less than five (5) calendar days prior to hearing.

D. The Hearing Officer may require witnesses, who have been subpoenaed to appear at a hearing, to answer written interrogatories or to appear at a deposition if it is not feasible for them to be available for hearing. The Hearing Officer shall require that the costs of such a deposition be paid by the party requesting the witness testimony.

E. Any party, non-party, or witness, or a representative thereof may move to quash or modify a subpoena if it is unreasonable and oppressive.

19-46 Pre-hearing Conference

The Hearing Officer may, at the request of the parties or on the Hearing Officer's own initiative, schedule a pre-hearing conference in order to define the issues for hearing, encourage alternate dispute resolution, resolve pending motions, or otherwise assist the parties in obtaining a fair and efficient resolution of the appeal.

19-47 Interlocutory appeals

Rulings by the Hearing Officer regarding jurisdiction may be appealed immediately to the Board subject to the provisions of this Rule 19 governing interlocutory petitions to the Board. The appeal before the Hearing Office shall be stayed pending resolution of the interlocutory petition.

Section 19-50 Appeal Hearing

A. The Hearing Officer shall conduct the hearing in as informal a manner as is consistent with a fair and efficient presentation of the appeal. Strict rules of evidence shall not apply.

B. The parties may present evidence and witnesses, and may cross-examine the other party's witnesses.

C. Testimony shall be given under oath or affirmation.

D. The Hearing Officer shall rule on all objections, and may examine witnesses when necessary to establish a complete record.

19-51 Witnesses

A. Appointing authorities shall make available witnesses who have been subpoenaed by the Hearing Officer and are City employees.

B. All parties and witnesses who are City employees shall be compensated at their regular straight-time rate of pay for all hours spent at a hearing during their regular working hours, as if they were at work at their regular duty station. For any hours spent at a hearing outside of their regular working hours, there shall be no compensation.

C. The parties, representatives of the parties and witnesses shall not be subject to intimidation, interference, coercion, discrimination, or reprisal as a result of being a party or a witness in a hearing conducted by the Hearing Officer.

19-52 Failure to Appear

In cases where a party fails to appear at the hearing, the Hearing Officer may continue the hearing, dismiss the appeal or rule on the available evidence of record.

19-53 Record of Hearing

A record of the hearing shall be made. The record may be made by court reporter or any recording device approved by the Hearing Officer.

19-54 Public or Private Hearing

A. The hearing shall be open to the public except that the Hearing Officer may, at the request of an interested party, conduct the hearing in private, if it serves the interests of the parties and the public.

B. Witnesses shall be sequestered at the request of either party or when the Hearing Officer decides sequestration is appropriate.

19-55 Decision of Hearing Officer
(Revised August 29, 2008; Rule Revision Memo 30C)

The Hearing Officer shall issue a decision in writing affirming, modifying, or reversing the action, which gave rise to the appeal within forty-five (45) calendar days after the date on which the record is closed, or as soon as practicable thereafter. This decision shall contain findings on each issue necessary to resolve the appeal and shall be binding upon all parties.

Section 19-60 Petition for Review to the Board of a Hearing Officer's Decision

19-61 Grounds for Petition for Review

A party may petition that the Board review a Hearing Officer's decision only on the following grounds:

A. New evidence: New and material evidence is available that was not available when the appeal was heard by the Hearing Officer;

B. Erroneous rules interpretation: The Hearing Officer's decision involves an erroneous interpretation of the Rules;

C. Policy-setting precedent: The Hearing Officer's decision is of a precedential nature involving policy considerations that may have effect beyond the appeal at hand;

D. Insufficient evidence: The Hearing Officer's decision is not supported by the evidence. The Board may only reverse a decision on this ground if the Hearing Officer's decision is clearly erroneous; or

E. Lack of jurisdiction: The Hearing Officer does not have jurisdiction over the appeal. A party may file an interlocutory appeal on this ground and if such interlocutory appeal is filed, the appeal before the Hearing Officer shall be stayed until the Board decides the interlocutory appeal.

19-62 Filing of Petition for Review

A petition for review shall be filed with the Board at the Office of Human Resources ("OHR") Executive Director's office within fifteen (15) calendar days after the date of the mailing of the Hearing Officer's decision. If the due date falls on a day that the OHR is not open for business, the due date shall be construed as the next business day. The request shall be in writing, and shall contain the following:

A. The name and number of the appeal;

B. The names and addresses of all parties to the appeal and of their attorneys or representatives;

C. The date of the Hearing Officer's decision;

D. A brief statement of the grounds for the petition for review from subsection 19-61, including the factual or legal basis which the party asserts exist to support each ground of the petition. If the party is asserting "new evidence," the party shall include an affidavit stating the nature of the new evidence and the reason(s) for its unavailability at hearing;

E. The action the petitioner wants the Board to take;

F. A copy of the Hearing Officer's decision; and

G. Proof of service on all parties. Copies of the petition for review and all other documents filed with the Board shall be served on the Hearing Office, and all parties, or their representatives, if any.

19-63 Response to Petition for Review by the Board

A. The other party to the appeal may file a cross-petition for review which shall comply with subsection 19-62, except that it shall be filed within ten (10) calendar days after service of the petition for review.

B. If the other party does not file a cross-petition for review, no response is required until the answer brief is due.

C. If both parties file a petition for review by the Board, the employee shall be deemed the "petitioner" and the department or agency shall be deemed the "cross-petitioner."

19-64 Hearing Transcript and Record

A. Within twenty (20) calendar days after filing the petition for review, the petitioner shall file with the Hearing Office a request for the transcript of the hearing, or such portions of the hearing, if any, that the petitioner deems necessary for consideration of its petition by the Board. The petitioner shall file a copy of the request for the transcript with the Board and serve a copy on the other party on the same day that the petitioner files the request with the Hearing Office.

B. If the petitioner does not request any portion of the transcript, the petitioner shall, within twenty (20) calendar days after filing the petition for review, file with the Board and serve on the other party a notice that no transcript is being requested from the Hearing Office.

C. Within ten (10) calendar days after the filing of a request for the transcript of the hearing or the filing of a notice that no transcript is being requested, the respondent (or cross-petitioner) may file a request for additional portions of the transcript not included in the petitioner's request with the Hearing Office. The respondent (or cross-petitioner) shall file a copy of the request for the transcript with the Board and serve a copy on the petitioner on the same day that the respondent (or cross-petitioner) files the request with the Hearing Office.

D. The cost of preparing the transcript or portions thereof shall be advanced by the party making the request.

E. Once the transcripts are prepared, the Hearing Office shall file notice with the Board that the transcripts are complete, and shall provide the parties with copies of the notice and copies of the requested transcripts, upon the payment of reasonable copy costs. The Hearing Office shall include a date of service with its notice.

F. The parties may review the record at the Hearing Office and request copies of portions of the record necessary for preparation of a brief. The Hearing Office may charge reasonable copy costs.

19-65 Briefs

A. Petitioner's Brief: An original and five (5) copies of the petitioner's brief shall be filed by the petitioner with the Board within twenty (20) calendar days after the date of service by the Hearing Office of notice that the transcript is complete. If neither party requests transcripts of the hearing, the petitioner's brief shall be filed with the Board within thirty-five (35) calendar days after the date of service by the petitioner of notice that no transcript is being requested from the Hearing Office. The petitioner's brief shall separately address each ground for the petition; shall be supported by appropriate citations to the transcript and the record if necessary; shall include a brief statement of the relief sought by the petitioner; and shall include a copy of any portions of the transcript and record necessary for resolution of the petition. The petitioner's brief shall be served on the other party on the same date that it is filed with the Board.

B. Answer Brief: An original and five (5) copies of the answer brief shall be filed by the other party with the Board within twenty (20) calendar days after the date of service of the petitioner's brief. The answer brief shall contain a response to each argument contained in the petitioner's brief and, if the answer brief cites to additional portions of the transcript or record, such additional portions shall be included with the answer brief. If the other party is also a cross-petitioner, the answer brief shall also separately address each ground for the cross-petition; shall be supported by appropriate citations to the transcript and the record if necessary; shall include a brief statement of the relief sought by the cross-petitioner; and shall include a copy of any portions of the transcript and record necessary for resolution of the cross-petition. The answer brief shall be served on the petitioner on the same date that it is filed with the Board.

C. Reply Briefs: The parties are expected to fully address all issues in the petitioner's brief and answer brief. If, however, a cross-petition is filed and arguments supporting the cross-petition are included in the answer brief, the petitioner may file a reply brief which shall contain only a response to each argument advanced in support of the cross-petition and contained in the cross-petitioner's answer brief. An original and five (5) copies of the reply brief shall be filed by the petitioner with the Board within fifteen (15) calendar days after the date of service of the answer brief. If the reply brief cites to additional portions of the transcript or record, such additional portions shall be included with the reply brief. No further briefs shall be submitted by either party unless requested by the Board.

D. Extensions of Time to File Brief: If either party needs an extension of time to file a brief, the party may file a motion with the Board supported by good cause and the OHR Executive Director may, on behalf of the Board, grant an extension of up to ten (10) calendar days. The OHR Executive Director shall notify the parties in writing of any extensions granted.

E. Oral Argument: If either party believes that oral argument before the Board is necessary for resolution of the issues, the party shall include in the petitioner's brief or the answer brief a request for oral argument, and such request shall specifically indicate why oral argument is requested. The Board may grant a party's request for oral argument or may order oral argument when it determines oral argument is necessary.

19-66 Stay of Hearing Officer's Decision

A. When an interlocutory petition based on jurisdiction has been filed, the appeal before the Hearing Officer shall be automatically stayed.

B. When any other petition or cross-petition is filed, the Board may stay a Hearing Officer's decision if the party requesting a stay has filed a Request for Stay indicating the irreparable harm, injury or loss which would occur if the stay is not granted. A party may file a response or the Board may request a response to a Request for Stay. However, the Board may rule on a Request for Stay prior to the filing of a response.

C. Any stay permitted by this Rule shall expire at the time the Board issues a final decision on the petition and cross-petition, if any.

Section 19-70 Decision by the Board

Upon submission of the briefs and upon the conclusion of oral argument, if any, the Board shall Issue a decision in writing, affirming, modifying, or reversing the Hearing Officer's decision. The Board may also remand part or all of the appeal for further action by the Hearing Officer. The Board shall issue its decision within sixty (60) calendar days after the date on which the final brief is submitted or oral argument is held, whichever is later. The binding effect of a decision is not affected by late issuance. The decision shall contain findings on each issue necessary to resolve the petition and cross-petition if any and shall be binding upon all parties. A decision of the Board shall be concurred in by at least three (3) members of the Board, whose names shall be included in the decision. The decision rendered by the Board shall constitute the final decision for purpose of requesting judicial review.

Section 19-80 Enforcement of Subpoenas

Subpoenas issued by the Hearing Officers or the Board shall be enforced in accordance with the City Charter.

APPENDIX 19.A.

RELEVANT PROVISIONS OF THE WHISTLEBLOWER PROTECTION ORDINANCE SECTION 2-100 OF THE DENVER REVISED MUNICIPAL CODE

Sec. 2-106. Legislative Declaration

The city council hereby determines and declares that employees of the City and County of Denver should never suffer retaliation from their supervisors or appointing authorities for communicating information about illegal activities, unethical practices or other forms of official misconduct experienced or witnessed by employees in the scope of their employment. The interests of the City and County and Denver and the larger interests of the citizens of Denver are served by encouraging all employees to speak out fully and frankly on any official misconduct which comes to their attention without fear of retaliation. Therefore, the purpose of this Article VII is to eliminate the possibility or the threat of any adverse employment action that may be taken against any City and County employee for reporting such information to appropriate reporting authorities.

Sec. 2-107. Definitions

As used in this Article VII:

(a) "Appropriate reporting authority" means any officer, board or commission, or other person or entity vested with legal authority to receive, investigate, or act upon reports of official misconduct by officers and employees of the City and County, including, by way of example:

(1) The mayor and members of the mayor's cabinet;

(2) The city council, any committee of the city council, and individual members of the city council;

(3) The auditor and the audit committee;

(4) The board of ethics;

(5) The district attorney and other law enforcement agencies; or

(6) The appointing authority for the officer or employee who is alleged to have engaged in the official misconduct that is the subject of the report.

(b) "Adverse employment action" means any direct or indirect form of employment discipline or penalty, including, but not limited to, dismissal, suspension, demotion, transfer, reassignment, official reprimand, adverse performance evaluation, withholding of work, denial of any compensation or benefit, lay-off, or threat of any such discipline or penalty.

(c) "Employee" means any employee of the City and County of Denver within the meaning of § 1.2.11 of the charter.

(d) "Official misconduct" means any act or omission that is committed, intended, or planned by any officer or employee of the City and County that constitutes:

(1) A violation of law;

(2) A violation of any applicable rule, regulation or executive order;

(3) A violation of the code of ethics as codified in article IV of this chapter 2, or any other applicable ethical rules and standards;

(4) The misuse, misallocation, mismanagement or waste of any city funds or other city assets; or

(5) An abuse of official authority.

(e) "Supervisor" means any person who is authorized to recommend or to impose any adverse employment action upon an employee.

Sec. 2-108. Retaliation prohibited.

(a) Except as provided in subsection (b) of this section, no supervisor shall impose or threaten to impose any adverse employment action upon an employee on account of the employee's disclosure of information about any official misconduct to any person.

(b) The protections afforded by this Article VII shall not apply to any employee:

(1) Who discloses information that the employee knows to be false or who discloses information without regard for the truth or falsity thereof;
(2) Who discloses information in a manner prohibited by law including, by way of example, information that is prescribed as being confidential by law; or
(3) Who otherwise discloses information in bad faith.

(c) It shall be the obligation of an employee who wishes to disclose information under the protection of this Article VII to make a good faith effort to provide to an appropriate reporting authority the information to be disclosed prior to the time of its disclosure. The protection of this Article VII shall not extend to reports of official misconduct that are made anonymously.

Sec. 2-109. Remedies.

(a) Employees in the career service. Any employee in the career service may file a complaint with the career service board or its designated hearing officer alleging a violation of section 2-108 within thirty (30) days of the alleged retaliatory adverse employment action. The complaint shall be processed in accordance with the rules of the board governing employee appeals; provided, however, that the employee shall not be required to pursue a complaint or grievance within the employee's department or agency prior to appealing the alleged retaliatory adverse employment action to the board or its designated hearing officer. In addition to the foregoing procedure, any employee who is otherwise contesting a disciplinary action before the board or its designated hearing officer in accordance with the rules of the board may defend against the disciplinary action upon a showing by the employee that the disciplinary action constitutes a violation of section 2-108. In either event, if the board or the designated hearing officer finds that a violation of section 2-108 has occurred, the board or the hearing officer shall order appropriate relief on behalf of the employee including, but not limited to, reinstatement, back pay, restoration of all benefits and seniority rights, and the expunging of the records of any retaliatory adverse employment action made in violation of section 2-108.

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(d) Sanction against supervisors. Upon a determination by the career service board or its designated hearing officer, the civil service commission or its designated hearing officer, or an appointing authority that a violation of section 2-108 has occurred, any supervisor who committed the violation shall be subject to appropriate disciplinary action by the supervisor's appointing authority, up to and including termination from employment.

Sec. 2-110. Posting Required.

All departments, agencies and other appointing authorities of the City and County of Denver shall post and maintain, in one or more prominent locations accessible to employees of the department or agency, a notice of the rights and protections afforded to employees by this Article VII. The notice shall be in a form approved by the city attorney.

This Appendix is provided for informational purposes and is not considered a part of the Rules.